

EXHIBIT T

United States of America / Yemen Secret Detention in CIA “Black Sites”

“They came to take our father at night, like thieves...”

Fatima al-Assad, age 12, daughter of Muhammad al-Assad,
who “disappeared” after his arrest in 2003

“Brother, what is your name, what village are you from?” It was distinctive Yemeni Arabic that greeted Muhammad al-Assad as he stumbled, still hooded and shackled, from the plane at Sana’a. For the first time in nearly 18 months he knew what country he was in. He heard the question repeated twice more, as Salah Nasser Salim ‘Ali and Muhammad Faraj Ahmed Bashmilah emerged onto the hot tarmac. He still could not see them, and had not known they were on the plane with him, but he could hear one of them shouting over and over again: “I am Bashmilah, I am Bashmilah, I am from Aden”.

The three, all Yemeni nationals, had “disappeared” in 2003, and had been kept in complete isolation – even from each other – in a series of secret detention centres apparently run by US agents. Senior Yemeni officials have told Amnesty International that they first heard of the men in May 2005, when the US Embassy in Yemen informed them that the three would be flown to Sana’a and transferred to Yemeni custody the following day. No further information or evidence against the men was provided, but the Yemenis say they were instructed by the US to keep them in custody. All three continue to be held in a kind of extralegal limbo; they have not been charged with any offence, given any sentence, or brought before any court or judge. The only improvement in their situation, they say, is that their families now know that they are alive.

Muhammad al-Assad’s odyssey began on the night of 26 December 2003, in Dar-es Salaam, Tanzania, where he had lived since 1985. As he told Amnesty International, he had just sat down to dinner with his Tanzanian wife, Zahra Salloum, and her brother and uncle. An immigration officer and two men from the state security forces came to the door, and ordered Muhammad al-Assad to surrender his passport and mobile phone. As he crossed over to his office to get the passport, he was grabbed from behind, a hood was forced over his head, and his hands were cuffed behind his

Despite her frailty, she insists on making the trek to the Central Prison in Aden, nearly every day, in the intense midday heat, to see her son. He has asked her to stop, but she refuses. "She suffers a lot to see me", he admits, and says he is consumed with worries over her health.

Arbitrary detention in Yemen under US direction

The three men were sent to Yemen on 5 May 2005. Rajih Hunaish, the Undersecretary of the Central Organ for Political Security, told Amnesty International that the Yemeni government was notified of the return only 24 hours before the plane landed at Sana'a. It is not clear whether the Yemeni government knows the origin of the flight, when asked for a flight plan Rajih Hunaish said it would indeed be normal for a flight plan to be filed, but that they had no information about this specific flight, and his office would have to check into it further. Amnesty International has not yet received any response.

The men were held in the political security prison at Sana'a for about two weeks before Muhammad al-Assad was transferred to al-Ghaydah; he has still never met Salah 'Ali and Muhammad Bashmilah, who were sent to Aden. A number of Yemeni officials, including the Chairman of the Central Organ for Political Security, Ghalib al-Qamish, have told Amnesty International that US officials had given them explicit instructions on the continued detention of the three men, and that they are "awaiting files" from the US, so that they can try them. When asked if the men would be released if the US requested it, Rajih Hunaish said, without hesitation, "yes". He told Amnesty International that notification of the transfer in May, and further instructions on the detention of the three men, came from the US Embassy in Sana'a.

Amnesty International met US Embassy officials in Sana'a, and submitted additional questions to the Embassy in writing. In his reply, the Chief, Political/Economic and Commercial Section noted: "The U.S. Government relinquishes all custody and control over detainees transferred from Guantanamo Bay to the exclusive control of another government. There are no conditions attached." However, when asked if this meant that the US was confirming that the men had been released from Guantánamo, the official replied: "As a matter of policy, I am not permitted to talk about the details of any particular case; I can only share information on general policies."³¹

Amnesty International does not accept the assertion that the men were held in Guantánamo, a claim which continues to be repeated in the Yemeni press and by

