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Rendition – torture – trial?

The case of Guantánamo detainee Mohamedou Ould Slahi

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My country turned me over, short-cutting all kinds of due process of law, like a candy bar to the United States. They sent me to Jordan for torture and later on to Bagram and then to this place... I have been kept out of the world for more than four years and I really don't know what is going on outside.

Mohamedou Slahi, Guantánamo, 13 December 2005¹

During the weekend of 2 and 3 September 2006, 14 so-called “high-value” detainees who had been held in secret custody by the USA’s Central Intelligence Agency (CIA) in undisclosed locations outside the United States were transferred to military detention in the US Naval Base in Guantánamo Bay, Cuba. The detainees had been held incommunicado in secret locations for up to four and a half years. Amnesty International considered that at least some of them had become the victims of enforced disappearance, a crime under international law. Announcing the transfers, President George W. Bush defended the use of secret detentions and the “alternative” interrogation techniques he said had been used to break the resistance of these detainees. President Bush declined to elaborate on these techniques.²

This report describes the case of another “high value” detainee, Mohamedou Ould Slahi, who has been held in Guantánamo since August 2002, and whose own torture or ill-treatment in US custody appears to have been influenced by what at least one of the 14 detainees held in secret CIA custody, Yemeni national Ramzi bin-al Shibh, allegedly said while interrogated in prolonged incommunicado detention under the “alternative” methods to which President Bush referred.

¹ Mohamedou Slahi’s quotes are as reported in the unclassified returns of the Combatant Status Review Tribunal (CSRT) hearing held on his case in Guantánamo in late 2004 and the follow-up Administrative Review Board (ARB) hearing in December 2005. His case also appeared as Appendix 4 of Amnesty International’s report, *USA: Justice at last or more of the same – Detentions and trials after Hamdan v. Rumsfeld*, AI Index: AMR 51/146/2006, 18 September 2006, <http://web.amnesty.org/library/Index/ENGAMR511462006>.

² *President Discusses Creation of Military Commissions to Try Suspected Terrorists*, 6 September 2006, <http://www.whitehouse.gov/news/releases/2006/09/20060906-3.html>.

The case of Mauritanian national Mohamedou Slahi, a man described in the July 2004 final report of the National Commission on Terrorist Attacks Upon the United States (the 9/11 Commission) as “a significant al Qaeda operative” who “recruited 9/11 hijackers in Germany”, illustrates how US policies on detention and interrogation in the “war on terror” have violated international law and jeopardized the prospect for trials.

Mohamedou Slahi was not taken into custody in a zone of armed conflict, yet he has been labelled by the US administration as an “enemy combatant” to whom the “laws of war” apply and to whom human rights law does not. If charged and tried, according to the position of the administration, he would be subject to trial by a military commission; yet he is a civilian who if tried should be tried in a civilian court. He has suffered nearly five years of human rights violations, including unlawful transfers between countries, very lengthy incommunicado detention, torture or other cruel, inhuman or degrading treatment, denial of his right to *habeas corpus*, and a presumption of his guilt without being brought to any court for trial.

Announcing the transfer of the 14 men from secret CIA custody, President Bush said that if Congress passed his administration’s proposed Military Commissions Act of 2006, these 14 individuals and others could be brought to trial by military commissions. As proposed, the commissions would be able to admit hearsay and coerced evidence for use against the accused, who also could be excluded from any part of the proceedings at which classified evidence was presented. The commissions would have the power to pass death sentences. The Act would extend the “war on terror” to before the 11 September 2001 as part of the administration’s attempt to prosecute “alien unlawful enemy combatants” for “war crimes” committed before that date.

Ten of the approximately 455 foreign nationals currently held in Guantánamo had been charged prior to the US Supreme Court’s ruling on 29 June 2006, *Hamdan v. Rumsfeld*, which found unlawful the previous version of military commissions established under the Military Order on the Detention, Treatment, and Trial of Certain Non-Citizens in the War against Terrorism signed by President Bush on 13 November 2001. The remaining 445 detainees remain held without charge or trial more than four and a half years after detention operations began at Guantánamo. Although most are considered unlikely to face trials conducted by the USA, some of them may yet be charged for trial by whatever forum the US authorities choose to replace the military commission system found unlawful by the *Hamdan* ruling.

