

# **THROWING AWAY GOODWILL IN GUANTÁNAMO BAY**

**Written testimony of  
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## **Introduction**

When I was sworn in as a U.S. citizen several years ago, U.S. District Court Judge Helen G. Berrigan, who was conducting the ceremony, kindly announced that I had for years been fulfilling my new oath of citizenship, performing civil rights work for indigent prisoners. This, she said, was what it meant to up-hold the U.S. Constitution and the American way of life.

I became involved in the litigation over Guantánamo Bay at the very beginning, in early 2002. I did so, at a time when it was rather unpopular to object to President Bush's 'War on Terror' policies, because I believed that the evisceration of the Rule of Law was contrary to everything that I swore to up-hold both as a U.S. citizen and as a member of the bar.

I believed then that Guantánamo Bay would make everyone a loser. Obviously the prisoners would be denied their legal and human rights; at the time, I had no idea whether they were guilty of crimes against the U.S., but the American way to sort this out was to provide them with some form of Due Process. I feared for the impact on the young American service men and woman required to enforce a lawless enclave. But most of all I feared that the U.S. would itself suffer if the Rule of Law became an early victim of the 'War on Terror.'

The U.S. has been, in the latter half of the Twentieth Century, the steadfast enemy of Torture and the advocate of Law. Yet hypocrisy is the yeast that ferments hatred, and I feared that if we succumbed to the temptation to jettison our principles, it was inevitable that the temperature of the world could only rise.

On September 12, 2001, as the victim of an unpardonable crime, the U.S. enjoyed a reservoir of goodwill unparalleled in our history. Sadly, that reservoir has long since drained away, sucked out by the ghastly pictures of Abu Ghraib, the images of Muslim men in their Guantánamo orange uniform, and by other tragic stumbles in foreign policy.

A reputation is often hard-won, but it is always easily lost. We have tarnished our reputation in the past six years, yet we can and must regain it. We need to understand our mistakes, redress them, and move forward to the future that is promised by the American ideal.

## **The Cost of the Guantánamo Bay experiment to the United States**

I have visited many foreign countries during my work for prisoners in Guantánamo Bay. I currently reside in the U.K.; I have travelled to Bahrain, France, Jordan, Mauritania, Morocco (twice), the Netherlands, Portugal, Qatar (three times), Sudan (twice), Switzerland, and Yemen (three times). Staff from my charitable law office have additionally visited Germany, Greece, Israel, Italy, Kenya, Pakistan, Russia, Somaliland, Spain, Sweden, and Tunisia. I have additionally met prisoners, family members or media representatives from Afghanistan, Algeria, Belgium, Kuwait, Libya, Poland, Romania, Saudi Arabia, Syria, Uganda, U.A.E., and Uzbekistan – to name only those countries that are directly affected by the ‘War on Terror’ policies. The media all around the world have shown an interest in the sad story of Guantánamo Bay, and the interest has flowed in only one direction. This is not a case of opinion divided – criticism of Guantánamo Bay has been uniform and unceasing.

Everywhere I go in Europe and the Middle East, I meet the same question: What is the U.S. doing holding prisoners for year upon year in Guantánamo Bay, without any meaningful due process? There is a great deal of anger. There is sadness – that the U.S. has created a new word for inequity, and that word is Guantánamo.

There is hope amid the darkness: As an American citizen, I always apologize for what I view as our mistake, and this invariably draws the same positive response. Those in the audience -- family members of prisoners and even the former prisoners themselves – raise their hands to say that they do not hate the American people; however, they are strongly and angrily opposed to what they view as the mistakes of the Bush Administration. They view Guantánamo as an aberration, an error from which the U.S. can recover.

Yet we cannot expect to recover our reputation without action. As one Guantánamo prisoner said to me: “If I receive just one act of kindness from an American I will forget the years of mistreatment.”

If, on the other hand, we are unwilling to admit our mistakes then the damage done to our reputation will never be repaired.

## **Explaining the errors: How could we have got it so wrong?**

It is notoriously easy to play Quarterback on Monday morning. It is more helpful to analyze the setback, and help avoid a similar loss seven days later.

There are many explanations for the frequency of mistakes in Guantánamo Bay. However, perhaps the most obvious involves the bounty program that we have implemented in Pakistan and Afghanistan. We have distributed leaflets all across the

region, offering large sums of money for “Taliban” or “Al Qaeda” prisoners. An typical example of these leaflets may be seen below:



*Sample Bounty Leaflet dropped in Pakistan/Afghanistan  
(\$5,000 for turning in alleged Taliban & Al Qaeda)*

Sometimes, the bounties have been far higher. Findings have recently been made by a Canadian judge confirming that the US paid Pakistan a bounty of \$500,000 for Abdullah Khadr, the older brother of the juvenile Guantánamo prisoner Omar Khadr.<sup>1</sup> He was detained for some 14 months before being sent back to Canada.

