

USA: Who are the Guantánamo detainees?

Case Sheet 1

ABDULLAH KAMAL ABDULLAH KAMAL AL KANDARI, and 11 other Kuwaitis

" I would like news of my family, especially of my pregnant wife. Did she give birth yet? ...I will be back soon, God willing...Please be advised that I do not know where I am, but the authorities say the state I am in is Cuba."

Full Name: Abdullah Kamal Abdullah Kamal Al Kandari

Nationality: Kuwaiti

Age: 30

Family status: Married with four young children

Occupation: Mechanical technician, employed by Kuwait's public electricity company

Information: In 2001, Abdullah al-Kandari travelled to the Afghan/Pakistan border in order, he says, to help local humanitarian agencies in refugee relief work during the conflict. He last called his family in October 2001 describing the situation and stating that he was unable to leave Afghanistan because the borders had closed, following the US invasion. He was subsequently identified as one of the "enemy combatants" held at Guantánamo Bay.

He has never seen his youngest child, born while he was in custody.

Background

The quote above is from a Red Cross postcard written by Abdullah al-Kandari to his family in Kuwait following his imprisonment at Guantánamo Bay, the US military base in Cuba. His message highlights the plight of all the Guantánamo detainees. They do not know why they are being held, when they will be released or how their families are coping without them. Their families suffer too – since the first transfers to the base, detainees' parents have died, children have been born, but little or no news arrives about their relatives imprisoned half way round the world.

Abdullah is one of 12 Kuwaiti nationals captured during the international conflict in Afghanistan and currently detained as an "enemy combatant" at Guantánamo Bay. All are held without charge or trial, and most without access to their lawyers or families and in conditions which may amount to cruel, inhuman or degrading treatment.

There is very little information about the circumstances under which the Kuwaiti nationals were taken into custody. According to information received by Amnesty International, five of the Kuwaiti detainees may have been detained outside the zone of military conflict. They were reportedly detained as part of a group of over 150 people, mainly non-Pakistani nationals, who were detained in Kohat, Pakistan, between October and December 2001, apparently under a preventive detention law. Amnesty International does not know the agency that arrested them or the circumstances of the arrests.

Reports received by Amnesty International suggest that a number of the detainees were then transferred to Peshawar Central Jail and handed over to US officials who subsequently transferred some to Islamabad. There they were placed on military aircraft and flown to the US base at Kandahar in Afghanistan. The five Kuwaiti nationals who were among this group were later transferred from Kandahar to Guantánamo Bay.

On 10 November 2003, the US Supreme Court agreed to hear an appeal against the detention of a group of the detainees, 2 UK nationals, 2 Australians and the 12 Kuwaitis. The

court will rule on whether the detainees can use US courts to challenge the lawfulness of their detention which their lawyers believe violates international law and the US constitution. The Supreme Court is due to hear the case in March 2004 and a ruling is expected in June. The Kuwaiti authorities have visited the detainees at least twice – the last visit took place in January 2004.

Guantánamo Bay – A Human Rights Scandal

Hundreds of people of around 40 different nationalities remain held without charge or trial at the US Naval Base in Guantánamo Bay in Cuba, without access to any court, legal counsel or family visits. Denied their rights under international law and held in conditions which may amount to cruel, inhuman or degrading treatment, the detainees face severe psychological distress. There have been numerous suicide attempts.

Many of those held were captured during the international conflict in Afghanistan, from where transfers to the Naval Base began in January 2002 under harsh conditions of transportation. Others were arrested elsewhere and handed over to the US authorities. Sporadic transfers to, and releases from, the base continue, but the precise numbers, identities and nationalities of those held has never been made public.

None of the detainees have been granted prisoner of war status or brought before a “competent tribunal” to determine his status, as required by Article 5 of the Third Geneva Convention. The US government refuses to clarify their legal status, despite calls from the International Committee of the Red Cross (ICRC) to do so.

The majority are held in maximum security blocks in small cells, sometimes for up to 24 hours a day and with very little out-of-cell exercise time. They are also subjected to repeated interrogations sometimes for hours at a time and without the presence of a lawyer, raising fears that statements may be extracted under coercion. The ICRC is the only non-governmental organization allowed access to the detainees.

With no opportunity to challenge the lawfulness of their detention and the prospect of indefinite detention without trial in such conditions, the potential psychological impact upon those held is a major concern. The ICRC delegation has stated that it has observed a “worrying deterioration” in the mental health of a large number of the detainees, and that their psychological condition has become a “major problem”.

In November 2001, President Bush signed a Military Order establishing trials by military commission which have the power to hand down death sentences and against whose decisions there will be no right of appeal to any court. In addition to the lack of right to appeal, the commissions will lack independence and will restrict the right of defendants to choose their own counsel and to an effective defence. The commissions will also accept a lower standard of evidence than in ordinary courts. This could include evidence extracted under torture or coercion.

AMNESTY INTERNATIONAL DEMANDS THAT

- **The US government end the legal limbo of all detainees**
- **All those held are charged and given fair trials or released**
- **They are granted full access to lawyers and families**
- **They are treated humanely and granted access to their rights**
- **Their families are kept informed of their legal status and well-being**

