



WORLD ORGANIZATION FOR HUMAN RIGHTS USA

Formerly the World Organization Against Torture USA

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The World Organization for Human Rights USA (Human Rights USA), the U.S. affiliate of the World Organization Against Torture (OMCT) submits this brief update to the 87th Session of the United Nations Human Rights Committee to inform the Committee of recent developments concerning U.S. non-compliance with the International Covenant on Civil and Political Rights (ICCPR) in the context of Government efforts to combat terrorism.

We have presented several reports and briefings to the Committee, including reports and testimony filed in connection with the special briefing of Committee members by U.S. NGOs at the March meeting in New York, and a "shadow" report that we filed critiquing the US Government's 2005 submission to the Committee. In these reports, we have outlined our concerns related to the policy and practice of "rendition to torture or "extraordinary rendition," the arbitrary, indefinite detentions of suspected terrorists at Guantanamo Bay, Cuba, the existence of secret detention facilities abroad and the Government's failure to hold accountable high-level government officials who command and remain complicit in these abuses. This update outlines our concerns related to:

- the Government's ongoing use of torture and degrading treatment at Guantanamo Bay,
- the Government's continued operation of an illegal rendition to torture program,
- its plans to transfer a majority of the detainees held at Guantanamo to U.S.-built facilities abroad, where the practice of arbitrary, indefinite detention without charges would be maintained by other nations with the support and complicity of the U.S. government,
- the Government's continued assertion that it is exempt from basic human rights standards in its pursuit and interrogation of terror suspects.

As a supplement to this report, we will present testimony before the Committee's 87th Session in Geneva during formal hearings and informal briefings in July of this year.

The Government Continues Using Interrogation Tactics Amounting to Torture and Cruel and Inhumane Treatment at Guantanamo Bay

Recent news releases reveal that the U.S. Government continues subjecting Guantanamo Bay detainees to treatment amounting to torture. In February, General Bantz J. Craddock admitted that the military regularly force feeds detainees at Guantanamo who participate in hunger strikes.¹ As described by one detainee, Emad Hassan:

The head is immobilized by a strap so it can't be moved, their hands are cuffed to the chair and the legs are shackled . . . They ask, 'Are you going to eat or not?'

and if not, they insert the tube. People have been urinating and defecating on themselves in these feedings and vomiting and bleeding. They ask to be allowed to go to the bathroom, but they will not let them go. They have sometimes put diapers on them.²

Forced feeding is well-recognized as degrading treatment amounting to torture where the victim experiences severe pain or suffering.³ Due to continued despair as to the conditions and length of their confinement, three Guantanamo Bay detainees committed suicide last week.⁴

In light of the increasing climate of despair among Guantanamo Bay detainees and the U.S. Government's seemingly shameless willingness to engage in interrogation and detention tactics amounting to torture and degrading treatment, Human Rights USA urges the Committee to:

- *ask the U.S. government how its use of forced-feeding in Guantanamo comports with its obligations under Article 7 of the ICCPR.*

The Government Continues Operating an Illegal Rendition to Torture Program

Recent reports indicate that the United States government continues operating an illegal rendition to torture program, in violation of Articles 6, 7, 9, and 10 of the ICCPR, and enjoys the cooperation of several European nations. While speaking at the European Parliament, State Department Legal Adviser Mr. Bellinger admitted that the U.S. "extraordinary rendition" program is still operative.⁵ A recent report issued by the Council of Europe catalogued over a thousand suspected rendition flights in European airspace,⁶ on which up to 500 people were moved across the continent to jails in third countries where they faced torture and other abuses.⁷

The U.S. Government, in recent hearings before the Committee Against Torture, attempted to absolve its liability for the torture of victims of its rendition program by hailing its reliance on so-called 'diplomatic assurances.' The Committee Against Torture criticized the U.S.' reliance on diplomatic assurances, due to "the secrecy of such procedures including the absence of judicial scrutiny and the lack of monitoring mechanisms put in place to assess if the assurances have been honoured."⁸ The Committee Against Torture continued:

[T]he State party should only rely on 'diplomatic assurances' in regard to States which do not systematically violate the Convention's provisions, and after a thorough examination of the merits of each individual case. The State party should establish and implement clear procedures for obtaining such assurances, with adequate judicial mechanisms for review, and effective post-return monitoring arrangements.⁹

Several international bodies have flatly rejected the use of diplomatic assurances in the context of the rendition of terror suspects. For example, the Committee Against Torture

in the case of *Agiza v. Sweden* flatly rejected Sweden's reliance of diplomatic assurances in deporting a terror suspect to Egypt and held that Swedish authorities knew or ought to have known of the risk of torture to Mr. Agiza in Egypt.¹⁰ The primary basis for the Committee's rejection of diplomatic assurances was the "absence of any avenue of judicial or independent administrative review of the Government's decision to expel the complainant" and the fact that there was "no mechanism for [the] enforcement" of the diplomatic assurances.¹¹

The use of diplomatic assurances in the context of the transfer of terror suspects has also been rejected by the United Kingdom Parliament Joint Committee on Human Rights,¹² and the Council of Europe.¹³ The Human Rights Committee has also set forth guidelines on the appropriate use of diplomatic assurances in the extradition context. "When a State party expels a person to another State on the basis of assurances as to that person's treatment by the receiving State, it must institute credible mechanisms for ensuring compliance of the receiving State with these assurances from the moment of expulsion."¹⁴

Accordingly, international jurisprudence sets forth clear legal standards requiring state parties to 1) refrain from relying on diplomatic assurances given by states that systematically torture their detainees and 2) institute clear and credible mechanisms for following up on the status of detainees once transferred.

Despite these clear standards, the U.S. Government 1) refuses to enact an accountable and uniform process for following up on the status of detainees once transferred, 2) accepts diplomatic assurances from countries that routinely torture their detainees such as Egypt and Saudi Arabia, and 3) relies on a highly subjective, individualized process for evaluating diplomatic assurances. This evaluation process uses detainees as carrots and sticks in a complex game of diplomacy, taking into consideration, as the Government admits, factors such as whether the transfer of the detainee will foster goodwill between the U.S. government and the receiving state.¹⁵ This kind of analysis and approach to transfer runs directly counter to ICCPR mandates that the likelihood of torture or ill treatment to the detainee should be the primary consideration when considering transfer.

It is clear that the U.S. continues operating an illegal rendition to torture program, and its unwillingness to accept responsibility for the torture of detainees transferred under this program. Accordingly, Human Rights USA urges the Committee to:

- *reject the U.S.'s reliance on diplomatic assurances as a justification for continuing its rendition to torture program,*
- *request that the U.S. cease seeking and using diplomatic assurances for the purpose of transferring terror suspects, and*

- *require the U.S. government to provide detailed information on all cases since 11 September 2001 where the U.S. has relied on diplomatic assurances in transferring detainees suspected of links to terrorism.*

The Government Plans to Transfer a Majority of the Guantanamo Bay Detainees to Black Sites Abroad

As an extension of the Government's extensive rendition to torture program, the Government has recently announced plans to transfer the majority of the Guantanamo Bay detainees to prison facilities in their countries of origin, built and operated by the U.S.¹⁶ Rather than providing for the regular repatriation for these men, the plans will assure their continued arbitrary and indefinite detention in sites that would be out of the jurisdiction of U.S. courts and away from U.S. media attention.