Indeed, the following flyer promises a reward of \$5 million for information about the Taliban and al Qaeda:



General Pervez Musharraf has recently published memoirs entitled *In the Line of Fire*. President Musharraf describes how Pakistan sought and obtained bounties from the

<sup>1</sup> *Abdullah Khadr v. Attorney General of Canada*, 2008 FC 549 (2008).

US for hundreds of stray Arabs. Many of these prisoners ended up in Guantánamo Bay.

“We have captured 689 and handed over 369 to the United States,” Musharraf writes. “We have earned bounties totalling millions of dollars. Those who habitually accuse us of ‘not doing enough’ in the war on terror should simply ask the CIA how much prize money it has paid to the Government of Pakistan.”

His revelations set people to arguing, and more truths came out. Rather than denying the existence of the bounty program, the U.S. Department of Justice complained about who received the money. “We didn't know about this,” said a DOJ official. “It should not happen. These bounty payments are for private individuals who help to trace terrorists on the FBI's most wanted list, not foreign governments.”

President Musharraf then denied official corruption, saying that the money was given directly to individuals rather than the government.

Even a \$5,000 bounty represents a great deal of money in this region. Indeed, when one compares the per capita income of the U.S. with Pakistan, it would translate to giving roughly a *quarter of a million dollars* to an American. Imagine the temptation that people faced in that impoverished region when offered such a sum, required only to finger a foreigner and suggest that he was in Tora Bora in the Fall of 2001.

‘Enhanced Interrogation Techniques’ were then injected into the mix, and the large number of mistakes became inevitable. Those American personnel who used harsh interrogation tactics were not trying to force the innocent to confess; they had been told (often falsely) by their informants (often Pakistani) that the prisoner had been up to no good in Afghanistan. Thus, when they forced the prisoner to admit that he had been in Tora Bora, or example, they only thought it was the truth. Such a forced confession was a one-way ticket to Guantánamo, where the prisoner had no meaningful way to contest his culpability.

Not everyone caught up in this web was innocent, of course. But without due process, there was no way to sort the guilty wheat from the innocent chaff. In significant part, this helps to explain the disaster that is Guantánamo Bay.

### **On-going injustice in Guantánamo Bay**

It is not my purpose to canvass every injustice that has taken place in Guantánamo Bay. Unfortunately, however, the following three examples (selected from the clients represented by my office) are reasonably typical.

All three were purchased for bounties in Pakistan; none was seized in Afghanistan. The first, Muhammad Abdallah, is a UNHCR refugee, a father of eleven children and a grandfather, who has long been cleared for release, but remains held in Guantánamo Bay. The second, Mohammed el Gharani, is a juvenile who was just *fourteen years old* when seized by the Pakistani forces, who is patently innocent yet has not been cleared for release to Chad. The third, Binyam Mohamed, is a British resident who was tortured in unspeakable ways when rendered on a CIA plane to Morocco, and who faces a potential trial in a military commission based on this torture evidence.

## **Muhammad Hussein Abdallah, UNHCR Refugee Cleared For Release From Guantánamo Bay**

*“First of all, you classified me as a terrorist or associated with this organization; that has no founding or truth to it at all. I am just a teacher. I teach orphans, seven or eight year old orphans. They came and picked me up at 2AM from my house ... if teaching orphan children who lost their father how to write is a terrorist act, [then] I am a terrorist.”*

*Muhammad Hussein Abdallah – statement to  
Combatant Status Review Tribunal (CSRT) at  
Guantánamo Bay*

Muhammad Hussein Abdallah is a teacher, a father of eleven, and a Somali refugee. He has spent the last six years held without charge by the U.S. military.

Of all the tragic and senseless tales to come out of Guantánamo Bay, Mr. Abdallah’s is one of the saddest. He led his family out of Somalia years ago to protect them from escalating clan-based violence – the loud, early murmurs of a conflict that plagues Somalia to this day. The family settled in Pakistan in the early nineties; UNHCR granted Mr. Abdallah protected refugee status in 1993.

For the next several years, the Abdallahs lived quietly. Mr. Abdallah was the family protector and provider; the family lived on his meagre teacher’s income, supplemented slightly by funds sent by married children in Canada and Saudi Arabia. In Mr. Abdallah’s last post as a free man, he taught orphans at a Red Crescent school in Jalozai, a refugee camp outside Peshawar that housed thousands of displaced Afghans.

This simple life was disrupted when war broke out in Afghanistan. Like hundreds of other men in Peshawar at the time, Mr. Abdallah fell prey to the policy of offering bounties for captured Arabs. Pakistani soldiers staged a night time raid on his home, took him away from his family, and sold him to American soldiers. He has been in military custody ever since.

Family reports indicate that, just three months after Mr. Abdallah’s seizure, his house was raided again by both the ISI and U.S. forces. During that raid, a soldier reportedly stormed into the room where Mr. Abdallah’s son-in-law was sleeping, unarmed. Startled, the son-in-law apparently reached for his glasses to see what was happening—and the soldier shot him. He was killed.