Under the proposed Military Commissions Act, any detainee found to be an “enemy combatant” by the Combatant Status Review Tribunal (CSRT) – the administrative review procedure established in Guantánamo in July 2004 – would automatically be transformed into an “unlawful enemy combatant” and thereby eligible for trial by the revised commission system. The proposed Act would also endorse the 2001 Military Order which, apart from establishing the now struck-down commissions, also provided for the indefinite detention without charge or trial of detainees held under it. The administration told the UN Committee against Torture in May 2006 that all those held in US custody in Guantánamo and Afghanistan were held under the Military Order.

The Act would also strip the right of full *habeas corpus* review from all of the Guantánamo detainees, and not allow them to raise claims in the courts of alleged abuses committed against them. Finally, the proposed Act threatens to further facilitate impunity by narrowing the scope of the USA's War Crimes Act which makes violations of Article 3 common to the four Geneva Conventions of 1949 prosecutable in the USA. Common Article 3 requires fair trials for detainees picked up in armed conflict and prohibits "outrages upon personal dignity, particularly humiliating and degrading treatment".

As the US authorities consider their legislative response to the *Hamdan* ruling, they should bear in mind cases such as that of Mohamedou Ould Slahi, and also reflect upon how his treatment by the USA has failed to match the USA's repeated promise that it will uphold the "non-negotiable demands of human dignity", including the rule of law in the "war on terror". It must ensure that its response complies with a central plank of the Global Counter-Terrorism Strategy, adopted by the United Nations General Assembly on 8 September 2006:

*"We, the States Members of the United Nations, resolve...to recognize that international cooperation and any measures that we undertake to prevent and combat terrorism must comply with our obligations under international law, including the Charter of the United Nations and relevant international conventions and protocols, in particular human rights law, refugee law and international humanitarian law."*³

Mohamedou Slahi was detained by the Mauritanian authorities in late November 2001 in the capital Nouakchott after he handed himself in. Suspected of involvement in the so-called millennium plot, an alleged conspiracy to bomb Los Angeles airport and sites in the Middle East on 31 December 1999, he says he had been questioned on a number of occasions previously in his country, as well as in Germany and Senegal. His questioning in Mauritania included interrogation in February 2000 by four US government personnel – three FBI agents and "another guy from the Department of Justice". In Nouakchott in 29 September 2001, he was again called in for questioning, and was told "the Americans told us to arrest you". On 13 October, a US agent participated in the interrogation during which Mohamedou Slahi was allegedly threatened with torture and hit. The US agent allegedly threatened that he would bring in "black people".⁴ Mohamedou Slahi was released later in October.

After he returned for questioning in late November 2001 at the request of the Mauritanian authorities, he was held in intelligence custody. He was told that "the United States wants you to be turned over to Jordan. I said what do I have to do with Jordan? Turn me over to America. They said they have no general law basis to turn me over to the United States. They wanted to find first the proof then they were going to turn me over to the United States because there were not facilities to send me to yet."

³ Available at: <http://www.un.org/terrorism/strategy/#resolution>.

⁴ This is reminiscent of an allegation in the case of Jamil al-Banna and Bisher al-Rawi, who were questioned by US agents in Gambia in 2002 prior to being transferred without the due process of law to Afghanistan and then Guantánamo. At least one of the men was allegedly threatened that unless he cooperated he would be handed over to the Gambian police who would beat and rape him.

