

# EXHIBIT

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# USA/Jordan/Yemen

## Torture and secret detention: Testimony of the 'disappeared' in the 'war on terror'

### 1 - Introduction

On 20 June 2005, Amnesty International delegates visited two Yemeni detainees said to have recently been transferred from the US detention facility at Guantánamo Bay in Cuba. However, their accounts described another US detention regime just as sinister, yet more secretive, than Guantánamo. The men appear to have been victims of the US administration's policy of secret detentions around the world. For over a year and a half they had effectively "disappeared".

This document, which relays the accounts of the two men, calls on the US administration to:

- provide full information about these cases
- disclose the whereabouts of its secret detention facilities around the world and open them up for scrutiny;
- disclose the identity and nationality of detainees;
- take immediate steps to end secret detentions once and for all.

**Muhammad Faraj Ahmed Bashmilah** and **Salah Nasser Salim 'Ali** are friends from the Yemeni city of Aden. They described to Amnesty International their arrest and subsequent four-day detention in Jordan where they say they were tortured. For over a year and a half, the two men were then detained incommunicado without charge or trial in unknown locations, held and interrogated by guards they say came from the USA. Neither was ever told why they were detained. They said they were held in solitary confinement for the duration of their detention with no access to family, lawyers, diplomatic representatives or visits from the International Committee of the Red Cross (ICRC) or other detainees.

Although they are no longer held in solitary confinement, both Muhammad Faraj Ahmed Bashmilah and Salah Nasser Salim 'Ali remain in detention in Yemen, even though the Yemeni authorities admit they have no legal reasons to hold them. Yemeni officials told Amnesty International delegates that the men are in continued detention at the request of US authorities.

Amnesty International calls upon both the US and Yemeni authorities to ensure that Muhammad Faraj Ahmed Bashmilah and Salah Nasser Salim 'Ali are released immediately if they are not to be promptly charged with recognizably criminal offences. Both men must also be offered appropriate medical treatment and rehabilitation immediately.

This document also describes the plight of Yemeni national **Walid Muhammad Shahir Muhammad al-Qadasi** who was returned to Yemen from Guantánamo Bay at the beginning of April 2004. He too remains detained in Yemen without charge or trial despite the admission by the Yemeni authorities that they have no legal reason to detain him. In this document, Amnesty International is calling for the US and Yemeni authorities to ensure that he is released immediately if he is not to be promptly charged with a recognizably criminal offence.

## **2 - Muhammad Faraj Ahmed Bashmilah and Salah Nasser Salim 'Ali**

### ***Arrests in Indonesia and Jordan***



Salah Nasser Salim 'Ali © AI

Salah Nasser Salim 'Ali, 27 years old, was living in the Indonesian capital of Jakarta with his Indonesian wife Aisha when he was detained on 19 August 2003. Police in plain clothes detained him while he was shopping in Tanah Abang, Jakarta and took him to the main immigration centre in the Kuningan area of Jakarta.

He said that he was held there for four days handcuffed, blindfolded and without food.

His requests to make telephone calls to his family were refused. He later discovered that his wife had been calling the centre continually to find out what had happened to him. On 22 August she was told that he was being held by immigration authorities and was asked to pay some money to secure his release. After the initial four days of detention, during which his passport expired, Salah Nasser Salim 'Ali was told that he would be deported to Yemen, via Thailand and Jordan.

Muhammad Faraj Ahmed Bashmilah, aged 37, also lived in Indonesia. In October 2003 he travelled to Jordan with his wife Zahra to be with his mother who was about to have medical treatment there. On arrival at Amman airport, Jordanian immigration authorities took his passport and told him to collect it three days later on 19 October. However, when he tried to collect it he was detained by the *Da'irat al-Mukhabarat al-'Amah* (General Intelligence Department (GID)) and asked whether he had ever travelled to Afghanistan. He answered "yes". From that moment, he didn't see anyone except Jordanian and US prison guards and interrogators, until he was transferred to custody in Yemen more than a year and a half later.

When his mother contacted Jordanian officials she was told simply "your son is a terrorist". The first time she tried to visit him in detention, she was refused access. The second time she was told that he had been removed from the country.

On 22 April 2005 Amnesty International wrote to the Jordanian Minister of the Interior and Head of the GID in Jordan, seeking information about Muhammad Faraj Ahmed Bashmilah and assurances that if he was not held by the Jordanian authorities, an investigation would be carried out into the exact circumstances of his apparent "disappearance". To date, Amnesty International has not received a response to these letters.

