

amnesty international

UNITED STATES OF AMERICA

Human rights not hollow words

An appeal to President George W. Bush on the occasion of his re-inauguration

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Mr President,

In your inaugural address four years ago, you promised to be a leader who would “speak for greater justice”. Since then, a much repeated promise of your administration has been that the USA will adhere to fundamental principles of human dignity and the rule of law, including in the context of the “war on terror”. The National Security Strategy devotes an entire chapter to asserting that in its pursuit of security, the USA will “stand firmly for the non-negotiable demands of human dignity”, including the rule of law. The National Strategy for Combating Terrorism concludes that “a world in which these values are embraced as standards, not exceptions, will be the best antidote to the spread of terrorism”. Just last month, on Human Rights Day, you proclaimed that respect for human rights and the rule of law line the route to peace and security. Amnesty International agrees.

Your stated opposition to torture would appear on the face of it to be similarly principled. On 26 June 2003, for example, you issued a statement that:

“Torture anywhere is an affront to human dignity everywhere. We are committed to building a world where human rights are respected and protected by the rule of law...The United States is committed to the worldwide elimination of torture and we are leading this fight by example.”

In similar vein, on 26 June 2004, to mark the United Nations International Day in Support of Victims of Torture, you stated that:

“The non-negotiable demands of human dignity must be protected without reference to race, gender, creed, or nationality. Freedom from torture is an inalienable human right, and we are committed to building a world where human rights are respected and protected by the rule of law... America stands against and will not tolerate torture. We will investigate and prosecute all acts of torture and undertake to prevent other cruel and unusual punishment in all territory under our jurisdiction.”

Of course, a government should not be assessed on its words alone, but also on its actions. For things may not be as officially described. As you yourself pointed out in your 26 June 2003 statement on torture, “notorious human rights abusers... have long sought to shield their abuses from the eyes of the world by staging elaborate deceptions and denying access to international human rights monitors”.

Your administration has as a matter of policy for more than three years denied international human rights monitors, including Amnesty International, access to detainees held by the USA in the “war on terror”, in addition to routinely denying detainees access to the courts, legal counsel and relatives. In addition, US personnel have staged deceptions in order to subvert basic human rights protections and the rule of law. Certain detainees, for example, have been moved around or left unregistered in order that they can be hidden from the International Committee of the Red Cross (ICRC). The full extent of this practice remains unknown – last September General Paul Kern told the Senate Armed Services Committee that there may have been as many as 100 so-called “ghost detainees” in US custody in Iraq. An unknown number of detainees are believed to remain held in secret locations by the USA or with its connivance, amounting to “disappearance” in some cases. The Pentagon refuses to give precise numbers of detainees held in Guantánamo Bay, raising concern that this imprecision could facilitate secret detainee transfers. In early 2004, for example, approximately seven detainees remained unaccounted for in the official announcements about transfers to and from Guantánamo.

The USA is alleged to have been involved in numerous secret transfers of detainees between itself and countries known to use torture, or to have employed extrajudicial abductions of individuals in order to subject them to executive detention and interrogation. For example, Khaled El-Masri, a German national of Lebanese origin, told Amnesty International in June 2004 that there had been US involvement in his alleged secret transfer from Macedonia to detention and ill-treatment in Kabul in early 2004. He also told the organization that he had learned of detainees in US custody in Afghanistan being hidden from the ICRC. As has been the pattern with your administration – which claims to be committed to working with non-governmental organizations to ensure worldwide respect for international human rights standards, but which routinely fails adequately to respond to such organizations in matters concerning its own alleged misconduct – Amnesty International is still awaiting a reply to the letter it sent to the US authorities five months ago raising the allegations made by Khaled El-Masri.

Your administration’s pick and choose approach to the Geneva Conventions has caused widespread international concern. Amnesty International believes that this selective disregard for international humanitarian law principles has contributed to torture and ill-treatment by US forces and to the degree of lawlessness which has marked the USA’s waging of the “war on terror”. It is now known that you were advised by White House Counsel Alberto Gonzales in January 2002 that a determination that the Geneva Conventions would not apply to those captured in the international armed conflict in Afghanistan would free up US interrogators and make their future prosecution for war crimes less likely. Since your decision, allegations of torture and ill-treatment by US forces in Afghanistan and Guantánamo

– and the subsequent migration of this phenomenon to Iraq – have been persistent, and such allegations continue to emerge from both detainee and non-detainee sources.

