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**UNITED STATES OF
AMERICA**

**Cruel and inhuman:
Conditions of isolation for
detainees at Guantánamo Bay**



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

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Summary

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This report describes Amnesty International's concerns about the current conditions of detention in the US military base at Guantánamo Bay, Cuba. As of 1 April 2007, approximately 385 men of around 30 nationalities remained detained as "unlawful enemy combatants", many have been held for more than five years without charge or trial or knowing if or when they will be released.

Despite being provided with what the US government has called "high quality" medical care, adequate food, sanitation and access to religious items, most detainees have languished in harsh conditions throughout their detention, confined to mesh cages or in held in isolation in maximum security cells. Moreover, a new facility which opened in December 2006, known as Camp 6, has created even harsher and apparently more permanent conditions of extreme isolation and sensory deprivation.

Detainees are confined for 22 hours a day to individual, enclosed, steel cells where they are almost completely cut off from human contact. The cells have no windows to the outside or access to natural light or fresh air. No activities are provided, and detainees are subjected to 24 hour lighting and constant observation by guards through the narrow windows in the cell doors. They exercise alone in a high-walled yard where little sunlight filters through; detainees are often only offered exercise at night and may not see daylight for days at a time.

The US authorities have described Camp 6 as a "state of the art modern facility" which is safer for guards and "more comfortable" for the detainees. However, Amnesty International believes that the conditions, as shown in photographs and described by detainees and their attorneys, contravene international standards for humane treatment. In some respects, they appear more severe than the most restrictive levels of "super-maximum" custody on the US mainland, which have been criticized by international bodies as incompatible with human rights treaties and standards.

It appears that around 80 per cent of those currently held at Guantánamo are in isolation – a reversal of earlier moves to ease conditions and allow more socialising among detainees. According to the Pentagon, 165 detainees had been transferred to Camp 6 from other facilities on the base by mid-January 2007. A further 100 detainees are held in solitary confinement in Camp 5, another maximum security facility.

As many as 20 detainees are also believed to be held in solitary confinement in Camp Echo, a facility set apart from others on the base, where conditions have been described by the International Committee of the Red Cross (ICRC) as “extremely harsh”.

They include Shaker Aamer, a UK resident and former camp negotiator, who has been held in total isolation in Camp Echo since September 2005. Saber Lahmer, an Algerian seized in Bosnia, has also spent the last 10 months in Camp Echo. Both men are reportedly confined to small, windowless cells with little exercise and no possessions apart from a copy of the Qu’ran. Saber Lahmer reportedly refused to leave his cell for a pre-arranged visit with his attorneys in March, causing grave concern for his mental health. The military authorities denied requests by his lawyers to visit him in his cell.

Security at the camp is reported to have significantly tightened following a protracted hunger strike and the deaths of three detainees from apparent suicide in June 2006. Many of those transferred to Camp 6 were previously held in Camp 4 where they lived communally in barracks and had access to a range of recreational activities. Camp 4 is now reported to house only around 35 detainees, down from 180 in May 2006.

A significant number of the more than 80 detainees slated for release or transfer by the Pentagon following review board hearings are believed to be held in isolation in Camps 5 or 6. They include all or some of the 14 Uighars still detained: Chinese Muslims cleared for release but who cannot be returned to China because of the risk of persecution.

Amnesty International is concerned that, as well as being inhumane, the conditions could have a serious adverse effect on the psychological and physical health of many of the detainees, exacerbating the stress inherent in their indefinite detention without trial or access to their families. Lawyers who have recently visited detainees in Camp 6 have expressed concern about the impact of the conditions on the mental state of a number of their clients.

Amnesty International is calling for Guantánamo to be closed and for detainees to be charged and tried under international fair trial norms or else released (see appendix). In the meantime, the organization is urging the US government to take immediate steps to alleviate conditions in the camp to ensure that all detainees are treated humanely in accordance with international law and standards. Such steps include ensuring that no detainee is subjected to prolonged solitary confinement in conditions of reduced sensory stimulation, and allowing detainees more association and activities as well as regular contact with their families with opportunities for phone calls and visits.

Amnesty International is also calling on the government to allow independent health care professionals into Guantánamo to examine detainees in private and to allow visits by independent human right organizations and the UN special procedures. Such visits should include access to all parts of the facility and the ability of delegates to speak privately to detainees.

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UNITED STATES OF AMERICA

Cruel and Inhuman: Conditions of isolation for detainees at Guantánamo Bay

Introduction

Without question, the isolation of a prisoner from the general population for an indefinite period of time raises Eighth Amendment issues, and due process concerns.

US federal judge, 27 August 2004¹

As of 1 April 2007, approximately 385 men of around 30 nationalities were detained without trial in the US military base at Guantánamo Bay, Cuba. Designated by the US authorities as “unlawful enemy combatants”, many have been held for more than five years without knowing if or when they will be released or brought to any form of judicial process. None of those currently held has had the lawfulness of his detention reviewed by a court. A few face the prospect of trials by military commission under procedures that violate international fair trial standards.²

Amnesty International has raised concerns about the treatment of the detainees ever since the first of them were transferred by plane from Afghanistan to Guantánamo – hooded, shackled and tied down – in January 2002.³ From the outset, the US authorities have asserted that all the detainees in its custody are treated “humanely”. That such assertions should be treated with extreme caution has become clear over the years. Even when official investigations have revealed interrogation techniques and detention conditions that clearly violate the international prohibition on torture or other cruel, inhuman or degrading treatment, US investigators and officials have concluded that no law was breached.⁴

Despite being provided with what the US government has called “high quality” medical care, adequate food, sanitation and access to religious items, most detainees have languished in harsh conditions throughout their detention, confined to mesh cages or enclosed maximum security cells. Moreover, in December 2006, a new facility opened on the base. This facility, known as Camp 6, has created even harsher and apparently more permanent

¹ *Hamdi v. Rumsfeld*, In the US District Court for the Eastern District of Virginia. The Eighth Amendment of the US Constitution prohibits, among other things, “cruel and unusual punishments”.

² *USA: Justice delayed and justice denied? Trials under the Military Commissions Act*, AI Index: AMR 51/044/2007, March 2007, <http://web.amnesty.org/library/Index/ENGAMR510442007>.

³ See, for example, *Afghanistan/USA: Prisoners must be treated humanely*, AI Index: AMR 51/004/2002, 10 January 2002, <http://web.amnesty.org/library/Index/ENGAMR510042002>; *USA: AI calls on the USA to end legal limbo of Guantánamo prisoners*, AI Index: AMR 51/009/2002, 15 January 2002, <http://web.amnesty.org/library/index/engamr510092002>.

⁴ For example, see *USA: Rendition – torture – trial? The case of Guantánamo detainee Mohamedou Ould Slahi*, AI Index: AMR 51/149/2006, September 2006, <http://web.amnesty.org/library/Index/ENGAMR511492006>.

conditions of extreme isolation and sensory deprivation in which detainees are confined to almost completely sealed, individual cells, with minimal contact with any other human being.

The US authorities have described Camp 6 as a “state of the art modern facility” which is safer for guards and “more comfortable” for the detainees. However, Amnesty International believes that conditions in Camp 6, as shown in photographs or described by detainees and their attorneys, contravene international standards for humane treatment. In certain respects, they appear more severe than the most restrictive levels of “super-maximum” custody on the US mainland, where conditions in some units have been criticized by international bodies and US courts as incompatible with human rights and US correctional standards.

The organization is concerned that, as well as being inhumane, conditions in Camp 6 could have a serious adverse effect on the psychological and physical health of many of the detainees held there, exacerbating the stress inherent in their indefinite detention without trial or access to their families. Lawyers who have recently visited Camp 6 have expressed concern about the impact of the conditions on the mental state of a number of detainees.

Isolation has been an aspect of the treatment of detainees in Guantánamo that has caused serious concern over the years, including its use as an interrogation technique or as punishment.⁶ Released detainees have recalled that the use of isolation became more pronounced from late 2002.⁷ In a meeting with the Guantánamo authorities in October 2003,

“Reports indicate that the treatment of detainees since their arrests, and the conditions of their confinement, have had profound effects on the mental health of many of them. The treatment and conditions include the capture and transfer of detainees to an undisclosed overseas location, sensory deprivation and other abusive treatment during transfer; detention in cages without proper sanitation and exposure to extreme temperatures; minimal exercise and hygiene; systematic use of coercive interrogation techniques; long periods of solitary confinement; cultural and religious harassment; denial of or severely delayed communication with family; and the uncertainty generated by the indeterminate nature of confinement and denial of access to independent tribunals. These conditions have led in some instances to serious mental illness, over 350 acts of self-harm in 2003 alone, individual and mass suicide attempts and widespread, prolonged hunger strikes. The severe mental health consequences are likely to be long term in many cases, creating health burdens on detainees and their families for years to come.”

Report of five United Nations experts on situation of detainees at Guantánamo Bay, 2006⁵

⁵ UN Doc: E/CN.4/2006/120. *Situation of detainees at Guantánamo Bay*. Report of the Chairperson-Rapporteur of the Working Group on Arbitrary Detention; the Special Rapporteur on the independence of judges and lawyers; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; the Special Rapporteur on freedom of religion or belief; and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. 27 February 2006.

⁶ See, for example, Section 4.2 of *USA: Human dignity denied – Torture and accountability in the ‘war on terror’*, AI Index: AMR 51/145/2004, <http://web.amnesty.org/library/index/engamr511452004>.

the International Committee of the Red Cross (ICRC) raised its concern about the “excessive isolation of detainees”, and noted that there had been “no improvement” on this issue, according to a leaked Pentagon document.⁸ Three and a half years later, in addition to Camp 6, Amnesty International remains concerned about other isolation facilities on the Guantánamo base, including Camp 5, built as a long-term detention and interrogation centre where detainees classed as “non-compliant” are also held in solitary confinement.