### ***Torture in Jordan***

Salah Nasser Salim 'Ali was not returned to Yemen in 2003 as Indonesian authorities had said he would be. Instead, he was detained on arrival at Amman airport in Jordan. His personal belongings were handed to Jordanian security forces and he was told he would be taken to a hotel.

The hotel, however, turned out to be the detention facilities of the Jordanian intelligence service, where he says he was tortured repeatedly for four days. He says that he was routinely beaten by Jordanian officials, spat on, verbally abused and threatened with sexual abuse and electric shocks. He also describes in detail being subjected to the torture technique known as *falaqa* (beatings with sticks on the soles of the feet). He states that two guards tied him so that he was suspended upside down, hands and feet tied, whilst the guards beat his feet.

On other occasions during the four days he says that he was surrounded by 15 guards in a circle. The guards would make him run around in the circle until he was exhausted. At this point the guards would run after him, beating him with a stick.

When he was so tired that he could run no longer, the guards lay him down in the centre and all took turns to beat him.

He also says the guards attempted to abuse him sexually. On one occasion they tried to force him to sit on a bottle so that it would penetrate his anus. It was only when he threatened to hit the guards with the bottle that they backed off.

Salah Nasser Salim 'Ali says that he was only interrogated at the beginning of his detention in Jordan and then only asked questions about his presence in Afghanistan. At no point was he told why he had been detained, offered contact with lawyers or allowed to make telephone calls.



Muhammad Faraj Ahmed Bashmilah was unable to talk in detail about the torture he says he suffered during his four days of detention in Jordan, stating only that his treatment was 'inappropriate' before breaking down in tears. He suggested that Amnesty International ask Salah Nasser Salim 'Ali to describe the torture.

**Muhammad Faraj Ahmed Bashmilah © AI**

Amnesty International delegates heard from one Yemeni official that the torture Muhammad Faraj Ahmed Bashmilah described in private was far worse than has been described above.

Both men are in need of medical treatment and rehabilitative measures. Instead they remain detained in Yemen without charge or trial.

Amnesty International has repeatedly expressed concerns about Jordan's apparent continued use of incommunicado detention by the GID where torture and other cruel, inhuman or degrading treatment (ill-treatment) is known to have happened. Those held incommunicado over the years have included people arrested on suspicion of links with Islamist groups. Maher Arar (see below), a Canadian citizen of Syrian origin, was deported to Syria from the USA in October 2002 on suspicion of involvement with "terrorist" groups. This transfer took place without the Canadian authorities being informed.

On his way to Syria he was taken to the airport of Jordan's capital where he said he was collected by Jordanian officials, blindfolded and put into a van. He was then

beaten. Afterwards, he was detained and questioned before being sent on to Syria where he was held in a secret location and tortured. He was finally released without charge one year later and has returned to Canada. A Commission of Inquiry was established by the Canadian authorities in 5 February 2004 to investigate and report on the actions of Canadian authorities in relation to the case. The inquiry is pending.

### ***Transfer to unknown locations run by US officials***

*"You have nothing on me. Why are you keeping me if you have nothing on me?"*  
Salah Nasser Salim 'Ali to US officials.

Muhammad Faraj Ahmed Bashmilah and Salah Nasser Salim 'Ali described separately to Amnesty International the next stages of their detention. Their accounts were remarkably similar in the descriptions of the places of detention, the presumed nationality of the guards and their treatment and interrogations. Neither the men nor Amnesty International know the location of the detention facilities, although Muhammad Faraj Ahmed Bashmilah stated clearly that he was not held at Guantánamo Bay.

After approximately four days of solitary confinement in Jordan, both men state that they were blindfolded and shackled before being transported in what they described as a small plane for between three and a half to four and a half hours to a second location. Both men state that the guards during the transfer were from the USA.

The place they were held for the next six to eight months was described as an old-style underground facility with high walls. The cells were approximately 1.5m x 2m with buckets instead of toilets. Western music was piped into the cells 24 hours a day. As before, the men were given no reason for their detention, nor were they informed about their rights. They describe being interrogated by US officials about people they might have known and about their activities in Afghanistan and Indonesia. Apart from the guards, the interrogators and translators, the men did not speak to or see any other people during this stage of detention. Neither knew the other was detained. Each was held in solitary confinement, "disappeared" as far as the rest of the world was concerned.

After this, the men describe being transferred once more. Again in shackles and blindfolded, they were taken in a small aircraft and flew for around three hours. They were then transferred to what they believed was a helicopter and flown for a further two hours. Muhammad Faraj Ahmed Bashmilah stated that he believed there were other detainees on both flights.