*Mr. Abdallah’s innocence has been proved, and has been conceded by U.S. forces, yet he remains in Guantánamo Bay.* Other witnesses—including exonerated ex-Guantánamo prisoner Abu Mohammed—have corroborated Mr. Abdallah’s story. Mr. Mohammed and Mr. Abdallah used to share the same Red Crescent bus to work. Mr. Mohammed was the sole witness allowed to testify at Mr. Abdallah’s CSRT. He remembered Mr. Abdallah as “basically a family man”: someone with few outside

contacts, a man who preferred to spend his free time at home with his wife and eleven kids.

Even the U.S. military fully recognizes Mr. Abdallah's innocence: he has been cleared for release from Guantánamo for years. Yet he remains in Guantánamo because the U.S. has, as yet, failed to find him somewhere to go.

Yet there is a refuge that would be suitable for Mr. Abdallah and the other two Somali prisoners in Guantánamo Bay: the small, stable, *de facto* independent region of northwest Somalia known as Somaliland. This region boasts its own police force and its own currency; it has its own president, parliament, and the rest of a functioning governmental apparatus.

The government of Somaliland is closely allied with the United States. Moreover, high-ranking members of this government—the Ministers of Interior and Foreign Affairs, the Speaker of the Parliament, and the leader of the chief opposition party—have all been alerted by *Reprise* to the cases of Somali prisoners in Guantánamo Bay.<sup>2</sup> They have responded very positively to these initial queries. It strongly appears that they would be willing to welcome the three Somalis from Guantánamo Bay, were the U.S. to approach the President about doing so.

It should, in principle, be relatively straightforward for the U.S. to transfer Mr. Abdallah, a UNHCR refugee who is patently innocent of any crime, to a friendly regime. For Mr. Abdallah the matter is particularly urgent. He is an aging grandfather who never posed the slightest threat to the U.S. or its allies. It is no exaggeration to say he has little time left. His one wish now is to return to his family in Somaliland and live out his remaining years in peace with his loved ones.



**Mohammed 'Yusuf' el Gharani, juvenile from Chad**

Mohammed El Gharani is the second youngest prisoner in Guantánamo Bay today. Mohammed was 14 when he was seized in Pakistan. Today he is 21, having now spent six and a half years in United States custody.

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<sup>2</sup> One of the other two Somalis is Mohammed Sulaymon Barre, the son-in-law of Muhammad Hussein Abdallah and also a UNHCR-recognized refugee. The other is Abdullah Sudi Arale, a later arrival to Guantánamo Bay who has not had a chance to see an attorney—nor has apparently been labelled an enemy combatant—in nearly a year of imprisonment at Guantánamo. Unclassified information and *Reprise's* research in Somaliland suggests that Mr. Arale poses equally little threat to the U.S. The government of Somaliland is reportedly open to the possibility of accepting the three individuals jointly.

Mohammed was born in Saudi Arabia in November 1986. He grew up in Medina, where he studied, loved playing football and earned money for his family working after school selling bottles of water or prayer beads. Though he was born in Saudi Arabia, he is a national of Chad. Both his parents are from Chad, and in Saudi Arabia citizenship follows that of the parents; Mohammed's birth in Medina is considered irrelevant.

Mohammed is a very intelligent young man. He dreamed of being a doctor, but the extreme discrimination in Saudi Arabia is reminiscent of the Deep South in the 1950s. His dark skin cut off his options, and Mohammed was forced to leave school at 14, and face a life selling odd items on the streets. A friend suggested he go to Pakistan to study English and computers. Although he was only 14 years old, he followed this advice.

Not long after his arrival in Karachi, Mohammed went to a mosque at prayer time. Police surrounded the building and arrested everyone inside. Mohammed told the Pakistani police that he was there to study and had arrived only recently, but this did him no good. He was hung for hours by his wrists, so high that only the tips of his toes touched the ground – a torture technique called *strappado* by the Spanish Inquisition. He was beaten repeatedly. He was interrogated about the Taliban and al Qaeda, though he had never heard of either group.

After twenty days, the Pakistanis turned Mohammed over to the United States military for a bounty, and he was taken to Bagram Air Force Base in Afghanistan. While there, Mohammed was subject to persistent racial slurs. He was kept naked for several days. On some nights he had freezing water thrown on him as well. After more than two months in Afghanistan, the U.S. sent Mohammed to Guantánamo Bay.

It is a sad condemnation of the quality of some of the intelligence in Guantánamo that until *Reprieve* lawyers finally managed to obtain access to Mohammed, the U.S. military thought he was ten years older than his real age. Confirming his true date of birth was simple: copies of his passport and birth certificate were obtained from Saudi Arabia, confirming that he was born in November 1986.

More than six years later, Mohammed has never been formally charged with any crime. The main allegation against him remains that he was a member of an Al Qaeda cell in London in 1998. The suggestion is ludicrous, and recently his interrogator has had the decency to apologize for the fact that the allegation has still not been dismissed: Mohammed would have been just 11 years old at the time – and had never been outside Saudi Arabia.

At no time in U.S. custody has Mohammed's status as a juvenile been respected. The U.S. military has subjected Mohammed to sleep deprivation, as well as freezing conditions, strobe lights and blasting music. Soldiers slammed Mohammed's head to the floor, knocking out two teeth. An interrogator allegedly stubbed out a cigarette on Mohammed's arm.