At the time of writing, about 300 of the Guantánamo detainees – nearly 80 per cent of the current detainee population – were believed to be held in isolation in Camps 5, 6 or Camp Echo. According to the Pentagon, 165 detainees had been transferred to Camp 6 from other facilities on the base by mid-January 2007. Around 100 detainees are held in Camp 5, and some 20 more are believed to be held in isolation in Camp Echo, a facility set apart from others on the base, which was originally used to hold detainees selected for trial by military commissions. Fourteen “high value” detainees transferred from years of secret detention to Guantánamo Bay in September 2006 are also held in isolation on the base, although their exact location is unknown. It was also not known at the time of writing in which part of the base Abdul Malik, a detainee transferred from Kenya to Guantánamo over the weekend of 24/25 March 2007, was being held.

The information in this report is based on various sources including lawyers who have visited detainees in Guantánamo;⁹ photographs and articles appearing in the press by journalists given controlled tours of the base (none of whom were allowed to speak to detainees); and public statements and photographs issued by the Department of Defense. Amnesty International has made several requests to visit Guantánamo and speak to detainees since the detention facility opened in January 2002 but these requests have been turned down.

Conditions in Camp 6

Built to accommodate around 178 detainees, the compound known as Camp 6 is surrounded by high concrete walls with no windows visible on the façade. Inside, detainees are confined for a minimum of 22 hours a day in individual steel cells with no windows to the outside. The only view from each cell is through strips of glass only a few inches wide in and adjacent to the cell door which looks onto an interior corridor patrolled by military police. There are no

⁷ For example, “[A] point came at which you could notice things changing. That appeared to be after General Miller around the end of 2002...Before when people were put into isolation they would seem to stay for not more than a month. After he came, people would be kept there for months and months and months.” Detention in Afghanistan and Guantanamo Bay. Statement of Shafiq Rasul, Asif Iqbal and Ruhel Ahmed. July 2004. Available at: <http://www.ccr-ny.org/v2/reports/docs/Gitmo-compositestatementFINAL23july04.pdf>.

⁸ Memorandum for Record. Subject: ICRC Meeting with MG Miller on 09 Oct 03. Department of Defense, Joint Task Force 170, Guantanamo Bay, Cuba.

⁹ Including detailed discussions at Reprieve, a London-based human rights charity which currently provides legal representation for 37 detainees in Guantánamo Bay (see www.reprieve.co.uk). Lawyers have not been allowed into the housing areas of Camps 5 or 6 but only the attorney visitation rooms.

opening windows and detainees are completely cut-off from human contact while inside their cells.

The housing cells are arranged around a central area on the ground floor which has fixed metal tables and chairs, originally designed so that detainees could have communal dining. However, this area was closed off to detainees before the facility opened, following a tightening of security and a change in the prison's mission to one that amounts to an administrative segregation facility. Detainees now eat all meals inside their cells.

The only way in which detainees can communicate with other inmates is by shouting through a narrow gap at the bottom of the cell door. Reportedly detainees have been punished for shouting to other inmates. One detainee told his lawyer that after several weeks in the facility, he still had no idea of who was in the facility apart from the five other inmates in his immediate "pod".

Contrary to international standards, the cells have no access to natural light or air, and are lit by fluorescent lighting which is on 24 hours a day and controlled by guards. The lighting is reportedly dimmed at night, although it is unclear by how much. The only source of air in the cells is from air-conditioning controlled by guards. Lawyers who visited detainees in January 2007 reported that they consistently complained of being too cold in the steel cells, with the air-conditioning turned up too high.¹⁰ One lawyer has described how in the visiting room her client was huddled on the floor, trying to warm himself with his arms and was too cold to sit on the chair. Reportedly, detainees in Camp 6 have now been given thermal shirts to wear under their jumpsuits, but these may be taken away as punishment through "loss of privileges": one detainee reportedly had his shirt taken away when he was found with a small item in his pocket when he went to shower.

The cells are sparsely furnished with a built-in bunk, and a combined metal toilet and sink unit; some if not all cells also have a small table fixed to the wall near the door with a shelf for the Qu'ran.¹¹ Detainees reportedly have no possessions in their cells apart from a copy of the Qu'ran, and (if "compliant") a prayer rug and beads and one book a week from a library cart. The library is reportedly poorly stocked, and there are few books in the Sunni tradition, despite most of the detainees being Sunni; there are a lot of children's books, and some which are reportedly culturally insensitive. A clock is reportedly positioned in the corridor outside the cells so that detainees can see the time for prayer.

As well as having few materials or possessions in their cells, detainees are cut off from the outside world by not being allowed newspapers, radio or TV. Once a week the guards will reportedly put up articles printed from the internet in the recreation area. Amnesty International has been told that these are nearly all in English, which the large majority of detainees cannot read. Furthermore, the articles do not constitute any meaningful synopsis of the "news" and have sometimes included crude propaganda: a photograph of Saddam Hussain

¹⁰ The manipulation of temperature via air conditioning has been authorized and used in Guantánamo as an interrogation technique known as "environmental manipulation".

¹¹ The table was reportedly in a cell viewed by journalists. It is not shown in photographs although it may have been obscured by the door.

was reportedly pinned up at the time of his execution with a caption by the US military stating that he “was executed because he did not co-operate with the Americans”. On another occasion, captions had reportedly been added to pictures of children along the lines of “Daddy, I don’t remember what you look like. Please cooperate with the Americans so you can come home”.

Detainees are allowed two hours of exercise a day. This is taken in a yard which was originally intended to be a communal sports and recreation area but has now been divided into individual areas by chain-link fences. During exercise, detainees are reportedly able to have some minimal communication with inmates in adjacent areas, although touching, such as hand-shaking, is forbidden. There appears to be no equipment of any kind in the yard for exercise or other activities, apart from a ball in some pens.

The exercise yard is surrounded by high concrete walls, with mesh fencing covering the top, so that while technically it is an outside area there is no view to the outside. Detainees have told their lawyers that, although they can see the sky from the yard during the day, the height of the walls and the mesh fencing means the sun filters through only for a short period of the day, and only in patches so that they have little, if any, exposure to the sun. Furthermore, detainees have reported that they are often offered exercise late at night, in which case they may not see daylight for days at a time. Guards also reportedly encourage detainees to refuse yard time at night and take a shower only, to which they usually agree.

The lack of human contact in Camp 6 appears to be reinforced by other operating procedures. The cell doors are operated by remote control, and guards escorting the detainees to and from the exercise yard wear thick gloves. There is an opening in the door through which food is slotted so that detainees rarely come into direct contact with another human being. Guards are reportedly silent during most of their contact with detainees. Detainees are also escorted in shackles whenever they leave their cells. Visits with attorneys take place in a small, windowless room, and detainees are reportedly shackled to the floor during visits.

One common complaint by detainees in Camp 6 is their constant exposure to guards. Several detainees have described their distress at being observed by guards while using the in-cell toilets. Reportedly, detainees in Camp 6 have not been allowed to cover themselves while using the toilet and they may be observed by female staff. It is further alleged that, contrary to former operating rules, female guards now observe detainees while they are taking showers. The towels provided are alleged to be too small to provide adequate covering. Amnesty International considers that allowing female guards to watch male detainees in the circumstances described can amount to a form of sexual abuse in violation of international standards prohibiting cruel, inhuman or degrading treatment; the constant observation may also violate the right to privacy and respect for human dignity, both of which are enshrined in the International Covenant on Civil and Political Rights.

Another complaint relates to constant noise deriving from the way Camp 6 is constructed. The cell areas consist of prefabricated units arranged on two storeys. Cell walls,

doors, ceilings, and even the floors on the second storey¹², are made of steel, as are the walkways which are patrolled by military police every two or three minutes. Amnesty International was told that every movement causes the steel to reverberate and echo, so that there is constant amplified noise. This reportedly goes on throughout the night, with guard patrols and people taken for exercise at virtually all hours, so that there is no respite. This causes sleep disturbance and considerable stress to detainees: as one lawyer put it, time spent in Camp 6 is “a combination of no peace and nothing to do”.

General restrictions on communication with relatives and lawyers

Detainees in Guantánamo are denied family visits and mail from relatives is often delayed and heavily censored. The father of Guantánamo detainee David Hicks recently said that even words of affection were blacked out and removed in letters to and from his son.¹³ Detainees are generally not allowed any phone calls. In March 2007, Omar Khadr, aged only 16 when first brought to Guantánamo after his capture in Afghanistan in July 2002, was allowed to speak to his mother on the telephone for the first time in more than five years.

Amnesty International has been told that detainees are usually not allowed to keep paper and pens in their cells and are provided with these items for only half an hour a week; if they are unable to complete a letter to their family or lawyer within this period, they have no extra time to do so. This can make it difficult for detainees to communicate with their families or lawyers adequately or assist in preparing a legal case, contrary to international standards.¹⁴ Furthermore, there is no time for detainees to assist those who are illiterate, in areas where communication between detainees is possible.

Move to permanent lockdown for most detainees: conditions worse than before

As noted above, 165 prisoners – more than a third of the total Guantánamo detainee population - had been moved to Camp 6 from other facilities in the base by January 2007. Around 100 other detainees are held in Camp 5, an isolation and interrogation facility for “non-compliant” detainees that opened in October 2004. Amnesty International has previously expressed concern about conditions in Camp 5, where detainees (including at least two who were juveniles when taken into custody) have been confined for up to 24 hours a day in small, enclosed cells. Camp 5 cells appear similar to those in Camp 6 and have solid metal doors with a small window looking onto an interior corridor; however, they also have a

¹² The only area which is not made of steel is the concrete floor on the ground floor cells.

¹³ Australian national David Hicks is the only detainee known to have had access to family members.