The next, unknown place of detention was described by the men as a modern purpose-built detention facility, run by US officials. Salah Nasser Salim 'Ali stated that the place of detention was not Guantánamo Bay and from the descriptions given Amnesty International would conclude that it was another place of detention.

Both men stated that they thought the facility was underground because they entered it down stairs and when they left they climbed stairs. It was fully air-conditioned with modern toilets and surveillance cameras in the cells. Both men describe being given Islamic books and copies of the Qur'an as well as watches and prayer schedules. In addition they were given Arabic and Western films to watch. Salah Nasser Salim 'Ali states that a doctor came to check on him once a fortnight. They were held in this facility for over a year and a half in solitary confinement, mostly shackled and in handcuffs.

Senior US administration officials have recently attempted to justify US detentions in Guantánamo Bay by describing the supposedly good conditions of detention. "They got a brand new facility down at Guantánamo", according to US Vice-President Dick Cheney "We spent a lot of money to build it. They're very well treated there. They're living in the tropics. They're well fed. They've got everything they could possibly want."<sup>1</sup> Congressional Representative Duncan Hunter, told reporters recently that the "inmates have never eaten better ... they've never been treated better, and they've never been more comfortable in their lives."<sup>2</sup> Perhaps the same logic is used by US officials to justify the use of "modern" secret detention facilities.

While the US is obliged under international law to hold all detainees in humane conditions, with these and other statements US officials attempt to divert attention from concerns that the detentions in Guantánamo and elsewhere are illegal, that detainees have been tortured and ill-treated and that their long-term physical and psychological welfare is at risk. They also ignore the suffering of the families of the detainees.

While Muhammad Faraj Ahmed Bashmilah and Salah Nasser Salim 'Ali may have been given books to read, films to watch and modern toilet facilities, they were still "disappeared", held in underground cells for over a year and a half in solitary confinement, frequently shackled and in handcuffs, never given a glimpse of the sun for the entire period. They were not able to communicate with their families, much

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<sup>1</sup> Vice President Dick Cheney, Interview with CNN news, 24 June 2005

<sup>2</sup> Congressional Representative Duncan Hunter, news conference, 13 June 2005

less challenge the lawfulness of their detention in court. Do US officials consider that these men too had everything they could possibly want?

**“Disappearances” – a human rights violation and an international crime**

“Enforced disappearances” are described in the 3<sup>rd</sup> preambular paragraph of the UN Declaration on the Protection of All Persons from Enforced Disappearances as taking place when,

*“...people are arrested, detained or abducted against their will or otherwise deprived of their liberty by officials of different branches or levels of Government, or by organized groups or private individuals acting on behalf of, or with the support, direct or indirect, consent or acquiescence of the Government, followed by a refusal to disclose the fate or whereabouts of the persons concerned or a refusal to acknowledge the deprivation of their liberty, which places such persons outside the protection of the law.”*

The Rome Statute of the International Criminal Court defines the crime against humanity of “enforced disappearance of persons” as,

*“the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.”*<sup>3</sup>

The UN Human Rights Committee has determined that “disappearances” may amount to torture, in the *El-Megreisi* case.<sup>4</sup> Following Mohammed el-Megreisi’s arrest in Libya in 1989, he “disappeared.” In the words of the Human Rights Committee, “[T]he family could not trace him for approximately three years and feared that he had been tortured or killed, which is said to be the usual fate of political detainees in Libya.”<sup>5</sup> The Human Rights Committee concluded the following:

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<sup>3</sup> The Rome Statute of the International Criminal Court, Art. 7(2)(i). Article 7(1) provides that a crime against humanity under the Statute, means an act listed in that Article (including “enforced disappearances of persons”, at Art. 7(1)(i)) “when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack”.

<sup>4</sup> *El-Megreisi v. Libyan Arab Jamahiriya*, Communication No. 440/1990, U.N. Doc. CCPR/C/50/D/440/1990 (1994).

<sup>5</sup> *Ibid.*, para. 2.2.



*"...the Committee notes, from the information before it, that Mohammed El-Megreisi was detained incommunicado for more than three years, until April 1992, when he was allowed a visit by his wife, and that after that date he has again been detained incommunicado and in a secret location. Having regard to these facts, the Committee finds that Mr. Mohammed Bashir El-Megreisi, by being subjected to prolonged incommunicado detention in an unknown location, is the victim of torture and cruel and inhuman treatment, in violation of articles 7 and 10, paragraph 1, of the Covenant."*<sup>6</sup>

Muhammad Faraj Ahmed Bashmilah and Salah Nasser Salim 'Ali were, according to their testimonies, detained by US officials incommunicado in an unknown location, in total isolation for over a year and a half, without any information provided to them, to their lawyers, to their family, to the ICRC or to any other relevant persons or bodies on their detention or whereabouts. The acts described by Muhammad Faraj Ahmed Bashmilah and Salah Nasser Salim 'Ali were clearly acts of "disappearance."