Having taken the decision not to apply the Geneva Conventions to those held in Afghanistan and Guantánamo Bay, you sought to dispel concern about the treatment of such detainees by saying that they would be treated “in a manner consistent with the principles of Geneva”. However, this assertion has always been qualified with the phrase “to the extent appropriate and consistent with military necessity”. The legal concept of military necessity cannot lawfully be used to override the prohibition on torture or ill-treatment, but there is mounting evidence that the USA has violated this principle under your leadership.

A number of detainees in Guantánamo, for example, have been kept from the ICRC on the grounds of “military necessity”. One of them is believed to have been Abdallah Tabarak, who was transferred to his native Morocco last year. Since his repatriation, he has claimed that in Guantánamo he was beaten, given forcible injections, and held in a dark cell which has left him with eyesight problems. He said that he suffers from other physical ailments as a result of his confinement, as well as insomnia and nightmares. In the case of another Guantánamo detainee, Mohammed al-Kahtani, a harsh interrogation plan was developed, apparently justified by the US authorities on the grounds of “military necessity”. Mohammed al-Kahtani was reportedly put on a plane, blindfolded in conditions of sensory deprivation, and made to believe that he was being flown to the Middle East. After several hours in the air, the plane returned to Guantánamo and Mohammed al-Kahtani was allegedly put in an isolation cell and subjected to harsh interrogations conducted by people he was encouraged to believe were Egyptian security agents. This interrogation technique is known as “false flag” and has been approved by Secretary of Defense Donald Rumsfeld.

The Pentagon’s Working Group report of April 2003 promotes the technique of threatening to transfer the detainee to a third country, “where subject is likely to fear he would be tortured or killed”. Released Guantánamo detainee Tarek Dergoul has alleged that his interrogators threatened him with transfer to Morocco and Egypt where he would be tortured. Fellow United Kingdom national Moazzam Begg, subjected to prolonged and cruel isolation in US custody in Afghanistan and Guantánamo, has alleged that he was threatened by US agents with transfer to Egypt and terrified by accounts of what would happen there. He has said that fear of rendition to Egypt was widespread among prisoners held at the US air base in Bagram in Afghanistan.

For Australian detainee Mamdouh Habib, the threat of transfer to Egypt became a reality. According to a motion filed in US federal court in November 2004, he was secretly transferred from Pakistan to Egypt with US agents involved and knowing that he would face torture. He spent six months in Egyptian custody where he was allegedly subjected to electric shocks, water torture, physical assaults, suspension from hooks, threats with dogs, and cruel prison conditions. He was subsequently transferred to Guantánamo in May 2002 and held without charge or trial there for more than two and a half years. A released detainee has alleged to Amnesty International that Mamdouh Habib was subjected to a regime of sleep deprivation in Guantánamo that left him with “blood coming from both his nose and ears”.

Even in Iraq, where the Geneva Conventions have been applied, US forces have stretched the denial of ICRC visits for reasons of “imperative military necessity” way beyond “the temporary and exceptional measure” envisaged by Article 143 of the Fourth Geneva Convention. Torture or ill-treatment have been the result. In January 2004, for example, US authorities invoked “military necessity” when they refused to grant the ICRC access to eight detainees held in Abu Ghraib. One of the eight, a Syrian national, was being held in a tiny dark cell without windows, toilet or bedding. Around 18 December 2003, he was abused and threatened with dogs. During a visit to the prison in mid-March 2004, the ICRC’s delegates were again denied access to him, and eight other detainees, on the grounds of “military necessity”. By then, the Syrian detainee had been under incommunicado interrogation for four months. An interrogation plan for him is believed to have included the following:

“For the segregation phase of the approach, the MPs will put an empty sandbag onto the prisoner’s head before moving him out... During transportation, the Fear up Harsh approach will be continued... Upon arrival at site, MP guards will take him into custody. MP working dogs will be present and barking during this phase. Detainee will be strip searched by guards with the empty sandbag over his head... Detainee will be put on the adjusted sleep schedule for 72 hours. Interrogations will be conducted continuously during this 72-hour period. The approaches which will be used during this phase will include, fear up harsh, pride and ego down, silence and loud music. Stress positions will also be used... in order to intensify the approach.”