¹⁴ AI was told that detainees may be allowed a pen and paper the day before an annual review board hearing (an administrative hearing at which the detainee is not represented by a lawyer). International standards state that prisoners shall be allowed to communicate with family and friends through correspondence and visits (see section on standards). Principle 8 of the UN Basic Principles on the Role of Lawyers states that “All arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality”.

narrow frosted window on the outside wall which provides some access to natural light, if no view to the outside. Amnesty International has been told that the exercise yard in Camp 5 is surrounded by fencing so appears less enclosed than in Camp 6. While conditions in both camps are extremely harsh, according to a contact who has viewed cells in each facility, the difference in Camp 6 is that detainees have no way of knowing whether it is day or night from the physical environment in the cells. One detainee has described Camp 6 as being a “dungeon above the ground”.¹⁵

The Pentagon claims that conditions in Camp 6 are superior to those in older housing areas such as Camp 1 as detainees now have more “privacy” and larger cells as well as a standardized two hours of daily exercise. Detainees in Camp 1 are confined to small cages in cell blocks, with little opportunity for exercise. Harsh as these conditions are, however, the meshed walls allow communication between detainees as well as access to some natural light and fresh air (many of the cells appear to have windows). Lawyers have reported that detainees formerly in Camp 1, or in Camps 2 and 3 which are similar, find conditions in Camp 6 much more oppressive, particularly in terms of the isolation and lack of natural light.

Disturbingly, dozens of detainees transferred to Camp 6 used to be held in Camp 4, a medium security facility where they lived communally in barracks, ate at picnic tables, prayed together and had all-day access to an outside recreation area with sports equipment. They include some or all of the 14 Uighurs who have been cleared by review boards as eligible for release but who cannot be returned to China because of the risk of persecution.¹⁶ Most of the Uighurs had been transferred from Camp 4 to Camps 1-3 prior to their transfer to Camp 6; however they had never before been held in conditions of such blanket isolation. They are now reportedly dispersed among separate pods and are even more isolated as they don’t speak Arabic. According to the Department of Defense, as of early March 2007, more than 80 of the approximately 385 detainees currently held at Guantánamo were designated for release or transfer, following review board decisions.¹⁷ A significant number of these may now be held

¹⁵ Declaration of Sabin Willett, January 20, 2007 in case of *Huzaiifa Parhat et al v Robert M Gates*, before United States Court of Appeals, District of Columbia Circuit, Case No. 06-1397

¹⁶ According to their lawyers, Combatant Status Review Tribunal (CSRT) records show that their case histories are similar to those of five ethnic Uighurs (Chinese Muslims) released from Guantánamo to Albania in 2006, long after they were determined to be no longer a threat to the USA. The CSRTs are administrative review bodies set up in July 2004, more than two years after detentions began, to review the “enemy combatant” status of detainees. The CSRT determination is a one-off procedure, followed up by an annual Administrative Review Board (ARB). Both the CSRT and ARB procedures are wholly inadequate replacements for full judicial review of detentions. Both tribunals can rely on coerced or secret evidence against a detainee denied legal representation and presumed to be an “enemy combatant” unless he can prove otherwise. See *USA: Guantánamo and beyond: The continuing pursuit of unchecked executive power*, AI Index: AMR 51/063/2005, May 2005, <http://web.amnesty.org/library/index/engamr510632005>.

¹⁷ News Transcripts from the Department of Defense, 6 March 2007: *Annual Administrative Review Boards for Enemy Combatants Held at Guantánamo attributable to senior Defense officials*. <http://www.defenselink.mil/transcripts/transcript.aspx?transcriptid=3902>.

in Camps 5 or 6.¹⁸ It appears that many detainees may have been transferred there because there was room in the facility, not because of their individual behaviour.

Some of the harshest conditions anywhere at Guantánamo appear to be in Camp Echo. In its meeting with the Guantánamo authorities on 9 October 2003, the ICRC had expressed shock to discover that “Camp Echo had expanded”, and described conditions in the facility as “extremely harsh”.¹⁹ Camp Echo, which is still operational three and a half years later, is a collection of windowless shacks situated in a separate part of the base. One half of each shack is divided into two small individual cells: a sleeping area and a shower area which the detainee is reportedly allowed to use for 10 minutes a day. The other half is a room with a table and chairs, which is used for attorney visits and reportedly sometimes for interrogations. Detainees can only access this room by passing through the shower area. Detainees spend 23 or 24 hours a day confined to the individual cells at the back of each hut. The huts have no natural light and fluorescent lighting is on 24 hours a day. Some detainees in Camp Echo have reportedly been denied outdoor exercise for weeks at a time; others have been allowed exercise only a few times a week.

Detainees first named to appear before military commissions were at one time held in Camp Echo but are now in Camp 6. For example, after being named as eligible for trial by military commission in 2003, Yemeni national Salim Ahmed Hamdan was transferred to Camp Echo. The military claimed that “detainees at Camp Echo are not in solitary confinement”.²⁰ However, Salim Ahmed Hamdan was held for almost a year in solitary confinement in Camp Echo:

“The ICRC focussed on the effects that the interrogations were having on the mental health of the detainees. The ICRC feels that interrogators have too much control over the basic needs of detainees. That the interrogators attempt to control the detainees through the use of isolation. [The ICRC] stated that the interrogators have total control of the level of isolation in which the detainees were kept; the level of comfort items detainees can receive; and also the access of basic needs to the detainees. According to [the ICRC], detainees are kept in uncertainty as to their future and are often given contradictory information about their repatriation.”

Leaked Department of Defense memorandum of a meeting between ICRC and Guantánamo authorities, October 2003.

“Since December 2003 Mr Hamdan has been confined alone in a cell, in a house that is guarded by a single non-Arabic-speaking guard. A translator is rarely available. He receives 60 minutes of exercise outdoors three times a week, only at night... Mr Hamdan has described his moods during his period of solitary confinement as deteriorating, and as encompassing frustration, rage (although he has not been

¹⁸ One lawyer AI spoke to in March 2007 has six clients slated for release: five are in Camp 6 and one in Camp 5.

¹⁹ Memorandum for Record. Subject: ICRC Meeting with MG Miller on 09 Oct 03. Department of Defense, Joint Task Force 170, Guantanamo Bay, Cuba.

²⁰ Fact sheet: Camp Echo and Camp Five. Updated: June 2004. JTF Public Affairs.

violent), loneliness, despair, depression, anxiety, and emotional outbursts. He asserted that he has considered confessing falsely to ameliorate his situation.”²¹

Several detainees who acted as leaders during a brief period of negotiation with the authorities in 2005 were sent to Camp Echo after negotiations broke down. At least one former negotiator, Shaker Aamer, a UK resident, has been held in Camp Echo continuously since September 2005 and, at the time of a visit with his attorney in August 2006, had not been outside for 64 consecutive days. He has reportedly suffered beatings and harassment by guards and has had his clothes and mattress removed.²² Saber Lahmer, another former camp negotiator, was returned to Camp Echo in June 2006 where he remained as of late March 2007 without any explanation being given to his attorneys. Both men are reportedly totally isolated and denied personal possessions and basic materials, such as pen and paper. Saber Lahmer was apparently too depressed to see his lawyer during his last visit to the base (see cases, below). Amnesty International has been told that as many as 20 detainees may currently be held in Camp Echo, although exact numbers are hard to come by given the facility’s isolated location.

The transfer of most detainees to lockdown conditions marks a shift in policy, reversing moves over the past two years to apply less restrictive conditions for detainees. Following the Abu Ghraib torture revelations and other allegations of detainee abuse, commanders in Guantánamo reportedly began easing conditions for detainees after 2004, with Camp 4 seen as a model and incentive for non-disruptive detainees. The Army reported in 2005 that part of the rationale behind the living arrangements in Camp 4 was to rebuild detainees’ social skills “which may have been lost over time”: to this end detainees were provided with social activities and were responsible for maintaining their own living quarters.²³ Camp 6 was also reportedly designed to be a medium security facility allowing socializing among inmates, increased access to exercise areas and activities, mail and foreign-language materials.²⁴ The former warden of Guantánamo also started a direct dialogue over detainee complaints, meeting several times in 2005 with a council of detainee leaders.

However, a series of events precipitated a clamp-down by the authorities. These included the resumption in August 2005 of a hunger strike by detainees in protest at their indefinite detention and conditions, which continued into January 2006 amid reports of ill-treatment of detainees during force-feeding through nasal tubes. Other incidents were a disturbance in Camp 4 in May 2006,²⁵ and the deaths of three prisoners in Camp 1 in June

²¹ *Swift v. Rumsfeld*, Declaration of Daryl Matthews, M.D., Ph.D., US District Court, Western District of Washington, 31 March 2004.

²² Declaration of Zachary Philip Katznelson (attorney), 19 December 2006. The declaration suggests that Shaker Aamer has been treated particularly poorly because he speaks fluent English, is outspoken, and has therefore been an interlocutor between the US military and the detainees.

²³ Article by Kathleen T. Rhem, American Forces Press Service, 16 February 2005

²⁴ See for example, *New Guantánamo Camp to Pave Way for Future Detention Ops*, by Donna Miles, American Forces Press Service, June 28, 2005.

²⁵ There are conflicting accounts of what transpired during what the US military calls a “riot” in Camp 4 on 18 May, but it appears to have started when a tactical squad entered the camp after two detainees

2006, allegedly from suicide. It was after the deaths that security at Guantánamo appears to have been dramatically tightened, with the opening of Camp 6 delayed while it was retrofitted as a high maximum security facility. This involved the communal areas in Camp 6 being closed off, the landings fenced in and the exercise yard divided into individual pens.

Statements by the military indicate that Camps 5 and 6 are intended to be permanent facilities for the long-term confinement of detainees, with the large majority of detainees housed there in the future. According to a military spokesperson, Camp 4 is unlikely to house many more than the 35 detainees currently held there, down from 180 in May 2006.