### ***Psychological abuse and interrogations***

*"I couldn't bear it any longer...even if I was an animal I wouldn't put up with it"*  
Salah Nasser Salim 'Ali speaking about his secret detention by US authorities

The descriptions of treatment in the "modern" secret US detention facility suggest the use of psychological ill-treatment to obtain information. As with the previous facility, western music was piped into the cells 24 hours a day making it impossible for the men to concentrate on reading or prayers or to sleep properly.

Salah Nasser Salim 'Ali says that at times the guards brought him chocolate and cake and children's games and a guard would sometimes "play with him". The detainees were also intermittently taken individually to an underground sports hall for tennis, football or other sports, given a ball or a racket and then left in the hall to play on their own. However, at no point did either of them have contact with other detainees. They could not hear noise from the other cells because of the loud music, although Muhammad Faraj Ahmed Bashmilah estimated from the timing of the showers - they were only allowed to shower once a week - that there were at least 15 or 20 others detained in the same facility.

The two detainees were interrogated every day. At no point were they offered legal counsel. Muhammad Faraj Ahmed Bashmilah described the guards and interrogators as being fully covered "like Ninjas". He stated that all spoke English and that there

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<sup>6</sup> *Ibid.*, para. 5.4.

were female guards. They were regularly shown photographs of other people, some dead, and were asked to confirm whether or not they knew them. If they recognized anyone they would be taken for further interrogation. At one point Muhammad Faraj Ahmed Bashmilah described how he was consumed with anxiety and unable to sleep for days after interrogators accused him of knowing someone in a photo who was a "big fish". He said interrogators later apologised after saying they had made a mistake and that the person was not the 'big fish' they were seeking after all.

### ***Detained in Yemen at behest of the USA***

*"In Yemen I thought they would open their hearts to me, but instead they opened the prisons. I thought they would appreciate the suffering I have been through"*

Muhammad Faraj Ahmed Bashmilah from prison in Aden 20 June 2005

On or around 5 May 2005, without explanation, Muhammad Farah Ahmed Bashmilah and Salah Nasser Salim 'Ali were released from secret detention and transferred back to Yemen. They were detained in the central prison of Aden when Amnesty International interviewed them. Recent reports suggest that they may have since been transferred to Sana'a. Both men assert that others were transferred from the same place on the same day. Neither has been charged or tried with any offence and neither can understand the reason for their continued detention.

Salah Nasser Salim 'Ali has a daughter who was born nearly two years ago after he was detained and who he has never seen. His wife says she has been traumatised by what happened and is struggling to bring up her daughter alone. Since Amnesty International's visit, she has been able to telephone him in prison and is also in regular contact with his family in Aden.

Authorities in Yemen told Amnesty International that they have no reason for holding the two men except that their transfer from US detention was conditional upon them being held in Yemen. One official complained: "now we are running prisons for the Americans". Another stated that they have finished questioning the men and found they have nothing against them, it is "just a matter of telling the US authorities that we will set them free".

Arbitrary arrest and detention without charge or trial is a long standing pattern of human rights violations in Yemen which has been exacerbated by the events of 11 September 2001. Under Yemeni law, suspects have the right under Article 76 of the Code of Criminal Procedures and Article 47(c) of the Yemeni Constitution to see a judge or prosecutor within 24 hours of being detained, and they have the right to

challenge the legal basis of their detention<sup>7</sup>. Articles 73 and 77 of the Code establish a suspect's right to seek prompt legal assistance. Furthermore, Article 7 of the Code provides that detention is not permitted except for acts punishable by law.

However, none of the detainees returned from Guantánamo or elsewhere has been given the opportunity to challenge the legality of their detention or been charged with a recognizably criminal offence and brought to trial.