After eight days, Mohamedou Slahi was transferred to Jordan – he describes it as having been “kidnapped”. He told his Administrative Review Board (ARB) hearing in Guantánamo in December 2005 that “the Jordanians have a very bad reputation when it comes to treatment of detainees”. The US government is aware of this. In its latest State Department report on human rights in other countries, for example, the entry on Jordan noted:

*“Police and security forces allegedly abused detainees during detention and interrogation and reportedly also used torture. Allegations of torture were difficult to verify because the police and security officials frequently denied detainees timely access to lawyers. The most frequently reported methods of torture included beating, sleep deprivation, extended solitary confinement, and physical suspension. Defendants charged with security-related offences before the State Security Court claimed they were tortured to obtain confessions and claimed to have been subjected to physical and psychological abuse while in detention.”*⁵

A previously secret Department of Defense memorandum released in June 2006 under Freedom of Information Act (FOIA) litigation appears to be about Mohamedou Slahi, although he is not identified by name. The memorandum reads “He turned himself in to the Mauritanian authorities in November 2001.” The next sentence is censored out. The memorandum continues: “In July 2002, he was turned over to the US in Bagram...”⁶ In a hearing in front of the Senate Armed Services Committee on 2 August 2006, US Attorney General Alberto Gonzales defended the USA’s involvement in the practice of rendition. He said that “we seek assurances, whenever we transfer someone, that in fact that they will not be tortured.” The transcript of his comments continues: “I cannot – you know, we are not there – (chuckles) – in the jail cell in foreign countries where we render someone.”⁷

Mohamedou Slahi has begun to fill in the gaps. He says that “what happened to me [in Jordan] is beyond description” as “they tried to squeeze information out of me”. He says that he was not tortured everyday – “maybe twice a week, a couple times, sometimes more” – but that he was threatened “with a lot of torture”. He describes being taken to a “room where they tortured and there was this guy who was beaten so much he was crying, crying like a child”. Mohamedou Slahi said he was “terrorized” by the threats of being subjected to the same, and has stated that “under so much pressure and bad treatment” he falsely confessed to being part of the millennium plot.

On 19 July 2002, after eight months in incommunicado military detention in Jordan, he was turned over to US custody, and put on a plane. According to reports, this is the same

⁵ 2005 Country Reports on Human Rights Practices, US State Department, 8 March 2006, Jordan entry available at <http://www.state.gov/g/drl/rls/hrrpt/2005/61691.htm>.

⁶ Memorandum for record. Possible torture allegations, see page 770 of http://action.aclu.org/torturefoia/released/061906/Schmidt_FurlowEnclosures.pdf.

⁷ Hearing of the Senate Armed Services Committee on the future of military commissions following the US Supreme Court’s decision on 29 June 2006 in *Hamdan v. Rumsfeld*. Transcript of 2 August 2006 hearing by the Federal News Service.

CIA-leased plane used to subject other detainees to unlawful transfers between countries in the “war on terror”.⁸ Mohamedou Slahi recalls:

“They took my clothes off and I said this is an American technique not an Arabic one because Arabs don’t usually take all of your clothes off. So they stripped me naked like my mom bore me, and they put new clothes on me... I did not want them to take my picture. I was in chains, a very bad suit, I had lost so much weight in Jordan I was like a ghost and I did not want my family to see me in this situation – that was my worst fear in the world. Besides that I had to keep my water for eight hours straight. Because the Americans [had me put] on a diaper but psychologically I couldn’t [urinate] in the diaper.”

After his arrival, he heard a language he did not know and thought he had been taken to the Philippines, but “it turned out to be Bagram”, the US airbase in Afghanistan. He says that he was “not really tortured in Bagram” although “one soldier grabbed me with chains and he dragged me over concrete stairs... from the cell to interrogation”. He also alleges that a Japanese American interrogator “played with me a little bit. He made me sit on my knees for very long hours and I have very bad back pain, it’s called sciatic nerve and he worked on my sciatic nerve giving me a lot of pain during the interrogation.”

On 4 August 2002, Mohamedou Slahi was transferred to Guantánamo, apparently from Kandahar air base. He says he was glad to be out of Afghanistan because it was a “place of war” whereas Guantánamo was “American territory”: “I believed that a vast majority of Americans did not believe in torture and I did not want to be tortured... I thought this is America, not Jordan...” However, the use of incommunicado detention against him did not end. Leaked Pentagon documents reveal that at a meeting on 9 October 2003, delegates from the International Committee of the Red Cross (ICRC) complained that the organization had still not been able to visit detainee number 760 (Slahi), but were informed by Major General Geoffrey Miller (the commander of Guantánamo detentions from November 2002 to March 2004) that access to Slahi was not possible due to “military necessity”.⁹ On 2 February 2004, the ICRC again requested access to the detainee, but were told that they could not meet with him privately for the same reason.¹⁰ It was now 18 months since Slahi had been in Guantánamo and more than two years since his detention began in Mauritania.¹¹