Today, Mohammed is kept in the maximum security Camp V. He is housed in a cell that is entirely made of steel. The neon lights are on 24 hours a day. He has nothing to do all day.

Mohammed has had many medical problems. He had a tooth removed erroneously due to an inept interpreter. He has been bitten twice by spiders, a wound that leaked green puss and made him very sick. His eyesight is failing due to the constant artificial light.

Mohamed has also faced emotional and mental abuse. At one point, interrogators painted red across his chest and chanted “Mohammed is a Terrorist.” Perhaps most damaging, the racial abuse has continued throughout his incarceration.

Mohammed has been deeply depressed and has made several suicide attempts, including slashing his wrists, trying to hang himself and running head-first into the wall as hard as he could.

Saudi Arabia refuses to take responsibility for him, so Chad seems to be the only option for his release. However, until his volunteer legal representatives travelled to Chad, the Chad government reports no efforts by the U.S. to negotiated his release to the country of his nationality.

He remains in Guantánamo Bay.



**Binyam Mohamed [al Habashi]: Tortured in Morocco**

Binyam Mohamed was born on 24 July, 1978, in Ethiopia, and came to the U.K. on 9 March 1994, seeking political asylum. He is often called ‘Al Habashi’ simply because of his birthplace – the term means literally ‘from Ethiopia’. Binyam (referred to here by his first name, to avoid the confusion occasioned by his common last name) remained in the UK for the following seven years.

With the region in chaos, Binyam decided to return from Pakistan to the U.K. At Karachi airport on 10 April 2002, Binyam was seized by Pakistani authorities and detained for three months. During that time, Binyam was abused by the Pakistanis, and interrogated by both American and British officials. The British confirmed to the U.S. that he was a “nobody” – a janitor from London. Nevertheless, the U.S. decided that he knew more than he was saying.

On 21 July 2002 Binyam was taken to a military airport in Islamabad with two others. He was turned over to the U.S. Describing a routine that has come to be known as the U.S. “rendition methodology,” Binyam encountered special forces dressed in black, with masks, wearing what looked like Timberland boots. They stripped him naked, took photos, put fingers up his anus, and dressed him in a tracksuit. Binyam was then shackled, with ear-muffs, blindfolded, and put on board a plane.



This aircraft has been identified through official Eurocontrol flight data as a Gulfstream V N379P that left Islamabad, arriving in Rabat at 03:42.<sup>3</sup> This aircraft was owned by a CIA front company called Premier Executive Transport, and is the plane “most frequently associated with known cases of rendition.”<sup>4</sup> It has been dubbed “the torture taxi” by journalists and plane spotters around the world.<sup>5</sup>

Indeed, Binyam was to face torture in Morocco for 18 months. There was an initial “softening up” phase, a subsequent “cycle of torture”, and finally “heavy” psychological and physical abuse.<sup>6</sup> He reports being starved of food, suffering sensory deprivation and sleep alteration.<sup>7</sup> In the first few weeks, Binyam was repeatedly shackled, suspended from walls and ceilings, and beaten:

*“They came in and cuffed my hands behind my back. Then three men came in with black ski masks that only showed their eyes...one stood on each of my shoulders and the third punched me in the stomach. The first punch...turned everything inside me upside down. I felt I was going to vomit. I was meant to stand, but I was in so much pain I’d fall to my knees. They’d pull me back up and hit me again. They’d kick me in the thighs as I got up. They just beat me up that night...I collapsed and they left. I stayed on the ground for a long time before I lapsed into unconsciousness. My legs were dead. I could not move. I’d vomited and pissed on myself.”<sup>8</sup>*

Binyam describes being stripped naked and a doctor’s scalpel being used to cut him all over his body, including his genitals:

*“One of them took my penis in his hand and began to make cuts. He did it once and they stood for a minute, watching my reaction. I was in agony, crying, trying desperately to suppress myself, but I was screaming. They must have done this 20 or 30 times, in maybe two hours. There was blood all over. They cut all over my private parts. One of them said it would be better just to cut it off, as I would only breed terrorists...there were even worse things, too horrible to remember, let alone talk about.”<sup>9</sup>*

Morocco is a country well-known for its horrendous human rights record, and for its routine use of detention without charge and torture, and Binyam’s account of his torture in Morocco is consistent with numerous NGO and government reports of torture methods routinely used by the Moroccans.

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<sup>3</sup> Official Eurocontrol flight log at p21164.

<sup>4</sup> Amnesty International, *USA: A case to answer, from Abu Ghraib to secret CIA custody: the case of Khaled al-Maqtari*, AI Index: AMR 51/03/2008, at p15

<sup>5</sup> This Gulfstream executive jet has been successively registered as N379P, N8068V and N44982. In February 2000, it was registered by the CIA front company Premier Executive Transport Services. At the beginning of 2004 it was re-registered as N44982, and in December 2004 it was re-registered again as N44982 by Bayard Foreign Marketing, described by Amnesty International as “a phantom company registered in Oregon state since August 2003.” The plane was sold in early 2006. Until August 2005, Premier Executive Transport planes were licensed to land at US bases world-wide.