Into your administration’s “war on terror” detention policy has been added a pattern of dangerous public commentary about detainees by yourself and other officials. For example, repeated assertions that the detainees in Guantánamo are “terrorists”, “killers” and “bad people” – has not only undermined the presumption of innocence, but has fuelled the notion that these are people for whom the basic rules of humanity and legality do not apply. It cannot be considered responsible conduct for officials, let alone the Commander-in-Chief of the Armed Forces, to inject such labelling of detainees into this would-be unchallengeable regime of executive detentions, safeguards against torture and ill-treatment already lowered.

The struggle against torture and other cruel, inhuman or degrading treatment requires a government’s one hundred per cent commitment and constant vigilance. It requires stringent adherence to safeguards and an absolute rejection of loopholes. It demands a policy of zero tolerance. Mr President, your administration has manifestly failed in this regard. At best, it set the conditions for torture and ill-treatment by lowering safeguards and failing to respond adequately to allegations of abuse raised by Amnesty International and others from early on in the “war on terror”. At worst, it has authorized interrogation techniques and detainee transfers which have flouted the country’s international obligation to reject torture and ill-treatment under any circumstances and at all times.

Amnesty International takes this opportunity to list some of the detention or interrogation techniques that are alleged to have been authorized or used by the USA during the “war on terror”. Some of the techniques appear to have been tailored to specific cultural or religious sensitivities of the detainees, thereby introducing a discriminatory element to the abuse. Neither gender nor age has offered protection. Children, the elderly, women and men

are reported to have been among the subjects of torture or ill-treatment. The following list does not claim to be exhaustive:

- Abduction
- Death threats
- Dietary manipulation
- Dogs used to threaten and intimidate
- Dousing in cold water
- Electric shocks, threats of electric shocks
- Excessive and cruel use of shackles and handcuffs, including “short shackling”
- Excessive or humiliating use of strip searches
- Exposure to weather and temperature extremes
- “False flag”, ie making a detainee think his interrogators are not US agents
- Forced shaving, ie of head, body or facial hair
- Forcible injections
- Forced physical exercise
- Hooding and blindfolding
- Humiliation, eg forced crawling, forced to make animal noises, etc.
- Immersion in water to induce perception of drowning
- Incommunicado detention
- Induced perception of suffocation or asphyxiation
- Isolation for prolonged periods, eg months or more than a year
- Light deprivation
- Loud music, noise, yelling
- Photography as humiliation
- Physical assault, eg beating, punching, kicking
- Prolonged interrogations, eg 20 hours
- Racial and religious taunts, humiliation
- Religious intolerance, eg disrespect for Koran, religious rituals
- Secret detention

- Sensory deprivation
- Sexual humiliation
- Sexual assault
- Sleep adjustment
- Sleep deprivation
- Stress positions, eg prolonged forced kneeling and standing
- Stripping
- Strobe lighting
- Threats of reprisals against relatives
- Threat of transfer to third country to inspire fear of torture or death
- Threat of transfer to Guantánamo
- Threats of torture or ill-treatment
- Twenty-four hour lighting
- Withdrawal of “comfort items”
- Withholding of medication
- Withholding of food and water
- Withholding of toilet facilities, leading to defecation and urination in clothing

As the Pentagon’s April 2003 Working Group report states, interrogation techniques are “usually used in combination”. This can be illustrated by the recently revealed observations of FBI agents in Guantánamo. One reported seeing a detainee “sitting on the floor of the interview room with an Israeli flag draped around him, loud music being played and a strobe light flashing”. Another wrote:

“On a couple of occasions (sic), I entered interview rooms to find a detainee chained hand and foot in a fetal position to the floor, with no chair, food or water. Most times they had urinated or defecated (sic) on themselves and had been left there for 18, 24 hours or more. On one occasion (sic), the air conditioning had been turned down so far and the temperature was so cold in the room, that the barefooted detainee was shaking with cold. When I asked the MPs what was going on, I was told that interrogators from the day prior had ordered this treatment, and the detainee was not to be moved. On another occasion (sic), the A/C had been turned off, making the temperature in the unventilated room probably well over 100 degrees. The detainee was almost unconscious on the floor with a pile of hair next to him. He had apparently been literally pulling his own hair out throughout the night. On another occasion (sic), not only was the temperature unbearably hot, but extremely loud rap

music was being played in the room, and had been since the day before, with the detainee chained hand and foot in the fetal position on the tile floor”.