*"I am in Yemen, but I am still a prisoner of the Americans"*

Muhammad Faraj Ahmed Bashmilah from prison in Aden, 20 June 2005

Rules of international law, binding on all states concerned – Indonesia, Jordan, the USA, Egypt and Yemen<sup>8</sup>

- Prohibit arbitrary detention
- Provide that all detainees must be brought promptly before a judge and be able to challenge the legality of their detention<sup>9</sup>
- Provide that all detainees must be held in humane conditions
- Provide that all detainees must have prompt access to lawyers and be allowed visits from family members
- Prohibit "disappearances"
- Prohibit prolonged incommunicado detention
- Prohibit detention in secret locations
- Prohibit torture and other cruel, inhuman or degrading treatment or punishment
- Prohibit the return or transfer of persons to places where they are at risk of torture or other ill-treatment

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<sup>7</sup> Article 76 states that: "Anyone detained temporarily on suspicion of having committed a crime must be brought before the judiciary within the maximum period of 24 hours from the time of arrest. The judge or member of the public prosecution must inform him of the reasons of arrest, question him and enable him to present his defence or objections, and must promptly issue an order with justification for his preventive detention or release."

### **3 - Walid Muhammad Shahir Muhammad al-Qadasi**

Yemeni national Walid Muhammad Shahir Muhammad al-Qadasi was returned to Yemen from Guantánamo Bay at the beginning of April 2004. On his arrival he was detained in the Political Security Prison in Sana'a. An Amnesty International delegation met him there 11 days later.

The delegation asked why he was in detention as he had been released without charge from Guantánamo Bay. The prison staff said that they were investigating him, and that he would be released as soon as they had finished.

When the delegation met Walid al-Qadasi, he had no access to a lawyer, a judge or his family. He said that his family had not been informed of his arrival in Yemen. The delegation asked prison staff why the family had not been informed of his whereabouts, but the only response it received was that Walid al-Qadasi had forgotten his telephone number but that "we will inform them".

More than a year later Amnesty International returned to Yemen to discover that Walid al-Qadasi remains held in Yemen without charge or trial or even the opportunity to challenge his detention. He was moved to Ta'iz prison where a lawyer from the US non-governmental organization Centre for Constitutional Rights (CCR) met with him on 21 June 2005. Recent reports suggest that he may have since been transferred to Sana'a. Amnesty International also met with his father who is able to visit him twice a week.

As with Walid al Qadasi, many post-11 September detainees held by the Political Security in Yemen are subjected to a prolonged initial period of detention where communication with the outside world is denied. In many cases, family members have to wait weeks or months before they learn where their relatives are being held.

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<sup>8</sup> These standards are embodied in many international human rights standards, particularly the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and the International Covenant on Civil and Political Rights (ICCPR). Egypt is a state party to CAT since 1987 and to the ICCPR since 1982. Jordan is a state party to CAT since 1991, and to the ICCPR since 1975. Indonesia is a state party to CAT since 1998, but has not ratified the ICCPR. The USA is a state party to CAT since 1994 and to the ICCPR since 1992. Finally, Yemen is a state party to CAT since 1991 and to the ICCPR since 1987. Jordan is the only state party to the Rome Statute of the International Criminal Court which considers torture and enforced disappearance as crimes against humanity.

<sup>9</sup> With the exception of internment regimes such as those within the Geneva Conventions (prisoners of war and civilian internees)

The Head of the Political Security in Sana'a told Amnesty International that Walid al-Qadasi and other returned Guantánamo detainees were being held at the request of the US authorities and would remain detained in Yemen pending receipt of their files from the US authorities for investigation.

When Amnesty International representatives met with Walid al-Qadasi in April 2004, he described his arrest in Iran in late 2001. He said he was held there for about three months before being handed over with other detained foreign nationals to the authorities in Afghanistan who in turn handed them over to the custody of the US. There they were held in a prison in Kabul.

*"The Americans interrogated us on our first night which we coined as 'the black night'. They cut our clothes with scissors, left us naked and took photos of us before they gave us Afghan clothes to wear. They then handcuffed our hands behind our backs, blindfolded us and started interrogating us. The interrogator was an Egyptian. He asked me about the names of all members of my family, relatives and friends. They threatened me with death, accusing me of belonging to al-Qa'ida.*

*They put us in an underground cell measuring approximately two metres by three metres. There were ten of us in the cell. We spent three months in the cell. There was no room for us to sleep so we had to alternate. The window of the cell was very small. It was too hot in the cell, despite the fact that outside the temperature was freezing (there was snow), because the cell was overcrowded. They used to open the cell from time to time to allow air in. During the three-month period in the cell we were not allowed outside into the open air. We were allowed access to toilets twice a day; the toilets were located by the cell."*

Walid al-Qadasi said that in Kabul the prisoners were only fed once a day and that loud music was used as "torture". He said that one of his fellow detainees "went insane". Walid al-Qadasi said that when the ICRC visited the prison, his cell was initially not opened for ICRC inspection. When one of the detainees started shouting to alert the ICRC of their presence, the ICRC official reportedly demanded to see the cell. However, according to Walid al-Qadasi, the prison authorities only opened the cell after some of the detainees were secretly moved to another cell away from ICRC inspection.