⁸ According to Human Rights Watch, flight records indicate a flight by a plane with the registration N379P from Amman to Kabul on 19 July 2002. After landing in Afghanistan, Mohamedou Slahi said that he was taken in a helicopter for 10 minutes and then in a truck before he ended up in Bagram. As Amnesty International has reported, N379P was a CIA-leased jet which was used in other so-called renditions by the USA. See *USA: Below the Radar: Secret flights to torture and ‘disappearance’*, AMR 51/051/2006, April 2006, <http://web.amnesty.org/library/index/engamr510512006>. See also Appendix 2 of *USA: Justice at last or more of the same – Detentions and trials after Hamdan v. Rumsfeld*, 18 September 2006, <http://web.amnesty.org/library/Index/ENGAMR511462006>.

⁹ Department of Defense Memorandum for Record. *ICRC Meeting with MG Miller on 9 Oct 03*.

¹⁰ *ICRC meeting*, 2 February 2004.

¹¹ The 9/11 Commission Report revealed that it had been “authorized to identify by name only ten detainees whose custody has been confirmed officially by the US government”. Mohamedou Ould

Mohamedou Slahi told his ARB hearing that since Ramzi bin al-Shibh was taken into custody in September 2002 “my life has changed drastically”. He said that during the “time era of Miller”, the FBI released a list of the 15 highest priority detainees held in Guantánamo, and that he, Mohamedou Slahi, was top of the list.¹² Until 22 May 2003, Mohamedou Slahi’s daily interrogations were conducted under FBI control. On 23 May 2003, Amnesty International understands that his “hold status” was changed from FBI to the control of the Department of Defense (DoD) and possibly its military intelligence agency, the Defense Intelligence Agency (DIA).¹³ The FBI’s Military Liaison and Detainee Unit was said to have had “a long standing and documented position against use of some of DoD’s interrogation practices”.¹⁴ According to a previously secret FBI memorandum, dated 30 May 2003, Major General Miller at that time still favoured the “aggressive interrogation methods” employed by the DIA’s Defense HUMINT Service (DHS) which the FBI was concerned “could easily result in the elicitation of unreliable and legally inadmissible information”.¹⁵ The FBI document noted that members of the DHS were “being encouraged at times to use aggressive interrogation tactics” in Guantánamo. It continued:

“Not only are these tactics at odds with legally permissible interviewing techniques used by US law enforcement agencies in the United States, but they are being employed by personnel in GTMO who appear to have little, if any, experience eliciting information for judicial purposes. The continued use of these techniques has the potential of negatively impacting future interviews by FBI agents as they attempt to gather intelligence and prepare cases for prosecution”.

Slahi, branded by the report as a leading *al-Qa’ida* operative, was not among them, yet he had already been in US custody for two years by the time the report was issued on 22 July 2004.

¹² “We became aware of the other high value detainee later. And he’s obviously the big – he’s a bigger fish (than Mohamed al-Qahtani, see box in text). A much bigger fish. So this is – other high value detainee is classified, Khatani is not.” Testimony of Lieutenant General Randall M. Schmidt, taken 24 August 2005 at Davis Mountain Air Force Base, Arizona, for Department of the Army Inspector General, Virginia.

¹³ It seems that the same happened in the case of Mohamed al-Qahtani (see text box). A military investigator has said of that case that “the FBI’s approach wasn’t working”, and that when the FBI “saw that the DoD DIA piece of this going on, they went you know that’s extreme. And in fact by their standards of evidence it is extreme.” Testimony of Lt. Gen. Schmidt, 24 August 2005, *op.cit.* It is not known if there was any CIA involvement in Mohamedou Slahi’s interrogation. The Schmidt/Furlow investigators interviewed nine DIA personnel, but no one from the CIA. The CIA did not provide the Church investigation with any information about the agency’s activities in Guantánamo. Yet the CIA had “unfettered access to people they wanted to have and they had their own area [at Guantánamo]. They didn’t use our [DoD] interrogation facilities because they used their own trailer operation”. Lt. Gen. Schmidt, *op. cit.*

¹⁴ See <http://www.aclu.org/torturefoia/released/FBI.121504.3977.pdf>.