The US authorities have justified the restrictive regime in Camp 6 by emphasising that “the most dangerous” detainees, including those still “intent on killing Americans”, are held there. Such statements are consistent with a pattern by the administration of presuming the guilt of detainees who have not been charged or convicted. The authorities maintain that the prison combines humane treatment with security needs, citing incidents such as assaults by detainees on guards with bodily fluids in more open facilities. However, Amnesty International considers that conditions in Camp 6 and other isolation facilities are unacceptably harsh and breach international standards for the treatment of persons deprived of their liberty.

Amnesty International is disturbed that in applying such punitive conditions, the government has disregarded the severe psychological impact on detainees of indefinite confinement, a concern first raised by the ICRC more than four years ago.²⁶ Such disregard was shown in the authorities’ description of the apparent suicides in June as “a good PR move” and an example of “asymmetrical warfare”. A similar attitude was displayed when officials referred to the hunger strikes as “voluntary fasting”.²⁷ Amnesty International believes that the

“He told me that even when a detainee is being good they will take their personal items away. He said they do this to anger the detainees so that they can punish them when they object or complain. I asked Steven why he treats the detainees this way. He said it is because he hates the detainees and that they are bad people... Steven also added that his ‘only job was to keep the detainees alive’.”

Affidavit of Sergeant Heather N. Cerveny, US Marine Corps, 4 October 2006, relating a discussion she says she had with a Guantánamo military guard, Steven, who had worked in Camp 5 and was moving to Camp 6.

in another part of the base were found to have taken an overdose from hoarded drugs; later on the same day a detainee in Camp 4 is alleged to have been suspected by guards of preparing to hang himself with a sheet, although this is disputed by detainees. The situation reportedly escalated when some older detainees refused to allow their Qu’rans to be searched. Soldiers reportedly used large quantities of pepper spray and other non-lethal weapons against detainees.

²⁶ See page 20 of *USA: The threat of a bad example: Undermining international standards as ‘war on terror’ detentions continue*, AI Index: AMR 51/114/2003, August 2003, [http://web.amnesty.org/library/pdf/AMR511142003ENGLISH/\\$File/AMR5111403.pdf](http://web.amnesty.org/library/pdf/AMR511142003ENGLISH/$File/AMR5111403.pdf).

²⁷ *Guantanamo Tube Feedings Humane, Within Medical Care Standards*. American Forces Press Service, 1 December 2005, <http://www.defenselink.mil/news/newsarticle.aspx?id=18672>.

only way forward is for the US government to restore the rule of law and ensure fair procedures and humane treatment for all detainees, in accordance with its obligations under international law.

In raising these concerns, Amnesty International also notes that despite the disturbances cited above, there are reportedly far fewer violent incidents and assaults on staff than in the average maximum security prison in the USA. Guantánamo is staffed by military police most of whom have little or no experience in working in prisons or detention facilities; better training and the application of humane standards of treatment would benefit guards as well as detainees.

The United Nations (UN) Committee against Torture has called for the closure of Guantánamo, concluding that indefinite detention without charge is itself a violation of the Convention against Torture.²⁸ Amnesty International is also calling for Guantánamo to be closed and for the detainees to be charged and tried under international fair trial norms or else released (see appendix). In the meantime, those still detained should be confined in the least restrictive and most humane conditions possible.

As of March 2007, dozens of detainees are reported to have continued or resumed a hunger strike in protest at their conditions as well as indefinite detention. They include detainees in Camp Echo and Camps 5 and 6. A number of them were being force-fed through nasal tubes, some while strapped into restraint chairs. In recently declassified accounts, detainees have described being subjected to considerable pain as the tubes are inserted into their nostrils. One detainee reported how, three times, the tube had been inserted the wrong way so that it went into his lungs; he said he frequently vomited after being force-fed and was not given clean clothes. Guards have allegedly subjected hunger-striking detainees in one block to further punitive treatment, such as pepper spraying them or turning the air-conditioning up high. Amnesty International was seeking further information from the authorities about these allegations at the time of writing.

Standards for humane treatment

“Imprisonment and other measures which result in cutting off an offender from the outside world are afflictive by the very fact of taking from the person the right of self-determination by depriving him of his liberty. Therefore the prison system shall not, except as incidental to justifiable segregation or the maintenance of discipline, aggravate the suffering inherent in such a situation”. Article 57 of the United Nations (UN) Standard Minimum Rules for the treatment of Prisoners.

“Except for those limitations that are demonstrably necessitated by the fact of incarceration, all prisoners shall retain the human rights and fundamental freedoms set out under the Universal Declaration of Human Rights, and, where the State concerned is a party, the International Covenant on Economic and Social Rights, and the International Covenant on Civil and Political Rights ... as well as such other rights as are set out in other United Nations covenants.” Basic

²⁸ Conclusions and recommendations of the Committee against Torture on the USA, 25 July 2006: <http://daccessdds.un.org/doc/UNDOC/GEN/G06/432/25/PDF/G0643225.pdf>.

Principles for the Treatment of Prisoners, adopted by the UN General Assembly (1990).

The US government is obliged under international law to treat all those in its custody humanely, regardless of their status or location. Since the US Supreme Court ruling in *Hamdan v. Rumsfeld* in June 2006, the US government claims that its treatment of the Guantánamo detainees complies with Article 3 common to the four Geneva Conventions of 1949 which prohibits, *inter alia*, torture, cruel treatment and “outrages upon personal dignity, in particular humiliating or degrading treatment”.²⁹ The Detainee Treatment Act of 30 December 2005 also prohibits the cruel, inhuman or degrading treatment or punishment, as defined under US law, of persons of any nationality under the custody or control of the US government anywhere in the world.

The US government has declared the Guantánamo detainees to be “unlawful enemy combatants”, a status unrecognized in international law. Under its global “war on terror” paradigm it maintains that its detention activities outside the USA are exclusively regulated by the law of war, as it defines it, and that human rights law is inapplicable in this global armed conflict. However, contrary to this assertion, it is widely agreed by international experts that the two bodies of law, far from being mutually exclusive, are complementary.³⁰ As the International Criminal Tribunal for the former Yugoslavia has emphasized,

*“The essence of the whole corpus of international humanitarian law as well as human rights law lies in the protection of the human dignity of every person... The general principle of respect for human dignity is... the very raison d’être of international humanitarian law and human rights law; indeed in modern times it has become of such paramount importance as to permeate the whole body of international law. This principle is intended to shield human beings from outrages upon their personal dignity, whether such outrages are carried out by unlawfully attacking the body or by humiliating and debasing the honour, the self-respect or the mental well being of a person.”*³¹

The International Court of Justice (ICJ) has stated that ‘the protection offered by human rights conventions does not cease in case of armed conflict, save through the effect of provisions for derogation...’³² The USA has made no such derogation.

²⁹ Common Article 3 reflects customary international law applicable to international and non-international armed conflicts (but does not apply where there is no such conflict).

³⁰ For further information and discussion, see Section 2 of *USA: Justice delayed and justice denied? Trials under the Military Commissions Act*, AI Index: AMR 51/044/2007, March 2007, <http://web.amnesty.org/library/Index/ENGAMR510442007>.

³¹ *Prosecutor v. Furundzija*, No. IT-95-17/1-T, Judgment of 10 December 1998, para. 183.

³² *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion of 9 July 2004, para. 106. <http://www.icj-cij.org/icjwww/idocket/imwp/imwframe.htm>.

Amnesty International considers that the conditions under which detainees are held in Guantánamo contravene universally applicable standards, including international human rights treaties, and a range of standards and guidelines applying to the treatment of persons in custody.

The USA has ratified the International Covenant on Civil and Political Rights (ICCPR) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), both of which prohibit torture and other ill-treatment. Article 10 (1) of the ICCPR requires that “all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person”³³.

The Human Rights Committee, the ICCPR monitoring body, has emphasized that the prohibition on torture and other cruel, inhuman or degrading treatment or punishment is a peremptory norm of international law, non-derogable and binding on all states.³⁴ According to the Committee, this absolute prohibition under Article 7 of the ICCPR “relates not only to acts that cause physical pain but also to acts that cause mental suffering” and that “prolonged solitary confinement of the detained or imprisoned person may amount to acts prohibited by article 7”³⁵.

The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Body of Principles),³⁶ states under Principle 6 that:

“the term ‘cruel, inhuman or degrading treatment or punishment’ should be interpreted so as to extend the widest possible protection against abuses, whether physical or mental, including the holding of a detained or imprisoned person in conditions which deprive him, temporarily or permanently, of the use of any of his natural senses, such as sight or hearing, or his awareness of place of the passing of time”.

Amnesty International believes that the conditions described in Camps 5 and 6 and Camp Echo, particularly when applied long-term or indefinitely, constitute cruel, inhuman or degrading treatment in violation of the above standards. This conclusion is based on the isolation and prolonged cellular confinement; the conditions inside the cells including the

³³ In May 2006, the UN Committee Against Torture urged the USA to: “recognize and ensure that the Convention [against Torture] applies at all times, whether in peace, war or armed conflict, in any territory under its jurisdiction”. In July 2006, the UN Human Rights Committee called upon the USA to “acknowledge the applicability of the [International] Covenant [on Civil and Political Rights] in respect of individuals under its jurisdiction and outside its territory, as well as in times of war”

³⁴ Human Rights Committee, General Comment 29 (States of Emergency, Article 4), UN Doc. CCPR/C/21/Rev.1/Add.11, 31 August 2001.

³⁵ Human Rights Committee General Comment 20, on Article 7. See also the Basic Principles for the Treatment of Prisoners, Article 7, G. A. res. 45/111 (1990), stating that “Efforts addressed to the abolition of solitary confinement as punishment, or to the restriction of its use, should be undertaken and encouraged”.