<sup>6</sup> Al-Habashi unclassified.

<sup>7</sup> Al-Habashi unclassified.

<sup>8</sup> Al-Habashi unclassified.

<sup>9</sup> Al-Habashi unclassified.

Binyam said what his torturers wanted to hear, in an effort to avoid further abuse:

*“They said, if you say this story as we read it, you will just go to court as a witness and all this torture will stop. I could not take any more...and I eventually repeated what they read out to me. They told me to say I was with Bin Laden five or six times. Of course that was false. They continued with two or three interrogations a month. They weren’t really interrogations – more like trainings, training me what to say.”<sup>10</sup>*

Another aspect of Binyam’s torture in Morocco was the use of information obtained from the British. Binyam was told details about his life in the U.K. that he had never mentioned during interrogations, and that could only have originated from collusion in the process by the U.K. security or intelligence services. The use of this shared intelligence to torture a British resident has been extremely embarrassing to our British allies. The British Intelligence and Security Committee (ISC) report concludes:

*“There is a reasonable probability that intelligence passed to the Americans was used in al-Habashi’s subsequent interrogation.”*

The ISC has reviewed Binyam’s rendition, and expressed its belief that no British agent could truly have predicted the torture that Binyam suffered, as nobody believed – in 2002 – that the U.S. would be a party to such medieval practices. The ISC has quoted a senior British intelligence official as expressing horror at what has been learned about this case and others:

*“the Director General of the [UK] Security Service said to us: I do not think we would know today if Congress and the Supreme Court had not pressed the American Government to move the way it did”<sup>11</sup>*

Sadly, our U.K. allies have now been forced to revise their opinion, and recognize that the U.S. does use torture.

After 18 months in Morocco, Binyam was rendered from Morocco on the night of 21 or 22 January 2004. Binyam reports that photographs were taken of his mutilated genitals by U.S. personnel (photographs that this Committee should seek to review):

*“They did not talk to me. They cut off my clothes. There was a white female with glasses – she took the pictures. One of them held my penis and she took digital pictures. When she saw the injuries I had she gasped. She said, “Oh my God, look at that.”<sup>12</sup>*

Official Eurocontrol flight data shows that in the early hours of 22 January 2004, the CIA Gulfstream V, another known rendition plane, flew from Rabat to Kabul.<sup>13</sup>

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<sup>10</sup> Al-Habshi unclassified.

<sup>11</sup> Intelligence and Security Committee Rendition Report, July 2007, at p34.

<sup>12</sup> Al-Habashi unclassified.

<sup>13</sup> Official Eurocontrol flight data at p21165.

Again, this second rendition of the same European resident has caused great harm to U.S.-European relations. Senator Dick Marty has stated in a Council of Europe report:

“I regard this flight as an unlawful detainee transfer, transporting Binyam Mohamed from one secret facility to another. Two days later, as part of the same circuit, the same plane had flown back to Europe and was used in the rendition of Khaled El-Masri.”<sup>14</sup>

Binyam was rendered by the U.S. to the Dark Prison, Afghanistan. Conditions there were also horrific. He was held in the Dark Prison for five months, during which time he did not once see day light. He was chained to the floor and routinely forced to use a bucket as a toilet in the dark. He was subject to forced stress positions, sleep alteration, starvation, sensory deprivation and other “enhanced interrogation techniques”. Binyam was hung up in the *strappado* position once more (with his hands suspended above his head), his head was repeatedly knocked against the wall, and he was subjected to ‘torture by music’ which involved being constantly played rap, heavy metal, thunder, the sounds of planes taking off, cackling laughter and horror sounds at a constant and high volume.<sup>15</sup>

Binyam describes almost constant interrogation in the Dark Prison:

*“Interrogation was right from the start, and went on until the day I left there. The CIA worked on people, including me, day and night for the months before I left. Plenty lost their minds. I could hear people knocking their heads against the walls and doors, screaming their heads off.”*<sup>16</sup>

Binyam’s description of the Dark Prison and his experience there matches the independent accounts of other prisoners held in the same facility. According to a study by Amnesty International, Binyam was held in “cell number 17” during his stay in the Dark Prison.<sup>17</sup>

After five months in the Dark Prison, Binyam Mohamed was taken to the US prison at Bagram Airforce Base, where he was held until the end of May 2004. Four months later, on 22 September 2004, Binyam was transferred to Guantánamo Bay by US military plane, crossing Greek, Italian, Spanish and Portuguese airspace en-route to Guantánamo. Again, this rendition through European jurisdiction has caused considerable embarrassment to our allies.

Binyam Mohamed currently faces possible trial by Military Commission in Guantánamo Bay. He has already been charged once (in November 2005), but the charges were dismissed based on the U.S. Supreme Court’s decision striking down the process. As his counsel, we have been informed that he is likely to be recharged.