¹⁵ See <http://action.aclu.org/torturefoia/released/022306/1261.pdf>. See also page 3758 of [http://www.aclu.org/torturefoia/legaldocuments/july_docs/\(M\)%20SCHMIDT-FURLOW%20DEFERRED.pdf](http://www.aclu.org/torturefoia/legaldocuments/july_docs/(M)%20SCHMIDT-FURLOW%20DEFERRED.pdf) (FBI agent recalling a military interrogator at Guantánamo saying that “it would take approximately four days to break someone doing an interrogation 16 hours on with the (strobe) lights and (two different kinds of loud) music and four hours off. The sleep deprivation and the lights and the alternating beats of the music would wear the detainee down.”).

Another FBI email, dated 5 December 2003, referred to “torture techniques” that had been employed by DoD interrogators against an unidentified detainee at Guantánamo, and that the FBI’s Criminal Investigation Task Force believed that the techniques had “destroyed any chance of prosecuting this detainee”.¹⁶ Amnesty International does not know the identity of this detainee.

According to Mohamedou Slahi, his FBI interrogator told him on 22 May 2003 that Slahi “was not going to enjoy the time to come”. One of the new interrogators assigned to his case was “a special guy” who was always masked so “we would never see his face”. On 17 June 2003, Mohamedou Slahi was put in “total isolation” in India Block of the Guantánamo detention facility, and “they took all of my stuff from me”. He has described his cell as built of steel from floor to ceiling with a very cold temperature setting on the air conditioner. According to the information released under the FOIA, another detainee has called this room the “freezer”. Mohamedou Slahi recalled to his ARB in 2005 that “I could not bear sleeping on the metal because of my back and you never know how much pain I could take. I could end up dead or something.” He says that he refused painkillers in protest, as what he needed was something to sleep on.

Heavily redacted documents made public under FOIA litigation contain references to this period such as “every morning the detainee was scared...”, “the detainee stated that he refused to eat food when he was humiliated”, and “the detainee was awaken [sic] every hour or two and only [sic] and forced to drink one liter of water.”¹⁷ Although pages of further details have been censored out, the detainee would appear to be Mohamedou Slahi.

In July 2003, interrogators requested a “special interrogation plan” for use against Mohamedou Slahi. Their request was approved by the Secretary of Defense on 13 August 2003. According to the 2005 “Schmidt/Furlow” military investigation into FBI allegations of abuse at Guantánamo, the special interrogation plan – the details of which remain classified – was not put into operation because the detainee “began to cooperate”.¹⁸ This claim should be set against the Schmidt/Furlow finding that the detainee’s “cooperation” began on 8 September 2003, almost a month after the approval of the plan as well as Lt. Gen. Randall Schmidt’s later testimony that “they started [the special interrogation plan]”, but “never really got into it”.¹⁹ In addition, the earlier Church report said that the two special interrogation plans approved by Secretary Rumsfeld (the other was for Mohamed al-Qahtani, see text box below) “both successfully neutralized the two detainees’ resistance training and yielded valuable intelligence.” The Church report noted that both interrogations “were sufficiently

¹⁶ <http://www.aclu.org/torturefoia/released/FBI.121504.3977.pdf>.

¹⁷ A sleep deprivation procedure – the “frequent flyer program” – whereby detainees were moved every few hours to a different cell to disrupt their sleep was being used in 2003 and 2004.

¹⁸ Army Regulation 15-6: Final Report: Investigation into FBI allegations of detainee abuse at Guantanamo Bay, Cuba Detention Facility, 2005 (Schmidt/Furlow report), unclassified version available at <http://www.defenselink.mil/news/Jul2005/d20050714report.pdf>.