³⁶ While not a treaty, the Principles apply to all countries and represent an authoritative set of internationally recognized standards, drafted over a number of years and adopted by consensus by the UN General Assembly in 1988.

enclosed environment and lack of any view to the outside; the lack of access to natural light and fresh air, particularly in Camp 6; the constant and allegedly intrusive observation; the paucity of possessions or equipment available to detainees; and the absence of social or external stimuli or almost any form of activity, together with minimal contact with the outside world.

Conditions inside the cells

The lack of natural light and fresh air in the Camp 6 cells is in clear contravention of the UN Standard Minimum Rules for the Treatment of Prisoners (Standard Minimum Rules), which state that

“In all places where prisoners are required to live or work, (a) windows shall be large enough to enable the prisoners to read or work by natural light, and shall be so constructed that they can allow the entrance of fresh air whether or not there is artificial ventilation.” (Article 11).

While the Standard Minimum Rules do not have the binding force of a treaty they are minimum standards considered acceptable for the living conditions and treatment of prisoners worldwide. The rules set out standards for convicted and untried prisoners, and prisoners held without trial, with Article 11 among the rules for general application. Fresh air and natural light are fundamental elements of the quality of life to which all human beings are entitled.

Standards for adult correctional facilities set out by the American Correctional Association also require that “all inmate rooms/cells provide access to natural light” and an opening window in the case of general population prisoners confined to cells more than 10 hours a day.³⁷ The ACA standards appear to allow for a natural light source within 20 feet of a cell rather than directly into the cell itself. This may be acceptable in old-style facilities where cells have bars through which light can enter from a central skylight. However, it appears that no meaningful level of natural light can filter into the enclosed cells in Camp 6 from the central area. While the facility was originally designed so that detainees could spend more time out of their cells, the present lockdown conditions mean that the facility is not meeting ACA standards on natural light.

The US military authorities reportedly take the ACA standards into account in the operation of the facility. Although the standards are not mandatory, Amnesty International is disturbed that the authorities should disregard the standard on access to natural light. It considers this would be unacceptable in any detention facility, and certainly does not conform to what would be required in a facility described as “state of the art”.

The cell conditions in Camp Echo, including the lack of window and natural light also fall short of ACA and international standards. While the size of the cells in Camps 5 and 6 reportedly meet ACA minimum standards, the cells in Camp Echo and Camps 1-3 measure a maximum of six by eight feet. This is considerably less than the minimum 80 square feet of

³⁷ 4-4147- 4-4148, Standards for Adult Correctional Institutions, 4th Edition. The rules also state under 4-4140 that “segregation housing units provide living conditions that approximate those of the general population”.

total floor space per occupant recommended by the ACA when inmates spend more than 10 hours a day in their cells.³⁸ The standards also require 35 square feet per prisoner of unencumbered space, yet the Camp Echo cells reportedly provide only around a third of this after the bed, toilet and sink are taken into account. Such a shortfall from minimum standards is particularly disturbing given the extremely long periods detainees in Guantánamo spend in such cells.

The apparent lack of furniture other than a bed, toilet and sink in isolation cells in Guantánamo, possibly including Camp 6 cells, may also fall short of ACA correctional standards.³⁹

Amnesty International is also concerned at the possible health risk in requiring detainees to eat all meals in their cells, given the enclosed environment and close proximity to the toilet and sink unit. The lack of any chair with a back support may also cause discomfort and physical problems when prisoners are confined to cells for such prolonged periods.

The denial of regular outdoor exercise in the case of detainees in Camp Echo and possibly elsewhere is in breach of the Standard Minimum Rules which state that all prisoners shall have at least one hour of exercise in the open air daily if the weather permits (Rule 21.1).

General concerns

All relevant international standards provide that, except for limitations demonstrably necessitated by the fact of incarceration, prisoners have the same human rights and fundamental freedoms set out under the Universal Declaration of Human Rights and other treaties. The UN Human Rights Committee reasserts this principle in its General Comment on Article 10 of the ICCPR that persons deprived of their liberty may not be

“... subjected to any hardship or constraint other than that resulting from the deprivation of liberty; respect for the dignity of such persons must be guaranteed under the same conditions as for that of free persons. Persons deprived of their liberty enjoy all the rights set forth in the Covenant, subject to the restrictions that are unavoidable in an enclosed environment”, and that:

“Treating all persons deprived of their liberty with humanity and with respect for their dignity is a fundamental and universally applicable rule ... This rule must be applied without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”.⁴⁰

³⁸ ACA Standard 4-4131 (Standards for Adult Correctional Institutions, 4th Edition). Camp 5 and Camp 6 cells reportedly measure 9x12 and 6x12 feet in totality.

³⁹ ACA Standard 4-4134 provides that each inmate confined to a cell/room for ten or more hours daily should be provided with bedding, a writing surface and proximate area to sit; storage for personal items; and adequate storage space for clothes and personal belongings. Amnesty International has been told that there is a small storage space built into Camp 6 cells but detainees are not allowed to keep anything there for security reasons, not even a copy of the Qu’ran.

⁴⁰ Human Rights Committee General Comment 21.

While Camp 4 allows detainees to engage in some form of social activity within the confines of Guantánamo, the absence in Camps 5 and 6 of any social interaction or activities which are a basic part of human life is contrary to the above principle. This is even more disturbing as all detainees in Guantánamo already suffer through the absence of family visits or regular contact with the outside world - itself a violation of international standards.

The Body of Principles and the Standard Minimum Rules provide that prisoners should be able to communicate at regular intervals with family and friends both by correspondence and by receiving visits.⁴¹ Cutting a prisoner off from his or her family is also a violation of the right to protection of family life contained under the Universal Declaration of Human Rights and article 23 of the ICCPR. The Body of Principles further state that a detained or imprisoned person “shall be given adequate opportunity to communicate with the outside world, subject to reasonable conditions and restrictions as specified by law or lawful regulations” (Principle 19), and the Standard Minimum Rules provide that prisoners should be kept informed regularly of what is going on in the outside world, by the reading of newspapers, periodicals or other means (Rule 39).

In keeping with the general principle that persons deprived of liberty retain the same basic human rights as non-imprisoned persons, international standards emphasize the importance of prisoners and detainees engaging in recreational, social, cultural, educational and religious activities for their mental and physical wellbeing, recognizing that such measures are also necessary to prepare individuals for their eventual return to society.⁴² US federal rules also emphasize the importance of social, recreational and educational programs for all inmates in the federal system.⁴³

Super-maximum security prisons in the USA

Camps 5 and 6 provide a regime similar to those in so-called super-maximum security facilities on the US mainland.⁴⁴ These are prisons, or units within prisons, designed for the extended segregation for administrative or disciplinary purposes of prisoners considered too violent or too disruptive to be held in the general prison population. Indeed, the conditions in Camps 5 and 6 appear as restrictive as some of the highest security levels in super-maximum units, some of which have been criticized by US courts. A US federal judge found, for example, that conditions in Pelican Bay prison in California, where prisoners are confined for

⁴¹ Principle 19 of the Body of Principles and article 37 of the Standard Minimum Rules.

⁴² For example, Principle 28 of the Body of Principles states that a detained or imprisoned person shall have the right to obtain “reasonable quantities of educational, cultural and informational material”; article 40 of the Standard Minimum Rules states that every institution shall have a library for the use of all categories of prisoners “adequately stocked with both educational and instructional books”; elsewhere the rules stress the importance of providing prisoners with educational, recreational, religious and vocational programs, with Article 95 stating that all measures applying to convicted prisoners should apply to persons detained without charge “when conducive to the benefit of this special group of persons in custody”.

⁴³ 28 CFR 540.30-34 and 544.80-83.

⁴⁴ Some 25,000 prisoners in more than 40 US states are reported to be currently held in such facilities.

22-23 hours a day to sealed, windowless cells, “may press the outer bounds of what most humans can psychologically tolerate”.⁴⁵

International human rights bodies have also criticized conditions in US super-maximum prisons. In his 1999 annual survey of country practices, the UN Special Rapporteur on Torture, for example, raised concern about conditions in two facilities in Indiana, noting that inmates were held in solitary confinement for 22 and a half hours a day in cells with little natural light and fresh air, with most human contact reduced to the minimum. He referred to evidence of the damaging psychological effects of such confinement.⁴⁶ In its May 2000 report on the USA’s obligations under the Convention against Torture, the Committee against Torture expressed concern about the “excessively harsh” conditions in US supermaximum prisons and in its report in May 2006 called on the USA to “review the regime imposed” in such facilities.⁴⁷ In its July 2006 report on US obligations under the ICCPR, the Human Rights Committee reiterated its concern that conditions in some super-maximum security prisons in the USA were incompatible with Article 10 (1) of the ICCPR.⁴⁸

Inmates assigned to US mainland super-max facilities are usually convicted offenders who have committed further serious offences or rule violations in prison. While conditions remain extremely harsh in most super-max facilities, conditions for Guantánamo detainees in Camps 5 and 6 are in some respects even more severe. The detainees are more isolated than mainland prisoners, for example, in not being allowed even limited visits with family members or telephone calls.⁴⁹ Segregated prisoners in the USA must have their status periodically reviewed, and some super-max facilities provide a level system where prisoners can move from the most restrictive custody units to less severe conditions. Some systems provide in-cell activities or programs at even the strictest custody levels. In ADX Florence, the only federal super-max (level 6) prison in the USA, prisoners in the “general population” have some group recreation at each of the three security stages; prisoners housed in solitary cells in the Security Housing Unit (SHU) at ADX-Florence are allowed TV, radio and craft materials in their cells, unless these are removed for disciplinary purposes.⁵⁰ Detainees in Camps 5 and 6 reportedly have no access to such items. The segregated cells in ADX Florence have windows giving a view of outside exercise yards.

