

**Testimony Submitted to the European Parliament
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**Emi MacLean
Center for Constitutional Rights (CCR)
US Member League of the International Federation for Human Rights (FIDH)**

I am Emi MacLean of the Center for Constitutional Rights, the US member league of the International Federation for Human Rights, or FIDH. The Center for Constitutional Rights has been representing the men detained at Guantánamo since the prison opened in 2002. We successfully brought *Rasul v. Bush* to the Supreme Court in 2004, the case that first held that Guantánamo detainees have a right to challenge the legality of their detention in U.S. federal courts through the writ of habeas corpus. Through litigation and advocacy, we have been engaged over the last six years in efforts to close Guantánamo and restore the rule of law. We at CCR and FIDH have been working closely with Human Rights Watch, Amnesty International, and Reprieve to find a solution to the continued arbitrary detention of refugees currently imprisoned at Guantánamo for lack of a safe haven. The refugee crisis at Guantánamo is one of the primary barriers to closing the off-shore prison. We have been grateful for the positive reception of the issue by the European Parliament and I am honored to be here today to discuss the refugee issue, and the role of the international community in response to this humanitarian crisis.

Guantánamo, in its contemporary incarnation, seems a place devoid of fortune. Yet one's lot in Guantánamo – now in 2008 as much as it was in 2002 – is shaped in large part by the great vagaries of fortune or misfortune that is the country of one's birth.

At Guantánamo, if you were fortunate to be born European, you were released from the prison years ago.

If you were fortunate to be a military commission defendant from Australia, your plea agreement was negotiated directly by Australian Prime Minister John Howard and U.S. Vice President Dick Cheney, out of earshot of the military prosecutor, and you are now free.

If you are fortunate to be the sole westerner remaining in Guantánamo in 2008, you are removed from the psychologically deadening solitary confinement 23 hours a day, day after day, and instead placed in a small communal living quarters.

And on the other end of the spectrum of fortune at Guantánamo, some of the most unfortunate may be the detainee-refugees – those men who either were born in brutal human rights abusing regimes and have individualized fears of return or those who are effectively

stateless. These men do not have a nation fighting to have them safely repatriated; in fact, they face quite the opposite – return to possible persecution and torture in their country of nationality. And their home governments certainly do not advocate for them to receive a fair trial, or to be treated humanely in Guantánamo.

Instead, these men are faced with an impossible choice: to be detained indefinitely in the U.S. extrajudicial prison camp at Guantánamo Bay or to be repatriated to countries in which they face certain torture or persecution, in clear violation of the international law prohibition against *refoulement*. This is their misfortune unless and until an intervention alters their situation – and they are offered humanitarian protection and the opportunity to restart their lives and recover from their detention; otherwise, they, without question, ultimately will be forcibly repatriated to their home countries, despite the risk to their lives and security and a more prolonged arbitrary detention.

The Refugees at Guantánamo

There are approximately 50 refugees who remain at Guantánamo today. These men are from countries whose nationals comprise large swaths of the refugee and asylum populations in Europe and North America – countries like Algeria, China, Libya, Palestine, Somalia, Syria and Uzbekistan. At least two were granted official mandate refugee protection by the United Nations High Commissioner for Refugees before being brought to Guantánamo. These men have never been charged with any crime and are not expected to be charged with any crimes by military commission or any other process. Indeed, approximately 30 already have been acknowledged by the United States to be “cleared” for release which means that the U.S. has officially recognized that it has no interest in detaining them any longer.

A snapshot provides a portrait of some of the refugees who remain at Guantánamo today – after six years of indefinite detention without charge.

- ❖ There are 17 Chinese Uighurs still detained in Guantánamo. Adel Noori is one. He suffered in China because he was well-connected to literary and progressive movements. His friends – authors and activists – have been imprisoned by the Chinese state for exercising their expression. Adel, like the other Uighurs, escaped the persecution of the Chinese government and made his way to safety in a small refugee community in Afghanistan with other Uighurs. Forced to flee when, in October 2001, the war started in

Afghanistan, the Uighurs were taken in by Pakistanis on the border but then were sold for bounty to the United States. The U.S. had peppered Afghanistan and Pakistan with flyers promising “wealth and power beyond your dreams” for the handover of unknown enemies. The Uighurs, like many others, were caught up in a dragnet relying on limited intelligence and manufactured incentives. There were 23 in total. Five were eventually declared to be not enemy combatants; years later they were released to Albania, the first country to agree to accept non-nationals detained at Guantánamo. The remaining 17, despite virtually identical factual circumstances regarding their stays in and escape from Afghanistan, remain in Guantánamo because no country has yet opened its doors to them.

- ❖ Muhammed Hussein Abdallah is an elderly father from Somalia who had been officially granted mandate refugee protection by UNHCR in Pakistan years before his abduction and arbitrary detention in Guanátanamo. He was working as a teacher at a Red Crescent school for orphans when Pakistani soldiers raided his house, abducted him, and transferred him to U.S. soldiers. He is from a country embattled by a long-running war and has no home to return to and no other country which has offered him refuge, so he remains in Guantánamo today.

- ❖ Abdul Ra’ouf Al Qassim is a Libyan refugee who deserted the Libyan Army when he was young and fled religious persecution in his home country. He was living with his pregnant Afghan wife in Kabul when the war forced him and his wife to flee to Pakistan. Like Mr. Abdallah, Mr. Al Qassim’s house was subjected to a raid in which he was turned over to U.S. authorities, likely for a sizable bounty. The U.S. has twice attempted to transfer Mr. Al Qassim to Libya despite Libya’s known record of egregious human rights abuses, and the increased risks that Mr. Al Qassim would face if repatriated because he deserted the army and has been tarnished by false and unsubstantiated allegations that he was associated with a group opposed to the Qadhafi regime.