¹⁹ Testimony of Lt. Gen. Schmidt, 24 August 2005, *op. cit.*

aggressive that they highlighted the difficult question of precisely defining the boundaries of humane treatment of detainees.”²⁰ Meanwhile, the Schlesinger report had concluded in 2004:

*“It is clear that pressures for additional intelligence and the more aggressive methods sanction by the Secretary of Defense...resulted in stronger interrogation techniques that were believed to be needed and appropriate in the treatment of detainees defined as ‘unlawful combatants’. At Guantanamo, the interrogators used those additional techniques with only two detainees, gaining important and time-urgent information in the process.”*²¹

In his 2004 Combatant Status Review Tribunal (CSRT) hearing, Mohamedou Slahi said that he was “not willing” to answer questions about whether he had been abused by US personnel. However, in his ARB hearing a year later, he made some allegations about his prior treatment that occurred during the period he was kept from the ICRC. At this stage in the ARB hearing, however, the government’s transcript states that “the recording equipment began to malfunction”. The ARB report therefore only summarizes the Board’s recollection of what Mohamedou Slahi alleged. The report states: “The detainee discussed how he was tortured while here at GTMO by several individuals.” Mohamedou Slahi alleged that he had been sexually harassed by a female interrogator. While attempting to relate this sexual abuse, he became “distracted and visibly upset”. The Presiding Officer of the CSRT explained that he did not have to “tell the story”, at which the detainee “was very appreciative and elected not to elaborate”. Mohamedou Slahi went on to detail a beating he alleged he had received at the hands of two masked interrogators. He wanted to show the ARB members his scars and injuries, “but the board declined the viewing”.

The recording equipment was then replaced and the transcript of Slahi’s testimony continues with what he alleged occurred to him in Guantánamo in August 2003. He states that he was taken on a boat for a trip that lasted about an hour:

*“They took me to a place... and I recognized a voice and he was talking to two Arab guys, one claiming to be Egyptian and one claiming to be Jordanian.”*²² He was

²⁰ Naval Inspector General’s review of detention procedures at Guantánamo Bay, Cuba (Church report) March 2005 unclassified summary at <http://www.defenselink.mil/news/Mar2005/d20050310exe.pdf>.

²¹ Independent Panel to Review DoD Detention Operations, August 2004. None of the three reviews – Schmidt/Furlow, Church, or Schlesinger – had interviewed detainees. The Church review stated that it did not interview detainees “in order to minimize any impact on ongoing interrogation operations”.

²² As far as Amnesty International is aware, none of the investigations conducted to date has looked into allegations that detainees have been ill-treated by or with the involvement of agents of other countries – including China, Egypt and Libya – while held in Guantánamo. Amnesty International further notes that the Pentagon’s *Working Group Report on Detainee Interrogations in the Global War on Terrorism: Assessment of Legal, Historical, Policy, and Operational Considerations*, 4 April 2003, recommended an interrogation technique known as “false flag” which consisted of “convincing the detainee that individuals from a country other than the United States are interrogating him”. A heavily redacted witness statement given by the Lieutenant Commander who served as Special Projects Team Chief at the Guantánamo from around 28 June 2003 to 24 September 2003 indicates that when

telling them how grateful he is that they are helping him. They told him in Arabic that they were there to torture me and they could not take me to Jordan or Egypt or something like that... Then they gave me to the Arabic team and they took me to a place for about an hour and they took me to a place I don't know. They were hitting me all over... They put ice in my shirt until it would melt. Then I arrived at that place and... they brought in a doctor, who was not a regular doctor, he was part of the team. He was cursing me and telling me very bad things. He gave me a lot of medication to make me sleep and I had special guards with masks so I couldn't see anybody. For like two or three weeks I was unconscious and after that I decided that it is not worth it. Because they said to me either I am going to talk or they will continue to do this. I said I am going to tell them everything they wanted... I just wanted to get some peace. If nobody understands then they don't understand because I am the one who suffered with no food, the guards beat me, and it was a very bad place... Since 2004, I really have no complaints and everything was good. I admitted to what they wanted..."

Mohamedou Slahi has since recanted statements that he says were coerced out of him.