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<sup>14</sup> Council of Europe Draft Report – Part II, *Alleged Secret Detentions and Unlawful Interstate Transfers Explanatory Memorandum by Mr Dick Marty, Rapporteur* (7 June 2006), <http://assembly.coe.int> at 2.5 (52), 3.9 (193 – 214) and 11 (209).

<sup>15</sup> Al-Habashi unclassified.

<sup>16</sup> Al-Habashi unclassified.

<sup>17</sup> Amnesty International, *USA: A Case to Answer. From Abu Ghraib to secret CIA custody* (March 2008); AI Index: AMR51/013/2008, p23.

The British government takes the position that the U.S. commissions process does not meet minimum standards of due process. These criticisms run parallel to similar statements made by Colonel Morris Davis, former chief military prosecutor in Guantánamo Bay, who has also condemned the process as political, and for permitting the use of evidence obtained by torture.

The entire history of this case is an on-going source of immense embarrassment to our British allies. For example, in the past two weeks alone, the U.K. government has been sued in London to provide evidence in the possession of British intelligence that (a) the U.K. told the U.S. before Binyam's torture that he was a "nobody", a janitor from London; (b) the U.K. knew that he would be rendered before it happened; (c) the U.K. provided intelligence to the U.S. that was subsequently used in Binyam's U.S.-sponsored torture in Morocco. It will be very difficult for the U.K. to resist these demands, yet this litigation pits the U.K. intelligence services against the discredited U.S. military commission authorities in Guantánamo Bay.

The U.K. has asked that Binyam Mohamed be returned to the U.K., where he will face any legal proceedings that the U.K. chooses to initiate. The U.K. is willing to be responsible for his custody and control. The U.S. should repatriate him immediately rather than prolong and exacerbate the damage that this case has done both to the reputation of the U.S. and to Anglo-American relations.

### **Gross examples of injustice in Guantánamo Bay that leave a sore**

Again, I do not mean to give an exhaustive account of the mistakes that have been made in the past in Guantánamo Bay. However, I will touch on the cases of three of my clients by way of illustration, and to help explain why Guantánamo has caused so much damage to the U.S. reputation for fair play.



**Sami al Hajj – the al Jazeera cameraman**

Sami al Hajj is an Al Jazeera journalist, originally from the Sudan, who was detained by the U.S. for over six years without trial. He was seized whilst working as a cameraman on assignment reporting on the war in Afghanistan. He was finally released on May 1, 2008.

Born in Khartoum on February 15, 1969, Mr. al Hajj has a wife and a 7 year old son Mohammed, who was an infant when Mr. al Hajj left on his assignment. Mr. al Hajj's wife only found out where he was from the Red Cross 18 months after he had been seized, and had feared he might be dead.

Mr. al Hajj was originally seized at the border between Pakistan and Afghanistan, on December 15, 2001, apparently because the U.S. thought that he had been the cameraman at an Al Jazeera interview with Usama Bin Laden. The intelligence was flawed. It was another cameraman called Mr. al Hajj who filmed the interview (which was never shown by al Jazeera, but was used by their media partners CNN).

Despite this, the U.S. military flew him to Bagram Air Force Base on January 7, 2002. He reports that these were the longest days of his life. He was kept in a freezing hangar with other prisoners, in a cage, with an oil drum to use as a toilet. He was given one freezing cold meal a day. He was not allowed to talk, and he severely abused.

On January 23, 2002, Mr. al Hajj was taken to Kandahar. There, U.S. MPs pulled the hairs of his beard out one by one. He was forced him to kneel for long periods on cold concrete (he still has marks on his knees from this). He was beaten many times. An MP stuck a finger up his anus, and another said to Mr. al Hajj, "I want to f\*\*k you." The Qu'ran was thrown in the toilet in front of him.

Mr. al Hajj was transferred to Guantánamo Bay on June 7, 2002. No formal charges were ever brought against him. Indeed, he was interrogated more than 100 times, and he had to ask to be interrogated about any allegations against him. The only interest that the interrogators showed was to get him to be a cooperating witness against Al Jazeera and say that Al Jazeera was partly funded and controlled by Al Qaeda. Mr. al Hajj refused to say this, even as the price of his freedom, since he said that it was false.

Mr. al Hajj suffered from serious health problems both incurred and exacerbated at the hands of the U.S. Military. Mr. al Hajj had throat cancer in 1998 and the Sudanese doctors put him on medication which he is meant to take daily for the rest of his life, but which has been denied him for over six years during his detention by American forces. Whilst at Bagram, Mr. al Hajj was stomped by guards and had his right knee-cap was broken so that he has no lateral support. Mr. al Hajj did not receive a necessary operation for this. He was told by doctors at Guantánamo that he must have surgery, but that he could not expect the necessary therapy to recover the use of his knee there.