Under the proposed detention plans, the U.S. has agreed to transfer 110 prisoners from the Cuban facility to Afghanistan, and is working on similar arrangements to transfer 129 detainees to Saudi Arabia and 107 detainees to Yemen. The agreement with Afghanistan includes handing over 350 detainees currently held without charge by the U.S. at Baghram air base near Kabul.¹⁷

If implemented, these transfer agreements will dramatically reduce the Guantanamo Bay detainee population from 490 at the time of writing to 164. The remaining prisoners, thought to form the highest security risks, are expected to be held at Guantanamo indefinitely and apparently without facing charges. According to recent reports, of the 759 current or former detainees only 10 have been charged with a crime,¹⁸ after 4 years of the facility's existence.

These transfer agreements, as concluded with Afghanistan, Yemen and Saudi Arabia, will likely seriously aggravate the detainees' situation. It has become clear that many transferred or released Guantanamo Bay detainees can no longer be traced and accounted for.

Given the substantial likelihood that a large number of the detainees currently held at the Guantanamo Naval Base in Cuba will continued to be held on an arbitrary and indefinite basis as a result of the Government's transfer efforts, Human Rights USA urges the Committee to:

- *require the Government to provide detailed information about this planned transfer arrangement, including:*
 - *the names of the detainees who will likely be transferred,*
 - *the location of the facilities where each detainee will be held, and*
 - *whether the ICRC will have access to each detainee upon transfer.*

The Government Continues Asserting Exemption from Basic Human Rights Obligations in the Context of its Efforts to Combat Terrorism

The U.S. government continues to assert that its efforts to combat terrorism are exempt from basic human rights standards enshrined in the ICCPR and the Convention Against Torture. In addition to taking the position that the ICCPR does not apply in Iraq, Afghanistan, or Guantanamo Bay (all territories under the direct and effective control of the U.S. government), the Government now asserts that it is exempt from basic and fundamental prohibitions against torture and *refoulement* to torture enshrined in the Convention Against Torture.

At the most recent hearing before the Committee Against Torture, the U.S. government asserted that Article Three of the Convention Against Torture, which enshrines the fundamental prohibition against *refoulement*, does not apply to individuals outside of U.S. territory.¹⁹ This latest effort by the Government to draw loopholes into human rights documents illustrates the lengths to which the Government will go to evade accountability under the most basic human rights standards.

Given the U.S. Government's continued efforts to create or rely on imaginary loopholes to avoid its basic legal obligations, Human Rights USA urges the Committee to:

- *reiterate the Committee's position that the ICCPR applies in all territories under the effective control of the U.S. government.*

Conclusion

Despite widespread and growing condemnation by individual states and international bodies of human rights abuses committed in the context of efforts to combat terrorism, the U.S. government continues acting shamelessly in its disregard for the rule of law that it promotes abroad.

The Government now admits to force-feeding Guantanamo Bay detainees through gastric feeding tubes, a practice that is well-recognized as amounting to torture or degrading treatment. The Government continues operating an illegal rendition to torture program, relying on faulty and problematic diplomatic assurances, while turning a blind eye to the pragmatic reality that a substantial number of detainees transferred under the program are tortured by their receiving countries. The Government also plans to extend its rendition efforts by transferring a majority of the detainees currently held at Guantanamo Bay to U.S.-built and operated prison facilities abroad. This transfer plan can only be seen as an attempt to maintain the arbitrary and indefinite detention of hundreds of men who have never been charged with a crime. The Government further refuses to comply with simply requests made by United Nations Rapporteurs to have free, private access to detainees held at Guantanamo Bay, in spite of the fact that the Government insists that these standards be accepted by other nations.

In light of the Government's failure to alter its practices in the face of condemnations by

an increasing number of international bodies, it is critical that the Human Rights Committee reiterate well-settled human rights legal principles, and instruct the U.S. Government to immediately cease activities that constitute violations of the ICCPR.

¹ Eric Schmitt and Tim Golden. "Forced Feeding at Guantanamo is Now Acknowledged," New York Times. 22 February 2006. available at <<www.nytimes.com/2006/02/22/international/middleeast/22gitmo.html?ex=1298264400&en=7ea399aeba6605e&ei=5090&partner=rssuserland&emc=rss>> last visited 15 June 2006.