The Schmidt/Furrow investigation had concluded in 2005 that during the period July to October 2003, Mohamedou Slahi had been subjected to "environmental manipulation", in other words to extremes of hot and cold using the air-conditioning. The investigation concluded that no disciplinary action was required as "environmental manipulation" was an interrogation technique that had been approved by the Secretary of Defense, and there was "no evidence in the medical records of the [detainee] being treated for hypothermia or any other condition related to extreme exposure." The investigation concluded that it was unable to corroborate Mohamedou Slahi's allegations that he had been beaten, or that he had been subjected to sexual humiliation by female interrogators (although it acknowledged that "female interrogators used their status as females to distract the [detainee]"). Not in the published report was the statement given to the investigators by a former psychiatrist with the Behavioural Science Consultation Team at Guantánamo who stated that "sexual tension" was one of many authorized interrogation techniques. This could incorporate "shocking behaviour [that] would be culturally taboo, disrespectful, humiliating..."²³

Mohamedou Slahi was moved during this period, he was hooded, and personnel would "have conversations in Arabic to further confuse the detainee".

²³ Summarized witness statement, 28 February 2005, page 3771 of

[http://www.aclu.org/torturefoia/legaldocuments/july_docs/\(M\)%20SCHMIDT-FURLOW%20DEFERRED.pdf](http://www.aclu.org/torturefoia/legaldocuments/july_docs/(M)%20SCHMIDT-FURLOW%20DEFERRED.pdf). Allegations of sexually abusive techniques used against Guantánamo detainees have included DHS interrogators forcing a detainee to view "homosexual porn movies" in a room lit by strobe lighting (<http://action.aclu.org/torturefoia/released/022306/2600.pdf>), to humiliation by female interrogators. For example, the witness statement of a civilian contractor states that a 17 April 2003 interrogation included the following: "the session advanced into what can only be described as the proverbial 'strip club lap dance'. The ICE personnel (interrogator) removed her overblouse behind the individual and proceeded stroking his hair and neck while uttering sexual overtones and making comments about his religious affiliation. The session progressed to where she was seated on his lap making sexual affiliated movements with her chest and pelvis while again speaking sexual oriented

The investigation did find that Mohamedou Slahi had been threatened with death and “disappearance” by military interrogators. The detainee had also been told that his family was in US custody, and that he should cooperate in order to help them. For example, on 20 July 2003, a masked interrogator told Mohamedou Slahi that his family had been “incarcerated”. Again, on 2 August 2003 he told the detainee that his family were in US custody and was in danger. A letter was given to the detainee indicating that because of his lack of cooperation, US agents in conjunction with the Mauritanian authorities would interrogate his mother, and that if she was uncooperative she would be detained and transferred for long-term detention in Guantánamo. Not in the unclassified version of the investigators’ report, but contained in a leaked subsequent interview of one of the investigators, was confirmation of Mohamedou Slahi’s allegation that he was taken off from Guantánamo in a boat “where he thought this is where he goes away” (i.e. to be killed or “disappeared”).²⁴

The investigation concluded that the threats against Mohamedou Slahi did “not rise to the level of torture as defined under US law” (in comparison, for example, the most recent State Department report entry on human rights in Egypt notes that torture techniques employed there included threats against detainees and their families). It did, however, conclude that the threats violated the Uniform Code of Military Justice and recommended that the chief interrogator be disciplined. However, General Brantz Craddock, the Commander of US Southern Command, amended this recommendation and requested further (military) investigation, justifying this on the grounds that “evidence in mitigation and extenuation” could be discovered to help the interrogator’s case.²⁵ Amnesty International does not know the result of any further investigation or indeed if it has been carried out. Under international law, however, there can be no impunity for torture or other cruel, inhuman or degrading treatment. Those who commit such violations and those who authorize such conduct must be brought to account, and may not invoke any justification (such as “necessity”, “self-defence” or “superior orders”) in their defence. The unclassified version of the Schmidt/Furlow report made no mention, let alone criticism, of the fact that Mohamedou Slahi was kept from the ICRC for more than a year.