All of these men have been officially cleared for release, yet all remain in Guantánamo today, tomorrow, and the foreseeable future.

The Impossible Choice

The impossible choice faced by these men and others – indefinite detention at Guantánamo versus torture and persecution in countries which they previously fled – is neither acceptable nor legal, but it exists in large part because countries have not intervened to accept the shared responsibility of Guantánamo’s refugee crisis and offer safe haven to its victims. The prohibition against torture, and transfers-to-torture, is one of the most widely recognized obligations of international law.

Yet, thus far, almost 40 men have been transferred by the United States to notorious human rights abusing regimes with no process in place to determine whether these men face individualized risks of torture or persecution upon their repatriation. They have been returned to countries like Uzbekistan, Libya, Tunisia and Egypt. In 2006 and 2007, the U.S. sent two men from Guantánamo to Libya without any process to determine whether they should be granted a reprieve, and even though the U.S. government’s own State Department report for 2006 acknowledges that in Libya, “security personnel routinely tortured prisoners during interrogation or as punishment,” including through gruesome measures, such as “chaining prisoners to a wall for hours, clubbing, applying electric shock, applying corkscrews to the back, pouring lemon juice in open wounds,” and the list continues. No information about these men’s safe whereabouts has been made available. A similar laundry list of egregious treatment inflicted on detainees in Tunisian custody, described in the 2006 U.S. State Department report of Tunisia, did not prevent the U.S. from transferring two men to the custody of the Tunisian government. Both men immediately were jailed and subjected to abusive treatment.

In these transfers, the U.S. has relied largely on secretly-negotiated diplomatic assurances – the vague and unenforceable promises made by human rights abusing regimes that they will treat returnees humanely even if they have flouted their obligations under international law with myriad others caught up in the state security apparatus. The U.S. government has aggressively challenged the judicial oversight of such transfers. Subsequent to the enactment of the Military Commissions Act, the lack of judicial oversight is explicit – with dramatic consequences. Under the Military Commissions Act, no non-citizen detainee classified as an “unlawful enemy combatant” is entitled to challenge any aspect of his transfer or conditions of confinement, in any way. What this court-stripping provision has meant is that the government’s actions with respect to the transfer of Guantánamo detainees have virtually no judicial review. Further, no diplomatic assurance agreement for a detainee ever has been subject to any form of review.

Thus far, only two countries have intervened to offer these men an alternative. The United States has, to its shame, consistently refused to open its doors to any of the men it brought halfway around the world to a U.S. military prison. Instead, Albania – one of the poorest countries in Europe – became the first country to accept any non-citizens who had been caught up in the dragnet of Guantánamo in the months after the Afghan invasion; in 2006, Albania agreed to accept eight refugees from Guantánamo – five Uighurs, one Uzbek, one Egyptian and one Algerian. Last year, the United Kingdom became the second country to accept non-citizens in need of safe haven. It demanded the transfer from Guantánamo to England of five detainees who had been residents of the UK, but not citizens. Three of these men have since been returned to the UK. And now Sweden is considering the asylum application of Adel Al Hakim, one of the Uighurs who had been transferred to Albania but who is hoping to be reunited with his sister who is a refugee in Sweden – his only family member outside of China.

**Moving Forward:
Providing Humanitarian Protection for Guantánamo’s Refugees as
Part of the International Effort to Close Guantánamo**

As an American involved with the representation of the men imprisoned at Guantánamo over the last six years, there is something undeniably ironic about appealing to the European Parliament – and more broadly, to the European Union – to help the United States, and the international community, turn a page. The United States had for generations loudly spoken about the importance of human rights norms and refugee protection – and is still the largest receiving country of resettled refugees from around the world. However, as has been acknowledged by the leaders or high-ranking officials in most European governments, over the last six years, U.S. policies in Guantánamo have been both destructive and counterproductive for human rights. Even if investigations indicate that other countries had a role to play in the initial detention regime or its continuation, nonetheless, the bulk of responsibility clearly lies with the United States.

There is an understandable and tempting tendency to suggest that the United States should independently un-dig the hole it has dug. However, where human lives are at stake and the U.S. has not demonstrated that it is committed even to preventing the transfer of these men to torture or to reviewing their individual refugee claims, let alone to opening its doors to them, the refugee crisis at Guantánamo becomes another international problem desperate for an international solution.

This also presents an opportunity for European countries. European countries historically have led efforts to provide safe haven for refugees fleeing religious and political persecution and now lead major efforts to bring to light some of the other egregious abuses of the last six years. Stepping forward to consider offering humanitarian protection to a small number of refugees at Guantánamo would help to close this ugly chapter of the Guantánamo story. There is a critical need for countries to intervene to offer the possibility of asylum for men who have been detained at Guantánamo for years without charge, a majority of whom even the United States indicates could be immediately released.

The touting of principles must be transformed into action before it is too late. One of the Chinese Uighurs told his lawyer, from the depths of his desolation in his solitary confinement cell: “Tell my wife to remarry. She should consider me dead.” Another Uighur had been on prolonged hunger strike while in solitary confinement and was forcibly fed with the assistance of a riot squad and a rubber tube. His friend wrote in a letter to his lawyers, worried about his health but cognizant of the difficult choice he was making: “If the oppression were not unbearable, who would want to throw himself on a burning fire?”

Europe has been a leading voice calling for the rapid closure of Guantánamo and a renewed commitment to the rule of law. But the closure of Guantánamo requires that countries open their doors to a few stranded refugees, as European countries historically have done, in the noblest of humanitarian gestures, to respond to other human rights crises.