Walid al-Qadasi was eventually transferred to Bagram, where he faced a month of interrogation. His head was shaved, he was blindfolded, made to wear ear muffs and a



mouth mask, handcuffed, shackled, loaded on to a plane and flown out to Guantánamo. There, he said he was held in solitary confinement for the first month of what would become a two-year detention. He told Amnesty International that the flight to Guantánamo lasted around 24 hours. He said he was drugged for his transfer back to Yemen in April 2004.

In its 2004 annual human rights report, the US State Department reported that conditions in Yemeni prisons were:

*“...poor and did not meet internationally recognized standards, and the Government permitted limited visits by independent human rights observers. The Government allowed limited access to detention facilities by parliamentarians and some nongovernmental organizations (NGOs). Prisons were extremely overcrowded, sanitary conditions were poor, and food and health care were inadequate to nonexistent.”*<sup>10</sup>

Amnesty International delegates were allowed to visit and speak freely with Muhammad Faraj Ahmed Bashmilah, Salah Nasser Salim ‘Ali and Walid al-Qadasi in detention in Yemen. In stark contrast, the organization does not even know in which country Muhammad Faraj Ahmed Bashmilah and Salah Nasser Salim ‘Ali were detained in the custody of US personnel and, despite repeated requests, have never been granted access to prisoners at Guantánamo Bay.

While Amnesty International is well aware of the changes in the international political climate and the pressures brought on Yemen, particularly from the USA, it does not believe this can be used by the Yemeni authorities to justify human rights violations. On the contrary, Amnesty International believes that it is at times of particular threats to security that human rights need more, not less, protection. In the name of “security” suspects are currently being subjected to indefinite detention without charge or trial, without access to lawyers and the judiciary and in conditions which frequently constitute cruel, inhuman or degrading treatment.

The UN Human Rights Committee which examined Yemen’s compliance with the International Covenant on Civil and Political Rights (ICCPR) said:

*“While it understands the security requirements connected with the events of 11 September 2001, the Committee expresses its concern about the effects of this*

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<sup>10</sup> US Department of State, Bureau of Democracy, Human Rights, and Labor, *Country Reports on Human Rights Practices – 2004: Yemen*, 28 February 2005, <http://www.state.gov/g/drl/rls/hrrpt/2004/41736.htm>

*campaign on the human rights situation in Yemen... It is concerned, in this regard, at the attitude of the security forces, including the Political Security, proceeding to arrest and detain anyone suspected of links with terrorism, in violation of the guarantees set out in the Covenant (Article 9)..."*

The Committee further requested the Yemeni government to "ensure that the fear of terrorism does not become a source of abuse".<sup>11</sup>

Whilst the return of the three men to Yemen has, to some extent, alleviated the suffering of their families and provided the opportunity for lawyers and NGO representatives to meet with them, their continued detention without charge or trial is unlawful and unacceptable. Conditions of detention are also a major additional concern.

#### **4 - Other secret detentions, illegal transfers and possible "disappearances"**

Thousands of detainees remain held in US custody in Iraq and hundreds remain in US custody in Afghanistan, some of them having been detained without trial and virtually incommunicado for more than a year. Several thousand other detainees are believed to be held in the custody of other governments at the behest of the USA. The ICRC has access to some of these detainees.

In addition, however, the USA is holding an unknown number of detainees in secret, incommunicado custody in unknown locations and unknown conditions. Amnesty International has received reports that in the context of the 'war on terror' the USA has established secret detention facilities in a number of countries. These could include Jordan, Pakistan, Egypt, Thailand and Afghanistan, and in the US base on the British Indian Ocean territory of Diego Garcia.

Canadian citizen Maher Arar has said that he was flown out of the USA on a jet by a team that called themselves the "Special Removal Unit".<sup>12</sup> Federal aviation records support his contention that he was transferred on 8 October 2002 aboard a Gulfstream jet, and that he was flown via New Jersey, Washington DC, Maine, and Rome to

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<sup>11</sup> See Concluding Observations of the Human Rights Committee: Yemen. UN Doc. CCPR/CO/75, 26 July 2002, para. 18.

<sup>12</sup> Scott Shane, *Suit by detainee on transfer to Syria finds support in jet's log*. New York Times, 30 March 2005. The plane in question has since changed ownership and is now reported to have the registration number N259SK.