Mohamedou Slahi remains in Guantánamo without charge or trial. He has now been held for nearly five years, more than four of them in US custody. What is his future? If he is indeed a leading *al-Qa’ida* operative, as the US government has alleged, why has he not been charged and brought to trial? If he is not, then why has he not been released?

sentences. This then progressed to the individual being placed on the floor with her straddling him, etc.” Page 1333 at http://action.aclu.org/torturefoia/released/072605/1243_1381.pdf.

²⁴ In November 2002, the General Counsel of the US Department of Defense, William J. Haynes, wrote that the following interrogation technique was one that may be “legally available”, but for which at that time, “as a matter of policy, blanket approval” was not warranted: “The use of scenarios designed to convince the detainee that death or severely painful consequences are imminent for him and/or his family”. Action memo to Secretary of Defense, 27 November 2002

²⁵ General Brantz Craddock testimony to hearing of the US Senate Armed Services Committee on the treatment of Guantánamo detainees. 13 July 2005.

If he is to be brought to trial, he must be given the opportunity to challenge the classified evidence that the administrative review procedures have relied upon in their consideration of whether his detention should continue. There will have to be scrupulous adherence to the international obligation to exclude any testimony coerced by torture or other cruel, inhuman or degrading treatment, including conditions of detention. This includes any statements which may have been coerced from detainees held in secret locations elsewhere, such as Ramzi bin al-Shibh. The latter's alleged statements made in secret custody after his capture in September 2002 have been used publicly against Mohamedou Slahi (including in the 9/11 Commission Report) to find him guilty without his having had his day in court.²⁶

Another "special interrogation plan" – Mohamed al-Qahtani

"In September or October of 2002 FBI agents observed that a canine was used in an aggressive manner to intimidate detainee #63 and, in November 2002, FBI agents observed Detainee #63 after he had been subject to intense isolation for over three months. During that time period, #63 was totally isolated (with the exception of occasional interrogations) in a cell that was always flooded with light. By late November, the detainee was evidencing behavior consistent with extreme psychological trauma (talking to non-existent people, reporting hearing voices, crouching in a cell covered with a sheet for hours)." FBI memorandum, 14 July 2004

The torture and ill-treatment which Guantánamo detainee No. 063, Saudi national Mohamed al-Qahtani, suffered – including under techniques authorized by US Secretary of Defense Donald Rumsfeld – clearly violated international law, and yet no one has been brought to justice for it. Mohamed al-Qahtani was subjected to intense isolation for three months in late 2002 and early 2003. He was variously forced to wear a woman's bra and had a thong placed on his head; was tied by a leash and led around the room while being forced to perform a number of dog tricks; was forced to dance with a male interrogator while forced to wear a towel on his head "like a burka"; was subjected to forced standing, forcible shaving of his head and beard during interrogation (and photographing immediately after this), stripping and strip-searching in the presence of women, sexual humiliation, culturally inappropriate use of female interrogators, and to sexual insults about his female relatives; had water repeatedly poured over his head; had pictures of "swimsuit models" hung round his neck; was subjected to hooding, loud music, white noise, and to extremes of heat and cold through manipulation of air conditioning. Other forms of humiliation included being forced to urinate in his clothing when interrogators refused to allow him to go to the toilet. Mohamed al-Qahtani was interrogated for 18-20 hours per day for 48 out of 54 consecutive days. According to a military investigator, in the four hours that he was not under interrogation, "he was taken to a white room... with all the lights and stuff going on and everything..." During the period of his interrogation, al-Qahtani was allegedly subjected to a fake rendition, during which he was injected with tranquilizers, made to wear blackened goggles, and taken out of Guantánamo in a plane. The Schmidt/Furlow report concluded that Mohamed al-Qahtani's treatment, while cumulatively "degrading and abusive", "did not rise to the level of prohibited inhumane treatment" (for further information see, <http://web.amnesty.org/library/Index/ENGAMR510932006>).

²⁶ The 9/11 Commission Report noted that "Assessing the truth of statements by these witnesses... is challenging. Our access to them has been limited to the review of intelligence reports based on communications received from the locations where the actual interrogations take place... Nor were we allowed to talk to the interrogators so that we could better judge the credibility of the detainees and clarify ambiguities in the reporting."