² Id.

³ "Situation of detainees at Guantánamo Bay," Report of the Chairperson of the Working Group on Arbitrary Detention to the United Nations Human Rights Commission. E/CN.4/2006/120 15 February 2006. page 37.

⁴ "Three Prisoners Die in Suicide Pact at Guantanamo," Associated Press, 10 June 2006. available at <<www.nytimes.com/2006/06/10/world/americas/10wire-cuba.html>>

⁵ Jan Sliva. "U.S.: Secret Prison Charges Hurt," May 2, 2006, last visited: May 8, 2006 at: <<www.cbsnews.com/stories/2006/05/04/terror/printable1585331.shtml>>

⁶ Craig Whitlock. "Probe of Detainee Transfer Finds Many CIA Flights," Washington Post, April 27 2006.

⁷ Reuters. "Europeans knew of CIA flights," published May 17, 2006 last visited May 17, 2006 at: <http://news.yahoo.com/s/nm/20060517/ts_nm/security_europe_cia_dc>

⁸ Concluding Observations of the Committee Against Torture: United States. CAT/C/USA/CO/2. 18 May 2006.

⁹ Id.

¹⁰ *Agiza v. Sweden*, Committee Against Torture Communication No. 233/2003, U.N. Doc. CAT/C/34/D/233/2003 (2005). Available at << <http://www1.umn.edu/humanrts/cat/decisions/233-2003.html>>> last visited 15 June 2006.

¹¹ Id.

¹² "We therefore agree with the UN Special Rapporteur on Torture, the European Commissioner for Human Rights and others that the Government's policy of reliance on diplomatic assurances against torture could well undermine well-established international obligations not to deport anybody if there is a serious risk of torture or ill-treatment in the receiving country. We further consider that, if relied on in practice, diplomatic assurances such as those to be agreed under the Memoranda of Understanding with Jordan, Libya and Lebanon present a substantial risk of individuals actually being tortured, leaving the UK in breach of its obligations under Article 3 UNCAT, as well as Article 3 ECHR. We are also concerned that Memoranda of Understanding lack enforceable remedies in an event of a breach of the terms of the Memoranda." United Kingdom Parliament Joint Committee on Human Rights 19th Report. Published 18 May 2006. Available at <<www.publications.parliament.uk/pa/jt200506/jtselect/jtrights/185/18502.htm>> last visited 15 June 2006.

¹³ Council of Europe Venice Commission Opinion "International legal obligations of Council of Europe member States in respect of secret detention facilities and inter-State transport of prisoners." Published 18 March 2006. Available at << [http://www.venice.coe.int/docs/2006/CDL-AD\(2006\)009-e.asp](http://www.venice.coe.int/docs/2006/CDL-AD(2006)009-e.asp)>> last visited 15 June 2006.

¹⁴ Concluding Observations of the Human Rights Committee: Sweden. CCPR/CO/74/SWE. 24 April 2002.

¹⁵ Written Reply of the United States Government to the Committee Against Torture 36th Session. Published 5 May 2006. last visited June 15, 2006 at: <<http://www.ohchr.org/english/bodies/cat/cats36.htm>> page 47.

¹⁶ Carol Williams. "Pentagon plans release of prisoners at Guantanamo Bay," Los Angeles Times, April 25, 2006

¹⁷ "Emptying Guantanamo," Washington Post, August 6, 2005:A 18

¹⁸ Associated Press. "Pentagon hands over all Guantanamo names," published May 15, 2006, last visited May 16, 2006 at: <<<http://msnbc.msn.com/id/12806375/from/RS.3>>>

¹⁹ Oral Reply of the United States Government to the Committee Against Torture 36th Session. Published 9 May 2006. last visited June 15, 2006 at: <<http://www.ohchr.org/english/bodies/cat/cats36.htm>> page 7.