On January 7, 2007, the fifth anniversary of his transfer by the Pakistanis to U.S. custody, Mr. al Hajj began a hunger strike that would ultimately last for more than 470 days. His patience was exhausted. All he asked for was either to be given a fair trial, or to be released to rejoin his family – a claim that has been supported by every major world leader outside the White House. On the twenty-first day of this peaceful, non-violent protest, the U.S. military began to force feed him. After this, each day the military inflicted the same torturous procedure on him. He was strapped into the 'chair', and a 110 cm tube was inserted up his nose. For the next hour and a half, doses of liquid nutrient were forced into him, and he was left in the chair to allow refeeding if it were to make him vomit. Three times the tube was erroneously forced into his lung, and he choked when the liquid was forced in. All this was in violation of the *Tokyo Declaration*, which mandates that a competent hunger striker should not be force fed. Yet above and beyond this, the regime adopted in late 2006 for hunger

strikers was intentionally painful, as a disincentive for them continuing their peaceful protest.

For taking this principled action, Mr. al Hajj was punished. All his 'comfort items' were taken away. He was left with just a thin isomat for sleeping, one blanket, his prison uniform and his Qur'an. Because his glasses had been confiscated, it was difficult for him even to read that.

Towards the end of his detention he was told that he might be suffering from another form of cancer, but that he would not be able to see the relevant expert for six months. This caused Mr. al Hajj, and his many sympathizers, great disquiet.

"Food is not enough for life," Mr. al Hajj said recently. "If there is no air, could you live on food alone? Freedom is just as important as food or air. Every day they [the U.S. Military] ask me, when will I eat. Every day, I say, 'Tomorrow.' It's what Scarlett O'Hara says at the end of *Gone With the Wind*: 'Tomorrow is another day.' Give me a fair trial or freedom, and I'll eat."

Mr. al Hajj received an enormous amount of support during his time in detention. In addition to his own government, he received backing from the Qatari government, acting on behalf of his Al Jazeera employers. A strap line would run along the Al Jazeera screen, and the station ran regular updates projected to millions of viewers. Western media outlets, including AP, Reporters Without Borders, the Committee for the Protection of Journalists, and the New York Times called for his release from Guantánamo. His inequitable detention caused immeasurable damage to the U.S. reputation for fairness and free speech.

His final indignity came on the 20 hour flight back to Sudan, when he was shackled and blindfolded for the entire trip, did not once use the toilet, and had neither water nor food. He was taken urgently to hospital on his arrival. His release came without apology or comment from the U.S. authorities.



**Ahmed Errachidi – London Chef who was erroneously thought to be “The General” of al Qaeda**

Ahmed Errachidi, originally from Morocco, is a chef who suffers from bipolar disorder (manic depression) and has a history of mental breakdowns. He lived in the UK for 17 years, working in hotels and restaurants. However, in September 2001, with an impetuosity that is a hallmark of those suffering from his illness, he set off for Pakistan on a hare-brained mission to buy silver jewellery to sell in Morocco to raise money for an essential heart operation for one of his two young sons.

Sidetracked by the humanitarian crisis that followed the invasion of Afghanistan in October 2001, he took a bus across the border, but discovered that there was nothing

he could do to help the women and children in distress, and returned at once to Pakistan. He was promptly seized by Pakistanis and sold to the U.S. military for a bounty.

For the next five years and five months, Mr. Errachidi was held without due process. While he was held in Bagram and at Kandahar airbase, he was interrogated by a senior U.S. interrogator who used the pseudonym Chris Mackey. Mackey later wrote a book about his experiences (*The Interrogator's War*, with the journalist Greg Miller), and his book betrays his own mistake, believing that Mr. Errachidi's claims of mental illness were a ruse. Years later, when Mr. Errachidi would finally receive lawyers, they would readily secure proof that he had been committed to a mental hospital in the U.K. for his psychosis.

Someone – presumably an informant – claimed that Mr. Errachidi had been training at the Khaldan camp in Afghanistan in July and August 2001. He was transferred to Guantánamo, where his supposed military training, his mastery of English, and his refusal to remain silent in the face of injustice led the prison authorities to dub him “The General.” The U.S. military publicly identified him to the media as the supposed leader of the Al Qaeda military wing in the prison.

If this had been true, he would have been a valuable prisoner. It was false. Held in isolation for two of his five years in Guantánamo, Mr. Errachidi was repeatedly interrogated about his alleged training in Afghanistan, even while suffering mental breakdowns. During February and March 2004, he became psychotic and was prescribed anti-psychotic drugs, but his interrogations continued, even though there was nothing to be gained from his claims that he was Jesus Christ, that Osama bin Laden was his student, and that a giant snowball was about to envelop the earth. He was only cleared for release after his lawyers produced documentation to prove that he had been working as a chef in London when the informant said he was performing military training in Afghanistan.

“The cook has become the General,” Mr. Errachidi later said. “In the minds of the American military, the crack of an egg has become the explosion of a bomb.”

Mr. Errachidi was repatriated to Morocco in March 2007, and reunited with his wife and family after a short investigation by the Moroccan authorities. He receives no treatment for his mental illness, exacerbated though it is by the tragic experience of his incarceration.