Crucially, inmates of US prisons may seek to have their treatment or conditions reviewed by the courts or other oversight bodies. Although results have been limited,

⁴⁵ *Madrid v Gomez*, 889 F. Supp. 1146 (N.D. Cal. 1995).

⁴⁶ E/CN.4/1999/61 Report of the Special Rapporteur on Torture, 12.01.99.

⁴⁷ Conclusions and Recommendations of the Committee against Torture: United States of America. CAT/C/USA/CO/2, 18 May 2006, <http://www.ohchr.org/english/bodies/cat/docs/AdvanceVersions/CAT.C.USA.CO.2.pdf>.

⁴⁸ Human Rights Committee, Concluding Observations: United States of America, 28 July 2006, <http://www.ohchr.org/english/bodies/hrc/docs/AdvanceDocs/CCPR.C.USA.CO.pdf>.

⁴⁹ As noted above, Omar Khadr, who was a juvenile when first detained in Guantánamo, received his first phone call from his family in five years in March 2007. To AI’s knowledge, the vast majority of detainees have never received a phone call from their families.

⁵⁰ Information from an Amnesty International visit to ADX in July 2001.

litigation has led to the amelioration of conditions in several US super-max facilities.⁵¹ In addition, the US Supreme Court has ruled that prisoners are entitled to procedural safeguards when assigned to super-max facilities which impose “atypical and significant hardship”; such safeguards include notice of the factual basis for such an assignment and an opportunity to rebut the decision at a hearing.⁵²

The Guantánamo detainees, on the other hand, have no access to the courts or statutory oversight bodies and their treatment is entirely at the discretion of the US government. The Military Commissions Act, signed into law by President Bush on 17 October 2006, stripped US courts of the jurisdiction to consider *habeas corpus* appeals challenging the lawfulness or conditions of detention of any non-US citizen held as an “enemy combatant” in US custody. Although a number of *habeas corpus* applications have been filed on behalf of Guantánamo detainees, and challenges to the new law are pending, none of those currently detained has had his case reviewed by a court. Even before the MCA was passed, government opposition to briefs filed previously have delayed proceedings over the years. Judicial review is a vital safeguard against cruel conditions of detention and other ill-treatment as well as arbitrary detention.

Mental health problems and other health concerns

There is a significant body of evidence in the USA and elsewhere that prolonged isolation can cause serious psychological and physical harm, particularly if accompanied by other deprivations such as conditions of reduced sensory stimulation, enforced idleness and confinement to an enclosed space. Sometimes referred to as the “SHU syndrome”, mental health experts who have examined prisoners in isolation, including US super-max facilities, have described symptoms that include perceptual distortions and hallucinations, extreme anxiety, hostility, confusion, difficulty with concentration, hyper-sensitivity to external stimuli and sleep disturbance as well as physical symptoms.⁵³ A study by health experts on prisoners held in isolation units in the UK found inmates suffered from physical disorders resulting from their highly restricted surroundings which included impaired eyesight, weight loss, muscle wastage and memory loss and that some inmates had developed “mental illnesses which go beyond the ordinary and expected anticipatory anxiety”.⁵⁴

⁵¹ Litigation in Wisconsin led to improvements which included removal of the mentally ill from the state’s supermax, and substantially reduced the level of lighting in cells at night (*Jones’El v Berge*, 164 F. Supp.2d 1096 (W.D.Wisc 2001); a judicial order in Indiana covered medical and mental health issues plus access to radios, TVs, additional reading and personal property, increased educational opportunities and reduced night lighting in cells (*Taifa v Bayh*, 946 F. Supp 723 (N.D. Ind 1994).

⁵² *Wilkinson v Austin*, No 04-495, Supreme Court ruling 13 June 2005.

⁵³ Findings of studies have been described in a number of articles, including Stuart Grassian, “Psychological Effects of Solitary Confinement”, *American Journal of Psychiatry*, 140:1450-1454, 1983; Terry A. Kupers, “The SHU Syndrome and Community Mental Health”, *Community Psychiatrist*, summer 1998, Craig Haney, “Mental Health Issues in Long-Term Solitary and ‘Supermax’ Confinement”, *Crime and Delinquency*, vol.49, no.1 (January 2003) and in court rulings and testimony.

⁵⁴ January 1997 report by three independent psychiatrists who examined prisoners in UK Special Security Units (SSUs). An official inquiry by the UK Prison Service recommended in an unpublished

Several US courts have ruled that the isolating conditions in super-max facilities can lead to serious mental injury in some cases, and have ordered the removal of prisoners with pre-existing mental illness, or who risk developing psychosis, from such units. A judge in Wisconsin ruled that confinement under conditions prevailing in the state's super-max facility "is known to cause severe psychiatric morbidity, disability, suffering and mortality", even in individuals with no history of mental breakdown, noting that: "Many prisoners are not capable of maintaining their sanity in such an extreme and stressful environment: a high number attempt suicide".⁵⁵

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), the expert body which is part of the Council of Europe, has stated, "It is generally acknowledged that all forms of solitary confinement without appropriate mental and physical stimulation are likely, in the long-term, to have damaging effects resulting in deterioration of mental faculties and other social abilities".⁵⁶ The CPT has recommended that all forms of solitary confinement should last for as short a time as possible, with compensatory measures for those held in high security units, such as enhanced exercise facilities, choice of activities and opportunities to meet fellow inmates within the units.

In Guantánamo, detainees generally have not had access to independent, outside mental health experts.⁵⁷ However, the ICRC noted in 2003 that the totality of the conditions under which they were held, including their indefinite confinement, had led to a worrying deterioration in the psychological health of many detainees. The ICRC continues to express its concern that "uncertainty about the prisoners' fate has added to the mental and emotional strain experienced by many detainees and their families".⁵⁸ Lawyers have also reported on health problems suffered by detainees, particularly individuals held for prolonged periods in solitary confinement, some of whom had been allegedly subjected to torture or other ill-treatment during interrogation. Complaints about the mental state of detainees appear to have increased since the opening of Camp 6. Lawyers who have visited clients in Camp 6 have consistently reported a marked decline in the mental and physical health of detainees since their transfer to Camp 6.

- A document describing the impact on five Uighurs of their transfer to Camp 6 states how they all expressed feelings of "despair, crushing loneliness, and abandonment by

report in 1996 that prisoners in SSUs should be held there for as short a period as possible and more provision should be made for mental stimulation and physical exercise and that prisoners should have access to open visits with members of their immediate family. The study's findings are described in an Amnesty International report, *UK Special Security Units – Cruel, Inhuman and Degrading Treatment*, 1997 (AI Index: EUR 45/06/97).

⁵⁵ Jones' El, 164 F. Supp. 2d at 1101, 1102.

⁵⁶ CPT Report to the Finnish Government on the Visit to Finland, conducted between 10 and 20 May 1992, Strasbourg, France, 1 April 1993, CPT/Inf (93) 8.

⁵⁷ David Hicks, an Australian national, had a visit from an Australian psychiatrist in February 2005. Requests for a follow-up visit were reportedly refused by the US authorities.

⁵⁸ ICRC, Operational update, 31 December 2006, <http://www.icrc.org/web/eng/siteeng0.nsf/html/usa-detention-update-121205?opendocument>.

the world”, during visits with their lawyers in January 2007. None had been subjected to such strict conditions of isolation before. One detainee who during previous visits “had appeared gentle and pleasant, quick to laugh and smile” now “appeared to be in despair” and said he was “beginning to hear voices”. Another described how his cell neighbour was “constantly hearing noises, shouting out, and being punished”.⁵⁹

- David Hicks, an Australian national detained for more than five years in Guantánamo, was reported to have deteriorated physically and mentally after being held in virtual total solitary confinement in Camps 5 and 6 from March 2006. He was transferred to Camp 6 in December 2006. Lawyers who visited him in January 2007 described how they were shocked by how much he had changed. Chained to the floor in the Camp 6 visitation room, Hicks reportedly looked far older than his 31 years, was hollow-eyed, unkempt and dishevelled and extremely despondent, and had difficulty in communicating for the first part of the interview. His lawyers said he was suffering the effects of prolonged isolation and a lack of privacy, being forced to use the toilet in his cell in full view of the guards. His hairbrush and comb had also been confiscated in Camp 6. There were complaints that, in Camp 5, his cell had often been kept very cold and he had not been given sufficient clothing. Hicks’ family had expressed concern about his condition in July 2006, when Hicks had been incoherent during a telephone call. In December, the US authorities reportedly denied a request for a follow-up visit from an independent psychiatrist who had visited Hicks in February 2005.

On 26 March 2007, David Hicks pleaded guilty at a military commission hearing in Guantánamo to a single count of “providing material support for terrorism”. On 30 March, as part of a pre-trial agreement, he was sentenced to seven years all but nine months of which were suspended and was due to be returned to Australia within 60 days.⁶⁰

- In January 2007 the lawyer for Bisher al-Rawi, an Iraqi-born UK resident detained in Guantánamo for more than four years, described how his “once healthy and extremely articulate” client was “slowly but surely slipping into madness” after nine months of solitary confinement in Camp 5 with no end in sight. Bisher al-Rawi’s cell was reported often to be “unbearably cold” with the air-conditioning turned up to the maximum. Sometimes guards removed his orange jump suit and sheet, leaving him only in his shorts. When he tried to warm himself by covering himself with his prayer rug, one of the few “comfort items” permitted to him, guards removed it for “misuse”. His toilet paper was also reportedly removed because he was using it to shield his eyes from constant light in his cell. He was reportedly being punished with isolation

⁵⁹ *Huzaiifa Parhat et al v. Robert M. Gates et al*, Petitioners’ Emergency Motion For Leave to Supplement The Record on Pending Motions with January 20,2007 declaration of Sabin Willett.