³¹ email correspondence dated 16 October 2005 and 18 October 2005

some Yemeni authorities, and which the US Embassy now appears to be promoting. However, the men could not have come from Guantánamo, the USA did not transfer any Guantánamo detainees to Yemen in May 2005, in fact, there were no detainee transfers at all on record between 28 April and 20 July. There was no ICRC notification of their detention, and they were never given access to ICRC officials. Although the ICRC is mandated to follow up on all cases of detainees transferred from Guantánamo to third countries, they have not contacted these three men since their arrival in Yemen.³² The men's own description of the facilities, climate, detention regime, and length of their return flight, all indicate they were never in Guantánamo

Amnesty International first spoke to Muhammad Bashmilah and Salah 'Ali on 20 June 2005. In a report issued six weeks later, Amnesty International revealed that Yemeni officials had confirmed that their continued detention in Yemen, and that of a third man, Walid al Qadasi, who was returned from Guantánamo in April 2004, was without legal basis, and at the request of the US authorities.³³ In late July, Muhammad Bashmilah says, they were suddenly moved from the Central Prison in Aden to the Political Security Prison in Sana'a. He was told they were going there to be released, so he gave his few belongings to other prisoners, only to find that they had only been taken to Sana'a for questioning. (Walid al Qadasi, the third case in Amnesty International's August report, was also brought to Sana'a, although Muhammad al-Assad, who had not at that time been interviewed by Amnesty International, was not.) Muhammad Bashmilah and Salah 'Ali were interrogated in Sana'a about the circumstances of their arrest and the reasons for their transfer back to Yemen, then returned to Aden, where Muhammad Bashmilah was put into solitary confinement for five days. Since then, he and Salah 'Ali have been held separately. He believes the sudden trip to Sana'a was aimed at intimidating them, "and if we go on talking to you now", he added dryly, "we might be here for life".

In September 2005, Minister of the Interior Rashad Mohammed al-Alimi announced that the men had been accused of belonging to an international terror group and that their trial would begin "once the United States had sent through their files". Officials of the Political Security have also repeatedly told Amnesty International that they are awaiting files from the US before bringing any charges against the men.

³² See 'US detention related to the events of 11 September 2001 and its aftermath - the role of the ICRC', Operational Update April 2005.
<http://www.icrc.org/Web/Eng/siteeng0.nsf/iwpList454/541ACF6DC88315C4C125700B004FF643> (accessed 13 October 2005)

³³ USA/Jordan/Yemen: Torture and secret detention: Testimony of the "disappeared" in the "war on terror", AI Index: AMR 51/108/2005

Muhammad Bashmilah says he finds this all confusing. "If we were guilty," he said simply, "the Americans would never have released us." He says that US officials had given him the choice of being handed over to Yemen or to another country, and he had insisted on Yemen because he was sure that he would be helped and welcomed at home. "More than four months have passed," he said, "and we are still detained, but we hear that others who have been returned to European countries have been released and that things have been done to facilitate their return, and this is the opposite to what we have here."

There have been no investigations into any accusations against the men, no charges have been made, none of the men have seen a lawyer or been brought before a judge. Anxiety and uncertainty over their futures, and the fear that their fate may remain unresolved, continue to torment the men and their families. All of them would welcome the prospect of trial. "If I am guilty of anything, try me and I will spend the rest of my life in jail," said Muhammad al-Assad, "only give me a trial".

"If there really are any charges," said Muhammad Bashmilah, "we are ready to defend ourselves... The Interior Minister says he is waiting for an American decision on our cases. But we are Yemenis in Yemen, why is he waiting for the Americans to decide?"

RECOMMENDATIONS

"Disappearance" and secret detentions

The US authorities should:

- Disclose the location and status of the detention centres where Muhammad Abdullah Salah al-Assad, Muhammad Faraj Ahmed Bashmilah and Salah Nasser Salim 'Ali were held; disclose the identities and whereabouts of all others held at these places and their legal status, and invite the ICRC to have full and regular access to those detained;

- End immediately the practices of incommunicado and secret detention wherever it is occurring, and under whatever agency;

- Hold detainees only in officially recognized places of detention with access to family, lawyers and courts;