Secretary Rumsfeld authorized interrogation techniques including stripping, environmental manipulation, sensory deprivation, stress positions, isolation, hooding, and the use of dogs to inspire fear. A number of detainees have alleged that they were subjected to such treatment in Guantánamo. An FBI agent also tells of having witnessed the use of a dog to intimidate a Guantánamo detainee, who was also subjected to three months of isolation in cell with 24-hour illumination. The detainee was later witnessed to be displaying conduct “consistent with extreme psychological trauma. Secretary Rumsfeld has also admitted to authorizing the exclusion of at least one detainee in Iraq from any prison register. Amnesty International has yet to see a satisfactory explanation of what appears to have been Secretary Rumsfeld’s participation in a “disappearance”, which is a crime under international law.

Mr President, Amnesty International also notes that on 17 September 2001 you reportedly signed a Memorandum of Notification granting “exceptional authorities” to the CIA in the “war on terror”. Amnesty International is further concerned by reports that you authorized the CIA to set up secret detention facilities outside the USA and to use harsh interrogation techniques. As noted further below, it appears that you have granted an exemption to the CIA and other non-military personnel from a 7 February 2002 directive stating that detainees in US custody would be treated humanely. If so, the ultimate responsibility for any resulting torture or other cruel, inhuman or degrading treatment would lie squarely at your door. In addition, an FBI agent’s email sent from Iraq, recently made public, refers to an Executive Order signed by you which authorizes interrogation techniques which should be considered contrary to international law and standards. Amnesty International is aware that the administration has denied the existence of such an order.

The problem with such rebuttals is that previous denials have been shown to be inaccurate. The stock response of US officials during the “war on terror” to allegations of torture or ill-treatment – namely that all detainees in US custody are treated humanely and with respect for human dignity – can now be seen either to have been a stock falsehood or else an indication that your administration’s view of what constitutes humane treatment and respect for human dignity differs markedly from wider understandings of such terminology. With this in mind, the following assertion may be instructive:

“Of course, our values as a Nation, values that we share with many nations in the world, call for us to treat detainees humanely, *including those who are not legally entitled to such treatment*” (emphasis added).

No detainee can fall outside the prohibition on torture or cruel, inhuman or degrading treatment. To suggest otherwise, as this line does, points to a serious gap in a government’s understanding of international law and indicates that it views fundamental human rights as privileges that can be granted, and therefore taken away, by the state. The sentence in question was in your memorandum, dated 7 February 2002, classified as secret for 10 years, and distributed to the main office-holders in your administration.

At the 22 June 2004 press briefing at which a selection of administration documents was made public, White House Counsel Alberto Gonzales referred to your 7 February 2002 memorandum as the “most important” from among them. He repeated aloud to the assembled media your central holding – that the USA would treat detainees humanely, “including those who are not legally entitled to such treatment” – without any apparent recognition of the disturbing message contained in it. Earlier this month, Judge Gonzales’ responses to questions from Senators as your nominee for the post of Attorney General left a similarly troubling impression. Two examples will suffice:

- Senator Patrick Leahy: “*Do you think that other world leaders would have authority to authorize the torture of US citizens, if they deemed it necessary for their national security?*”

Judge Gonzales: “*Senator, I don’t know what laws other world leaders would be bound by... I’m not in a position to answer that question*”.

- Senator Richard Durbin: “*Can US personnel legally engage in torture under any circumstances?... Of course that would include military as well as intelligence personnel or others who are under the auspices of our government*”.

Judge Gonzales: “*I don’t believe so, but I’d want to get back to you on that and make sure I don’t provide a misleading answer*.”

