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European Union – United States Summit: Set Clear Plan of Action to close Guantánamo

Joint Statement by Human Rights Watch, the International Commission of Jurists, the International Federation for Human Rights, the Center for Constitutional Rights and Reprieve

As the European Union - United States summit takes place in Washington DC on Monday, 30 April, Human Rights Watch, the International Commission of Jurists, the International Federation for Human Rights, the Center for Constitutional Rights and Reprieve urge European Union leaders to press the United States to establish a clear plan of action for ending detentions at Guantánamo Bay.

It has been more than five years since the first detainees were brought to Guantánamo, to be held indefinitely, without trial, and without fundamental safeguards provided by the rule of law. Almost one year ago, at the June 2006 summit, the European Union underscored to the United States the importance of ending this situation of lawlessness. Although some United States officials have expressed their desire to close Guantánamo, the detainee population has still only gradually been reduced, and approximately 380 people remain in detention.

At this year's summit, the United States and the European Union should initiate a comprehensive, co-operative plan of action to close the Guantánamo Bay detention facility in a way that ends the long-running violations of the human rights of those detained there and ensures the safety of detainees transferred from the base.

The 2007 summit takes place only seven months after the passage of the Military Commissions Act, which seeks to insulate the United States government's actions from judicial scrutiny and purports to strip the United States federal courts of jurisdiction over foreign nationals held outside United States territory. As a result, United States violations of human rights in counter-terrorism policy are of greater concern than ever. Detentions at Guantánamo are at the center of a counter-terrorism system designed to evade the rule of law

and the protections of international human rights and humanitarian law. In particular:

- People remain in detention, some for many years, without charge or trial, at Guantánamo, in Afghanistan and elsewhere, in violation of the right to freedom from arbitrary detention, and without due process safeguards. Some remain detained despite the fact that the United States government has cleared them for release or transfer. Furthermore, even according to the United States government's public statements, only a small minority of those in Guantánamo will ever be charged before a military commission. Thus, the vast majority face the prospect of indefinite administrative detention, without access to meaningful judicial review, including *habeas corpus*, to scrutinize the legality of their detention and their conditions of confinement and treatment.
- Some of the detainees transferred from Guantánamo have been returned to home countries where they face torture, cruel, inhuman or degrading treatment, or other serious violations of their human rights, in breach of the United States' international legal obligation not to return people to such treatment (*non-refoulement*). Some transfers have been subject to conditions by the United States, including continued administrative detention or other unacceptable constraints on liberty, freedom of movement or privacy rights. More such transfers will occur in the future. The transfer process fails to provide those in fear of persecution or torture with any form of individualized assessment to verify the validity of their need for protection.
- Guantánamo detainees who are to be prosecuted, under the terms of the Military Commissions Act of 2006, face trials that fail to meet international standards of fair trial, including the right to trial by an independent and impartial tribunal. The military commission can base a conviction on coerced evidence, including evidence obtained in response to highly abusive interrogation techniques.
- The Military Commissions Act of 2006 immunizes officials who have violated detainees' rights in the past, as well as their commanders, from civil suit and criminal prosecution, in most instances. As a result, there is no effective way to hold accountable United States officials who have violated the human rights of those held at Guantánamo or other overseas detention facilities in the past.
- The United States government has publicly acknowledged and justified its past use of secret detention centers and suggested that they may continue to be used in the future. Secret detention involves multiple human rights violations, including violations of the right to due process, freedom from arbitrary detention, and freedom from torture and cruel, inhuman and degrading treatment, and, in many cases, amounts to an enforced disappearance.

The United States bears full responsibility for these systematic violations of human rights. As a close ally of the United States, however, the European

Union must continue to play an important role in raising these issues with the United States and bringing these violations to an end.

At the 2006 summit, the European Union provided significant leadership in advancing the case for Guantánamo's closure. At this 2007 summit, the European Union must move from rhetoric to setting out a comprehensive, co-operative plan of action, in which the United States and the European Union together set clear timelines, and a plan of action to put an end to detentions at Guantánamo Bay and to ensure the safe resettlement of detainees. Equally importantly, the European Union should press the United States to end other arbitrary counter-terrorism detentions, wherever they occur, and restore the rule of law.

Closing Guantánamo: A Human Rights Agenda for the Summit

Human Rights Watch, the International Federation for Human Rights, the International Commission of Jurists, the Center for Constitutional Rights and Reprieve call on European Union leaders at this summit to:

1. Press for an end to all United States counter-terrorism detentions, anywhere in the world, that are in violation of international law.
2. Ask for a commitment to and clear timelines for closure of Guantánamo.
3. Oppose the transfer of detainees to states where they are likely to face further serious violations of their human rights, including extrajudicial killing, torture, cruel, inhuman or degrading treatment, or arbitrary detention, or manifestly unfair trials. Both the United States and the European Union should reject the use of diplomatic assurances as a means of circumventing obligations of *non-refoulement* to such violations of human rights.
4. Initiate discussions with the United States to establish a co-ordinated plan to end detentions at Guantánamo, through a transparent and accountable process that complies with human rights obligations and that includes the participation and input of the legal representatives of the detainees. This plan should provide for:
 - Where possible, repatriation of detainees to their home countries on terms that respect human rights, and without conditions which violate human rights;
 - resettlement of detainees unable to return to their home countries - either in the United States, in European Union states, or in third countries - by allowing them to claim asylum or by according them some other status allowing permanent residency on terms that respect human rights;
 - a viable process for assessing the refugee claims by individual detainees, with the involvement of their lawyers, modelled on the Comprehensive Plans of Action (CPAs) that have been implemented to address much larger refugee crises.

5. Insist on the right of all detainees to *habeas corpus* to review the legality of their detentions and on the repeal of the Military Commissions Act provisions stripping the courts of jurisdiction to hear these cases and all other cases concerning detainees' conditions of confinement, treatment and transfer.
6. Insist that those subject to the criminal provisions of the Military Commissions Act 2006 have their fair trial rights restored by supporting the repeal of the Act and by making clear that the European Union and Member State governments will not co-operate in any way in trials conducted under the Military Commissions Act.
7. Insist that the United States allows access to detainees at all United States counter-terrorism detention centers – both within an outside its territory - to the International Committee of the Red Cross and allows United Nations monitors, including Special Procedures of the Human Rights Council, access to Guantánamo and other counterterrorism detainees, in accordance with conditions required by these experts.
8. Insist on full accountability of those who have violated the human rights of detainees and repeal provisions of the Detainee Treatment Act and the Military Commissions Act that immunize perpetrators and commanders responsible for abuses.
9. Call for an end to the United States practice of renditions and secret detentions, as systematic violations of human rights, including the right to due process of law, freedom from arbitrary detention, and the right to freedom from torture and cruel, inhuman or degrading treatment; and make clear that neither the European Union nor its Member States will co-operate in or tolerate such practices.

Both Europe and the United States need to find ways to effectively combat terrorism, within the rule of law and with respect for human rights. A United States counter-terrorism system that evades these fundamental standards undermines effective and legitimate co-operation on counter-terrorism. The European Union should take the opportunity presented by this summit to restore credible counter-terrorism policies in which the United States, European and other states can co-operate, and in doing so, restore respect for basic principles of human rights and the rule of law.