⁶⁰ See *USA: David Hicks pleads guilty on one count. AI observer attends arraignment at Guantánamo*, AI Index: AMR 51/052/2007, 27 March 2007, <http://web.amnesty.org/library/Index/ENGAMR510522007>.

when he refused to undergo any further interrogations.⁶¹ In late March 2007 Bisher al-Rawi was transferred to the UK where he was subsequently released.

- A lawyer for three other Guantánamo detainees reported that they had been “remarkably psychologically strong” and hopeful during a visit in October but two had later been transferred to Camp 6 and one to Camp 5. During a visit to Camp 6 in January 2007 one of the men who had been vulnerable but bearing up well before, was now “visibly shaken and in great despair”; he had reportedly not seen daylight in 15 days.
- Saber Lahmer, an Algerian transferred to Guantánamo after being seized in Bosnia, has been held in solitary confinement in Camp Echo since late June 2006. A camp doctor had reportedly admitted to him that he needed exercise for serious nerve damage and muscle atrophy in both his legs. However, at Camp Echo he was allowed exercise only every 10 days or so, in a very limited space. When his lawyers visited him in November 2006, he appeared both psychologically and physically debilitated, appearing “extremely depressed”, with severe leg pains.⁶² He was completely isolated from anyone but guards as there were no detainees in any adjacent cells; he was not allowed to send or receive mail from his family on a regular basis or to keep mail from his lawyers in his cell and was often refused a pen and paper. He was denied all reading material except for the Qu’ran.

When his lawyers returned to Guantánamo in March 2007 for a pre-arranged legal visit with Saber Lahmer guards told them that he did not want to be moved from his cell to go to an interview. Deeply disturbed that this was a sign of his further mental decline, his lawyers sought permission to visit him in his Camp Echo cell or at least the visitation room adjoining the cell. This request was also refused. On 22 March, just before they left the base, his lawyers made a formal written request to the Camp Command to move Saber Lahmer from his isolation in Camp Echo to a more social environment. They had not received a response at the time of writing.

As noted above, indefinite detention can itself cause severe psychological trauma and the ICRC has reported at various times on what they have observed to be a deterioration in the mental health of a large number of the Guantánamo detainees since January 2002. Twelve independent mental health experts who examined the impact of indefinite detention on eight detainees in the UK found this had led to clinical depression in all eight cases as well as signs of depression in three spouses interviewed.⁶³ The severe psychological impact of years of

⁶¹ Article by al-Rawi’s attorney G. Brent Mickum, in *The Guardian*, January 9, 2007.

⁶² His lawyers had administered a proxy examination of him in 2005, which was prepared and then evaluated by forensic psychologist Dr Daryl Matthews of the University of Hawaii who said that at that time he met the criteria for a Major Depressive Episode and Post Traumatic Stress Disorder.

⁶³ *The psychiatric problems of detainees under the 2001 Anti-Terrorism Crime and Security Act*, Robbins, I., Mackereth, J., Kopelman, M., et al. (2004), *Psychiatric Bulletin* (2005) 29:407-409, the Royal College of Psychiatrists. <http://pb.rcpsych.org/cgi/content/full/29/11/407>. Each of the detainees was seen by more than one clinician on more than one occasion and there was a high degree of consensus amongst the expert opinion on the detainees.

indefinite confinement and lack of contact with the outside world is likely to be exacerbated by the conditions of isolation and other deprivations described above. On the US mainland, there is evidence that inmates held in isolation cells, with few amenities or privileges, are at a greater risk of suicide than other prisoners, especially if they already suffer from depression or other mental health problems.

There had been more than 40 attempted suicides by detainees at Guantánamo before the three deaths by apparent suicide in June 2006. The men who died were held in maximum security custody in Camp 1. While the physical conditions in Camp 1 meant they were not so isolated as detainees in Camps 5 or 6, they were nevertheless confined to small cells with little exercise or amenities, conditions likely to be extremely stressful over time. One of the three, Yasser al-Zahrani from Saudi Arabia, was only 17 when he was first incarcerated at Guantánamo; he died aged 21. He is among a number of detainees who were under 18 when first held in the base, some of whom had reportedly spent time in isolation or prolonged cellular confinement.⁶⁴ International standards prohibit punishing children with solitary or cellular confinement.⁶⁵

In recognition of the health implications of solitary or isolated confinement, the UN Standard Minimum Rules states that

“Punishment by close confinement ... shall never be inflicted unless the medical officer has examined the prisoner and certified in writing that he is fit to sustain it” (Rule 32 (1)) and that

“The medical officer shall visit daily prisoners undergoing such punishments and shall advise the director if he considers the termination or alteration of the punishment necessary on grounds of physical or mental health” (Rule 32 (3)).

ACA standards for correctional facilities also state that inmates in segregation should receive at least daily visits from a qualified health care official.⁶⁶

However, Amnesty International is concerned that the mental or physical health of Guantánamo detainees in isolation may not be adequately monitored or treated. One detainee sent to Camp 6 reported that he had not been seen by a doctor or mental health professional more than two months after being transferred there, despite repeated requests. A detainee in Camp Echo had reportedly not been permitted to see a doctor during two months of solitary confinement, despite having health problems (see Saber Lahmar case, below). Amnesty International has been told that in general it can be difficult to see a doctor, rather than a lower level health technician.

Relevant professional and ethical standards require that health professionals in prisons or places of detention should raise any concerns about conditions and their effects on

⁶⁴ Research undertaken by the UK group Reprieve in 2006 suggests that there may have been at least 17 detainees who were taken to Guantánamo when they were under 18 years old; most international legal standards recognize children as being under 18.

⁶⁵ *UN Rules for the Protection of Juveniles Deprived of their Liberty*, rule 67.

⁶⁶ Standard 4-4258, *Adult Correctional Institutions*, Fourth Edition

prisoners with the authorities. Amnesty International is unaware of whether such action has been taken in regard to conditions of isolation, but notes that mental health and other health professionals at the base are not independent as they are employed by the military. The organization is concerned, for example, by reports that military psychiatrists at one time downplayed some of the suicide attempts at Guantánamo, reclassifying them as “manipulative self-injurious behaviour”, resulting in a decrease in the number of such attempts officially reported.⁶⁷

While detainees in isolation in Guantánamo receive visits by health care technicians, and occasionally by doctors and psychiatrists, they are reportedly assessed only cursorily and some detainees have stated that they are afraid to complain. Amnesty International has been told that problems with the delivery of mental health care are compounded by detainees’ mistrust of health professionals at Guantánamo because of a history of mental health care personnel at the base having worked with interrogators.⁶⁸ Army medical personnel are alleged to have assisted in using detainees’ medical records to design individual prisoner interrogation plans that included sleep deprivation, prolonged isolation and exposure to temperature extremes, and to have coached interrogators on questioning techniques. Such practices are a gross violation of international standards which state that it is a breach of medical ethics for health personnel to be involved in any professional relationship with prisoners or detainees the purpose of which is not solely to evaluate, protect or improve their physical or mental health.⁶⁹

There are also concerns about the delivery of other medical care. Amnesty International is aware of several cases where doctors reportedly advised that detainees needed more exercise for medical conditions, but the advice was ignored. One case concerned a heart patient held in restraints in the medical facility and another a detainee transferred to isolation (see Saber Lahmer case, above). Such reports are extremely disturbing and inconsistent with the US authorities’ claims to provide excellent medical care at Guantánamo. Amnesty International is also disturbed at reports that prisoners in the medical facility are routinely held in four-point restraint, sometimes for prolonged periods without exercise. Holding someone immobile in restraints for a prolonged period can lead to serious and potentially fatal health conditions, including blood clots. The practice is contrary to both international and US health professional standards on use of restraints.⁷⁰

⁶⁷ David Rose, *Vanity Fair*, January 2004.

⁶⁸ This is based on a number of sources, including a leaked copy of a Department of Defense memorandum relating to an October 2003 meeting between Guantánamo authorities and members of the ICRC. Memorandum for Record. Subject: ICRC Meeting with MG Miller on 09 Oct 03. Department of Defense, Joint Task Force 170, Guantánamo Bay, Cuba.

⁶⁹ UN Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted by General Assembly resolution 37/194 of 18 December 1982).

⁷⁰ For example, in its Standards for Health Services in Correctional Institutions, the American Public Health Association (APHA) states that restraints should be used only when inmates pose a great risk of serious injury to themselves or others and only on the order of a physician; that restraints must be

- Jumah al Dossari, a Bahraini national who has reportedly attempted suicide at least 12 times during his detention, has been held in the mental health unit at Guantánamo for over a year in a windowless cell. He has told his lawyer that the lights are always off outside his cell and the air-conditioning turned up high so it is always very cold and dark. His communication with other detainees is reportedly limited because of the severe psychological problems suffered by many others in the mental health unit, some of whom he has seen crying. After the June 2006 deaths, he was permitted to have only a blanket, mattress and Qu’ran in his cell, with his possessions increased some months later to allow a toothbrush, toothpaste and soap.

Although he is visited daily by a psychiatric technician and weekly by two psychiatrists, they reportedly spend only a few minutes with him, asking the same questions: whether he is eating and sleeping well, and whether he thinks about harming himself or others. He alleges that all detainees have learned to report that they are well because otherwise they are held under even stricter conditions.

- Saifullah Paracha was moved to the Guantánamo hospital in November 2006 after suffering serious chest pains and was diagnosed as needing cardiac catheterization. During the week he spent in hospital he was reportedly held in four-point restraint with both his hands and both feet chained to the bed at all times (except for one hand at meal times). A consulting cardiologist reportedly recommended that Saifullah Paracha walk around the hospital four times a day for 20 minutes at a time, but security personnel refused the request. Saifullah Paracha refused to undergo medical treatment at Guantánamo as he was not confident that his medical needs would be adequately met or that after the operation he would receive appropriate monitoring. No longer able to tolerate being in restraints, he asked to be returned to his cell in Camp 5 and the doctor agreed.⁷¹

Recommendations

Amnesty International is calling on the US government to close Guantánamo and to charge detainees with recognized crimes and bring them to trial under fair trial procedures or else release them with full protections against further abuses (see appendix). In the meantime the US government should ensure that all detainees are treated in accordance with international law and standards, including the International Covenant on Civil and Political Rights, the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

applied as humanely as possible and the level of restraint reduced as quickly as possible to the least restriction necessary; and should be automatically terminated after four hours, renewable for a maximum of four more hours. The UN Standard Minimum Rules state that restraints should be used only when other measures are ineffective and only for so long as is “strictly necessary” (Rules 33 and 34).