As with your 7 February 2002 memorandum, Judge Gonzales’ inability to respond with an immediate and simple “no” to either of the above questions fuels concern that your administration’s commitment to the international prohibition on torture and other cruel, inhuman or degrading treatment remains less than absolute. Amnesty International urges you to withdraw the 7 February 2002 memorandum and to replace it with an unequivocal public directive against torture and other cruel, inhuman or degrading treatment. It must contain this full-spectrum phrase and not be limited to torture alone. The directive must apply to all officials, all agencies and all circumstances, including international detainee transfers. For example, as Amnesty International pointed out in its October 2004 report (see below), the existing memorandum only applies to the US Armed Forces – it did not include the CIA or those working with them, and omitted any reference to persons “rendered” to states that use torture for interrogation. In his just-released written responses to questions from Senators at his nomination hearing, Judge Gonzales has reportedly confirmed that officers of the CIA and other non-military personnel are outside the bounds of your 7 February 2002 memorandum.

Your administration recently replaced the now notorious 1 August 2002 memorandum on torture from the Justice Department to the White House Counsel. This had reportedly been drafted following a request by the CIA for legal protections for its interrogators engaged in the “war on terror”. Its contents were shocking, and presumably would still represent the administration’s position if it had not been forced to reassess it by the furore that accompanied its leaking and subsequent official release. The 1 August 2002 memorandum drew, *inter alia*, the following three erroneous conclusions:

- that interrogators could cause a great deal of pain before crossing the threshold to torture. Specifically, it suggested that torture would only occur if the pain caused rose to the level “that would ordinarily be associated with a sufficiently serious physical condition or injury such as death, organ failure, or serious impairment of bodily functions”;
- that even though US law makes it a criminal offence for anyone in an official position to commit or attempt to commit torture against a *detainee* outside the USA, and even though the USA has ratified treaties prohibiting torture, the US President’s authority as Commander-in-Chief could override these laws;
- even if interrogators were prosecuted for torture, there were defences available to them by which they could escape criminal liability, such as “necessity” or “self-defence”.

At his nomination hearing earlier this month, the White House Counsel stated that the 1 August 2002 memorandum “represented the position of the executive branch at the time it was issued”, and presumably this remained the case for the next two years.

The revised version of the 1 August 2002 memorandum, dated 30 December 2004, is undeniably an improvement on its infamous predecessor, and Amnesty International broadly welcomes it as far as it goes. It nevertheless leaves a number of questions unanswered. For example, although it says that it “supersedes the August 2002 Memorandum in its entirety”, it sidesteps the question of the President’s Commander-in-Chief power to authorize torture and immunize a US agent from criminal liability for torture. The new memorandum claims that an analysis of this issue is “unnecessary” as you have directed that US personnel will not engage in torture. The 30 December 2004 memorandum gives as an example of this “unequivocal directive” your June 2004 statement against torture quoted at the beginning of this letter. Yet as already pointed out, you made a similarly unequivocal statement asserting the USA’s leadership of the struggle against torture in June 2003, at a time when the then still secret August 2002 memorandum presumably “represented the position of the executive branch”. To coin a phrase, one is either against torture or, *de facto*, one is for it. One cannot have it one way in public and one way in private. Your statements against torture and ill-treatment must be unambiguous, consistent, and matched by actions.

In any event, the spirit of the August 2002 memorandum lives on. Much of it is repeated in the April 2003 final report of the Pentagon’s Working Group on Detainee Interrogations in the Global War on Terrorism. For example, the latter states that “[i]n order to respect the President’s inherent constitutional authority to manage a military campaign, [the US law prohibiting torture]... must be construed as inapplicable to interrogations undertaken pursuant to his Commander-in-Chief authority”. The Working Group report is believed to remain in force, and its recommendations were adopted by Secretary of Defense Rumsfeld, whose memorandum of 16 April 2003 does not rule out any interrogation method that goes beyond those promoted in the report, as long as he authorizes it personally on a case-by-case basis. Amnesty International urges you to ensure that the Working Group report is also withdrawn.

Of course, the withdrawal of the August 2002 memorandum does not delete it or its effects from history. It was in existence for some two years, during which time US forces allegedly engaged in torture or ill-treatment. In his statement to the Senate Armed Services Committee in September 2004, Dr Harold Brown, one of the members of the Independent Panel to Review Department of Defense Detention Operations, said that the impact of the August 2002 memorandum on the “atmosphere of permissiveness in the field” was “difficult to assess”. Certainly, detainees in US custody are alleged to have been subjected to what the memorandum promoted as the “significant range of acts that though they might constitute cruel, inhuman or degrading treatment or punishment, fail to rise to the level of torture”. These include stress positions, hooding, excessive tightening of handcuffs, subjection to noise, and sleep deprivation. Cruel, inhuman or degrading treatment is prohibited under international law.