**Omar Deghayes – mistaken for a Chechen rebel, blinded in Guantánamo Bay**

Omar Deghayes lived in Britain for many years as a refugee from Libya. His father, a notable lawyer, had been tortured and killed by Colonel Gaddafi. Eventually the family escaped and were granted asylum. Omar studied law in University and trained towards qualification as a solicitor.

After taking his exams, he planned to travel to Afghanistan prior to taking up his profession. However, while there, the country descended into war and he left for Pakistan. He, like so many others, was seized by the Pakistanis and turned over to the U.S.

In Guantánamo Bay, the main allegation against Mr. Deghayes was that he was “suspected of appearing in a confiscated Islamic extremist military training video showing atrocities in Chechnya.” This allegation continued to be levelled at Mr. Deghayes long after it was proven false.

The facts are as follows: For more than three years, the U.S. military refused to provide a copy of this video to Mr. Deghayes; neither could his counsel secure one. Mr. Deghayes was held based on this false information that could have been refuted if only the U.S. military had allowed someone with the most basic knowledge to see it.

Finally the BBC (British television) managed to obtain a copy. It was a tape provided to the Spanish authorities by the Russians in 2000. The Spanish had apparently shown it to unknown informants who falsely identified one person on the tape as being Mr. Deghayes. Anyone who knew Mr. Deghayes could have corrected the error. However, the tape was subtitled with the name “Mr. Deghayes” under the image of a bearded man brandishing a rifle in Chechnya.

The Spanish then apparently passed the tape along to the U.S. authorities, who seized Mr. Deghayes in Pakistan and based his detention in large part upon the false intelligence. Despite Mr. Deghayes’ insistence that he had never been to Chechnya, neither he nor anyone associated with his defense was allowed to see it.

When shown the tape by the BBC, counsel was able to state with total certainty that the person depicted was not Mr. Deghayes. To ensure reliability of this opinion, an independent expert was consulted, Dr. Timothy Valentine. He compared the images on the videotape with known pictures of Mr. Deghayes, and concluded:

I conclude that comparison of four passport photographs of Omar Deghayes with the facial image from the video supplied provides no support for the contention that the video is of the same person as the passport photographs.

*(Exhibit A)* (emphasis in original).

When the tape was played on British television, the person depicted on it was positively identified as one Abu Walid, a well-known Chechen rebel who was killed in April 2004. Someone who was apparently an employee of British intelligence watched the program and immediately knew who it was.



Despite this irrefutable evidence of innocence, which was all passed along to the U.S. military, Mr. Deghayes remained in detention for over two years, and the U.S. continued to allege that the tape was truly him.

Meanwhile, Mr. Deghayes was on the receiving end of a large amount of abuse in Guantánamo Bay. This came about in part because Mr. Deghayes stood up for the rights of other prisoners. As a person trained in British common law, and someone who spoke fluent English, he was pressed into the position of a go-between for the guards and the prisoners. When matters did not proceed as the authorities liked, very often Mr. Deghayes was on the receiving end of physical mistreatment.

The worst example of this came in March 2004, when Mr. Deghayes was blinded in his right eye by the ERF team in Guantánamo Bay. It is important to recognize that the public statements that the U.S. military has made about this incident have been false, and demonstrably so – which is all the more reason why the conditions of the camp need to be supervised in a transparent and public manner.

Mr. Deghayes was being held in Oscar Isolation camp in Camp Delta. The MPs there were going to be sent to Iraq shortly afterwards, and they were being trained. They came around the cells with dogs for a search. They did a full body search on Mr. Deghayes. They took him to the showers and inserted a finger up his anus.

People in the block were angry, and some simply refused to have it done to them. The prisoners, including Mr. Deghayes, were then maced. The officer standing behind the MPs kept urging them to spray more mace at Mr. Deghayes' face. One of the MPs pushed his fingers into Mr. Deghayes's eyes.

Mr. Deghayes could not see from either eye for several days, but he gradually got sight back in one eye. He has always had problems with his right eye, since he got injured by another child brandishing a stick in a sword fight, but repeated operations had preserved his vision. Now, because of this incident, Mr. Deghayes is totally blind in that eye.

Mr. Deghayes received repeated abuse in Guantánamo. Anger at his treatment swelled in his home town of Brighton, in England. A 'Save Omar' campaign attracted hundreds of supporters, and fifty members of the council voted without dissent to insist on his return. The British government requested his release.

Mr. Deghayes was ultimately repatriated in December 2007 and he was not charged with any crime on his return. Fortunately, he reflects the possibility that the U.S. can rehabilitate its image. Just two weeks ago, on May 6, 2008, he spoke to a large crowd at the Brighton Literary Festival insisting that he does not hate Americans for what was done to him. He insists, however, that he will pursue his legal training to ensure that others like him are not denied the benefits of law.

## **Conclusion**

The opinions expressed in this submission are purely my own. I am saddened by the actions taken against some of the prisoners who I represent by representatives of my own government. It is important to focus on the future. However, we cannot expect to

rehabilitate our own reputation unless we recognize the errors of the past, seek to make amends as best we can, and avoid similar mistakes in the future.