Jordan, from where he was driven to Syria. The Gulfstream III jet's registration number is reported to have been N829MG, records for which show that it also went to Guantánamo Bay in December 2003. Evidence of other aircraft allegedly used to carry out secret transfers has also come to light, using civil aviation records and sightings by "planespotters".

Between June 2002 and January 2005, a Gulfstream IV jet, registration number N227SV (previously N85VM), reportedly flew to Afghanistan, Morocco, Dubai, Jordan, Italy, Japan, Switzerland and the Czech Republic, as well as stops in US air bases in Maryland and Germany, 82 stops at Dulles International Airport outside Washington DC, and 51 visits to the US Naval Base in Guantánamo Bay.

On 18 February 2003, the jet was in Cairo, Egypt. That was the day after Egyptian national Osama Nasr Mostafa Hassan was abducted on a street in Milan and allegedly driven to the US air base in Aviano, Italy, interrogated, drugged and taken to the US military base in Ramstein in Germany. From there he was flown to Egypt, where he was allegedly tortured, including with electric shocks.<sup>13</sup> He is reported to have been released in mid-2004, but rearrested shortly afterwards after he made a phone call to his wife. He is believed to remain in custody in an unknown location, although it has been suggested that he may be currently held in the Damanhour prison, outside Alexandria, Egypt. Amnesty International fears that he may be subject to further torture or ill-treatment. On 24 June 2005 an Italian judge ordered the arrest of 13 CIA agents for their alleged involvement in his abduction.

The widespread and systematic practice of torture in Egypt has persisted despite its prohibition under domestic and international law. For well over a decade, specialized UN expert bodies, including the Committee against Torture and international and national human rights organizations have been documenting cases of torture and ill-treatment, including deaths in custody in Egypt.

This particular Gulfstream jet has also flown to Azerbaijan. Amnesty International believes this plane may have been used to transport Yemeni national 'Abd al-Salam al-Hiyla. As Amnesty International reported in June 2004, his family lost contact with him after he travelled to Egypt on a 15-day business trip from 9 September 2002. His family said that the Egyptian embassy in Sana'a, Yemen, told them that he had left Egypt on "a special American plane that took him to Baku, Azerbaijan"<sup>14</sup> 'Abd al-

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<sup>13</sup> *Jet's travels cloaked in mystery*. Chicago Tribune, 20 March 2005

<sup>14</sup> *Human rights fall victim to the "War on Terror"*, AI IndexMDE 04/002/2004, June 2004, <http://web.amnesty.org/library/Index/ENGMDE040022004>



Salam al-Hiyala is currently held in Guantánamo Bay, having been taken there via custody in Bagram air base in Afghanistan.

In its recent report to the UN Commission on Human Rights, the UN Working Group on Enforced or Involuntary Disappearances stated that it was “deeply concerned” by the reports of the USA’s use of secret detentions.<sup>15</sup> It reminded the US government that secret detention facilities are “typically associated” with the phenomenon of “disappearance”. Article 10 of the UN Declaration on the Protection of All Persons from Enforced Disappearance states:

*"Any person deprived of liberty shall be held in an officially recognized place of detention and, in conformity with national law, be brought before a judicial authority promptly after detention...Accurate information on the detention of such persons and their place or places of detention, including transfers, shall be made promptly available to their family members, their counsel or to any other persons having a legitimate interest in the information unless a wish to the contrary has been manifested by the persons concerned... An official up-to-date register of all persons deprived of their liberty shall be maintained in every place of detention..."*

Amnesty International fears that the testimonies of Muhammad Faraj Ahmed Bashmilah and Salah Nasser Salim ‘Ali are just one small part of the much broader picture of US secret detentions around the world. As the US administration, media and opinion formers in the USA continue to discuss the future of detentions at Guantánamo, US detention policies beyond Guantánamo must not be forgotten.

All secret and incommunicado detentions must end. Access to lawyers, relatives, the ICRC and national and international human rights (including UN) monitors should be granted and maintained. All detainees must be treated humanely in full accordance with international laws and standards. They should be released unless they are to be charged and tried in accordance with international standards.

## 5 - The need for rehabilitation

In his statement to mark the UN International Day in Support of Victims of Torture on 26 June 2004, President George W. Bush reaffirmed the United States’ commitment to the worldwide elimination of torture. He stated:

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<sup>15</sup> . Report of the Working Group on Enforced or Involuntary Disappearances, UN Doc. E/CN.4/2005/65, 23 December 2004, para 364.