⁷¹ Declaration of Zachary Philip Katznelson, representing petitioner in *Paracha v Bush*, Case No. 04-CV-2022. His lawyers applied to the US courts for him to be transferred to the USA for treatment but this was denied.

and other international instruments relevant to the treatment of persons deprived of liberty. In particular, the US government should take immediate steps to:

- ensure that no detainee is subjected to cruel, inhuman or degrading treatment or punishment, including prolonged solitary or cellular confinement in conditions of reduced sensory stimulation. No detainee should be held for a prolonged period in a cell with no window to the outside or without access to natural light or fresh air;
- improve the living conditions for detainees to allow them more association, meaningful activities and recreation; the communal areas in Camp 6 should be fully utilized. More equipment should be provided in the exercise yards. The library should be better stocked and detainees should have access to recreational and educational programs, including through TV and video where feasible, and should be kept informed regularly of the more important items of news. All detainees should have regular, daily exercise in the fresh air, during daylight hours;
- ensure that all detainees are treated with respect for their human dignity; steps should be taken to prohibit intrusive, culturally or sexually humiliating observation of detainees, such as allowing female guards to observe detainees while showering;
- Detainees should be treated with respect for their religious beliefs and practices, including with regard to handling of the Qu’ran;
- allow independent health care professionals into Guantánamo to examine detainees in private;
- allow visits by independent human rights organizations and the UN special procedures. Such visits should include access to all parts of the facility and the ability of delegates to speak privately with detainees;
- allow contact with detainees’ families through regular, and where possible uncensored, mail, with opportunities for phone calls and visits.

Appendix: Fair trials and an end to unlawful detentions

General ⁷²

1. Any detention facility which is used to hold persons beyond the protection of international human rights and humanitarian law should be closed. This applies to the detention facility at Guantánamo Bay, where, in more than five years of detention operations, the US administration has failed to establish procedures which comply with international law and standards. The USA's secret detention program should be immediately and permanently ended and any secret detention facilities, wherever in the world they may be situated, closed down.
2. Closing Guantánamo or other facilities must not result in the transfer of the human rights violations elsewhere. All detainees in US custody must be treated in accordance with international human rights law and standards, and, where relevant, international humanitarian law. All US detention facilities must be open to appropriate external scrutiny, including that of the International Committee of the Red Cross (ICRC).
3. The responsibility for finding a solution for the detainees held in Guantánamo and elsewhere rests first and foremost with the USA. The US government has created a system of detention in which detainees have been held without charge or trial, outside the framework of international law and without the possibility of full recourse to US courts. It must redress this situation in full compliance with international law and standards.
4. All US officials should desist from further undermining the presumption of innocence in relation to the Guantánamo detainees. The continued public commentary on their presumed guilt puts them at risk in at least two ways – it is dangerous to the prospect for a fair trial and dangerous to the safety of any detainee who is released. It may also put them at further risk of ill-treatment in detention.
5. All detainees must be able to challenge the lawfulness of their detention in an independent and impartial court, so that that court may order the release of anyone whose detention is not lawful. The Military Commissions Act should be repealed or substantially amended to bring it into conformity with international law, including by fully ensuring the right to *habeas corpus*.
6. President George W. Bush should fully rescind his 13 November 2001 Military Order authorizing detention without charge or trial, as well as his executive order of 14 February 2007 establishing military commissions under the Military Commissions Act.
7. Those currently held in Guantánamo should be released unless they are to be charged and tried in accordance with international standards of fair trial.

⁷² This framework, with additional notation, appears in *USA: Justice delayed and justice denied? Trials under the Military Commissions Act*, AI Index: AMR 51/044/2007, March 2007, <http://web.amnesty.org/library/Index/ENGAMR510442007>.

8. No detainees should be forcibly sent to their country of origin if they would face serious human rights abuses there, or to any other country where they may face such abuses or from where they may in turn be forcibly sent to a country where they are at such risk.

Fair trials

9. Those to be charged and tried must be charged with a recognizable crime under law and tried before an independent and impartial tribunal established by law, such as a US federal court, in full accordance with international standards of fair trial. There should be no recourse to the death penalty.
10. Any information obtained under torture or other cruel, inhuman or degrading treatment or punishment should not be admissible in any tribunal. In light of the years of legal, physical and mental abuse to which detainees in US custody have been subjected, any trials must scrupulously respect international standards and any sentencing take into account the length and conditions of detention in Guantánamo or elsewhere prior to being transported there.

Solutions for those to be released

11. There must be a fair and transparent process to assess the situation of each of the detainees who is to be released, in order to establish whether they can return safely to their country of origin or whether another solution must be found. In all cases detainees must be individually assessed, be properly represented by their lawyers, be provided interpreters if required, given a full opportunity to express their views, provided with written reasons for any decision, and have access to a suspensive right of appeal. Relevant international agencies, such as the Office of the United Nations High Commissioner for Refugees (UNHCR), could be invited to assist in this task, in line with their respective mandates. The options before the US government to deal in a manner which fully respects the rights of detainees who are not to be tried and who therefore ought to be released without further delay include the following:
 - (a) **Return.** The US authorities should return released detainees to their country of origin or habitual residence unless they are at risk there of serious human rights violations, including prolonged arbitrary detention, enforced disappearances, unfair trial, torture or other ill-treatment, extrajudicial executions, or the death penalty. Among those who should be released with a view to return are all those who according to the laws of war (Geneva Conventions and their Additional Protocols) should have been recognized after their capture as prisoners of war, and then released at the end of the international armed conflict in Afghanistan, unless they are to be tried for war crimes or other serious human rights abuses. Again, all detainees who are not to be charged with recognizable crimes should be released.
 - (b) **Diplomatic assurances.** The US authorities must not seek or accept diplomatic assurances from the prospective receiving government about how a detainee will be treated after return to that country as a basis for sending individuals to countries where they would otherwise be considered at risk of

torture or other ill-treatment. Diplomatic assurances under these circumstances breach international human rights obligations; are unreliable and unenforceable; and are inherently discriminatory in that they apply only to particular individuals. In addition, the USA must not impose conditions upon the transfer of detainees under which the receiving state would, by accepting such conditions, be violating their obligations under international human rights law.

- (c) **Asylum in the USA.** The US authorities should provide released detainees with the opportunity to apply for asylum in the USA if they so wish, and recognize them as refugees if they meet the requirements international refugee law. The US authorities must ensure that any asylum applicants have access to proper legal advice and to fair and effective procedures that are in compliance with international refugee law and standards, including the opportunity to contact UNHCR. Asylum applicants should not be detained except in the most exceptional circumstances.
- (d) **Other forms of protection in the USA.** Persons who do not qualify for refugee status, but are at risk of serious human rights abuses in the prospective country of return must receive other forms of protection and should be allowed to stay in the USA if they wish, pursuant to obligations under domestic and international human rights law, including the International Covenant on Civil and Political Rights, and the Convention against Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment. They should not be detained, unless in each individual case it is established before a court that their detention is lawful, for a purpose recognized as legitimate by international human rights law, and necessary and proportionate to the objective to be achieved, with the lawfulness of the detention periodically reviewed by the courts, in accordance with international human rights law and standards.
- (e) **Transfer to third countries.** The US authorities should facilitate the search for durable solutions in third countries for those who cannot be returned to their countries of origin or habitual residence, because they would be at risk of serious human rights abuses, and who do not wish to remain in the USA. Any such solution should address the protection needs of the individuals, fully respect all of their human rights, and take into account their views. All transfers to third countries should be with the informed consent of the individuals concerned. UNHCR should be allowed to assist in such a process, in accordance with its mandate and policies. Released detainees should not be subjected to any pressures and restrictions that may compel them to choose to resettle in a third country. Transfers must not occur to third countries from where individuals may in turn be forcibly sent to a country where they would be at such risk.

Reparations

12. The USA has an obligation under international law to provide prompt and adequate reparation, including restitution, compensation, rehabilitation, satisfaction, and fair and guarantees of non-repetition, to released detainees for the period spent unlawfully detained and for other violations that they may have suffered, such as torture or other ill-treatment. The right of victims to seek reparations in the US courts must not be limited.

Transparency pending closure

13. The USA should invite the five UN experts who have sought access – the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur on freedom of religion or belief, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, and the Chairperson-Rapporteur of the Working Group on Arbitrary Detention – to visit Guantánamo without the restrictions that led them to turn down the USA's previous invitation. In particular, there should be no restrictions on the experts' ability to talk privately with detainees.

Other countries

14. Other countries should give serious consideration to accepting released detainees voluntarily seeking resettlement there, especially countries of former habitual residence or countries where released detainees have had close family or other ties.
15. Other governments should reject conditions attached to detainee transfers requested by the USA which would violate the receiving country's obligations under international human rights law.
16. All countries should actively support closure of the Guantánamo detention camp and all other facilities operating outside the rule of international human rights and humanitarian law, and an end to secret detentions and interrogations.
17. No state should transfer anyone to US custody in circumstances where they could be detained in Guantánamo or elsewhere where they may be held outside the protections of international law, or in cases where they could face trial by military commission.
18. No state should provide any information to assist the prosecution in military commission trials. This applies in all instances, and is especially compelling in cases where the death penalty is sought.