*"The victims often feel forgotten, but we will not forget them. America supports accountability and treatment centers for torture victims... We stand with the victims to seek their healing and recovery, and urge all nations to join us in these efforts to restore the dignity of every person affected by torture."*

The US administration did not "stand with" Muhammad Faraj Ahmed Bashmilah and Salah Nasser Salim 'Ali to seek their healing and recovery following their alleged torture in Jordan. Instead, according to the men's accounts, they detained them in solitary confinement in secret underground cells for over a year and a half.

The US administration is not making any "efforts to restore the dignity" of Muhammad Faraj Ahmed Bashmilah, Salah Nasser Salim 'Ali and Walid al-Qadasi. Instead they appear to be making every effort to ensure they remain imprisoned in Yemen without access to of medical treatment, reparation or justice.

President Bush must transform his words into action. There are countless victims of the US administration's "war on terror" who have been held in incommunicado, secret detention and subjected to torture or ill-treatment at the hands of, or with the complicity of, US officials. Many hundreds, like Muhammad Faraj Ahmed Bashmilah, Salah Nasser Salim 'Ali and Walid al-Qadasi remain detained in Guantánamo, Iraq, Afghanistan or elsewhere without any recourse to justice. They must be released unless they are charged with a recognizably criminal offence and tried in court proceedings which fully meet international standards and without recourse to the death penalty. On release they should be given appropriate medical care and rehabilitation.

## 6 - Recommendations

### Secret detentions

The US authorities should:

- Clarify where Muhammad Faraj Ahmed Bashmilah and Salah Nasser Salim 'Ali were held; disclose information about others detained there and ensure access to outside bodies such as the ICRC to any and all such detainees still in custody;
- Clarify the fate and whereabouts of all detainees reported to be or to have been in US custody or under US interrogation in the custody of other countries, to whom no outside body including the ICRC are known to have access, and provide assurances of their well-being;
- End immediately the practices of incommunicado and secret detention wherever it is occurring, and under whichever agency. Hold detainees only in officially recognized places of detention with access to family, lawyers and courts;
- Either charge and bring to trial, for internationally recognizable offences, in full accordance with international standards of fairness and without recourse to the death penalty, all detainees held in US custody in undisclosed locations, or else release them.

The US and Egyptian authorities should:

- Clarify the location of detention of Osama Nasr Mostafa Hassan and details of any charges against him

### Torture

The US and Jordanian authorities should:

- Immediately end all acts of torture and other cruel, inhuman or degrading treatment or punishment, and make it clear to all officials involved in the treatment or interrogation of detainees and prisoners that such acts are prohibited absolutely and will not be tolerated;

- Investigate all allegations of torture and other ill-treatment of Muhammad Faraj Ahmed Bashmilah and Salah Nasser Salim 'Ali and ensure that anyone found responsible is brought to justice in fair proceedings.

The US, Yemeni and Jordanian authorities should:

- Ensure that both men have access to, and the means to obtain, full reparation including restitution, compensation and rehabilitation and satisfaction.

The Egyptian authorities should:

- Investigate the allegations of torture and ill-treatment against Osama Nasr Mostafa Hassan and ensure that, if still detained in Egypt, he is protected from further abuse.

#### **Charge or trial**

The Yemeni authorities should:

- Release Muhammad Faraj Ahmed Bashmilah, Salah Nasser Salim 'Ali and Walid Muhammad Shahir Muhammad al-Qadasi immediately from detention unless they are to be promptly charged with internationally recognizable criminal offences and brought to trial in a reasonable time in full accordance with international standards;
- Ensure that all detainees are given prompt access to lawyers and to the judiciary to challenge the legality of their detention;
- Ensure that no statement coerced as a result of torture or other ill-treatment, including long-term indefinite detention without trial, or any other information or evidence obtained directly or indirectly as the result of torture or ill-treatment, is admitted as evidence against any defendant, except the perpetrator of the human rights violation in question.

The US authorities should:

- Withdraw all requests or demands to the Yemeni or any other government for the continued detention of persons, unless it is with a view to prompt prosecution for internationally recognizable criminal offences and in accordance with international standards of fairness

**Other recommendations:**

The US, Jordanian, Yemeni and Indonesian authorities should:

- Ensure that human rights laws and standards are strictly adhered to in the cooperation between their security forces, and any other country particularly in the arrest and questioning of detainees, and detention;
- In particular, ensure that torture and other ill-treatment, incommunicado detentions and “disappearance” play no part in such cooperation;
- Grant UN human rights monitoring bodies, Amnesty International and other human rights organizations regular access to detainees and officials in Guantánamo Bay and in Yemen, Jordan and any other location.