Reports that late last year the White House pressed Congressional leaders to drop a provision from a Senate bill restricting the use of extreme interrogation techniques by US intelligence agents is cause for concern. In a letter to members of Congress in October, national security adviser Condoleezza Rice had reportedly opposed the measure on the grounds that it “provides legal protections to foreign prisoners to which they are not now entitled under applicable law and policy”. On 13 January, your spokesperson, Scott McClellan, explained that the White House “did not view the provision as necessary because there are already laws on the books to address these issues.” Yet, in his written responses to Senators, the White House Counsel has reportedly said that the Congressional ban on cruel or inhumane treatment has a “limited reach” and does not apply to “aliens overseas”.

Again, what is needed is an unequivocal directive, free of any ambiguity and carrying legal force, holding that no US government agent anywhere, including members of the administration, the military, the CIA, or any private contractor, may authorize, condone, or engage in torture or other cruel, inhuman or degrading treatment. It must be made clear that there exists no executive power that can override this, and no circumstances in which torture will be countenanced. This must then be followed up by action.

Amnesty International has suggested a framework for action for the USA in a 200-page report, *USA – Human Dignity Denied – Torture and accountability in the ‘war on terror’*.¹ In the report, Amnesty International makes more than 60 recommendations structured around the organization’s 12-Point Program for the Prevention of Torture by Agents of the State. A compilation of these recommendations is attached to this appeal. Mr President, Amnesty International urges you to give them serious consideration.

Investigation and prosecution are two basic components that a country committed to eradicating torture must follow. It has recently been announced that the Justice Department’s Inspector General will investigate allegations raised by FBI agents of the military’s use of torture and ill-treatment against detainees in Guantánamo Bay and Iraq. While Amnesty International welcomes this development, it does not believe that this and the other investigations and reviews initiated and conducted will be enough. They have offered or will

¹ Available at [http://web.amnesty.org/library/pdf/AMR511452004ENGLISH/\\$File/AMR5114504.pdf](http://web.amnesty.org/library/pdf/AMR511452004ENGLISH/$File/AMR5114504.pdf)

offer only a series of snapshots, not the overall picture. Many questions remain unanswered: For example:

- None of the investigations have had the power or the independence to be able to investigate into the highest echelons of government, including the Office of the Secretary of Defense and the White House.
- Alleged secret transfers of detainees between the USA and countries with poor records of torture have not formed part of the investigations.
- The activities of the Central Intelligence Agency remain shrouded in secrecy.
- The extent of the role of military doctors in abuses remains unclear but has already raised serious questions of professional ethics.
- Numerous interrogation techniques which violate the USA's international obligations, but which have nonetheless been authorized, have not been denounced by the military reviews, let alone by the administration itself.

The United Nations Principles for the investigation of torture and other cruel, inhuman or degrading treatment, adopted by the General Assembly in 2000, state:

“In cases in which the established investigative procedures are inadequate because of insufficient expertise or suspected bias, or because of the apparent existence of a pattern of abuse or for other substantial reasons, States shall ensure that investigations are undertaken through an independent commission of inquiry or similar procedure. Members of such a commission shall be chosen for their recognized impartiality, competence and independence as individuals. In particular, they shall be independent of any suspected perpetrators and the institutions or agencies they may serve”.

Since 19 May 2004, Amnesty International has been calling for an impartial and independent commission of inquiry to be set up by the US Congress to conduct a thorough investigation into the USA's “war on terror” detention policies and practices worldwide. Such a commission, composed of credible experts, could be appointed by Congress, but must be independent of government. Such a commission should consist of credible independent experts, have international expert input, and have subpoena powers and access to all levels of government, all agencies, and all documents whether classified or unclassified. Amnesty International urges you to support the establishment of such a commission, and to cooperate fully with it when it is established.

Your administration has chosen to release only selected documentation, and those documents have only been released reluctantly, either under court order or after unauthorized leaks into the public domain embarrassed officials into action. The degree of public scepticism that has inevitably been generated by this secrecy and lack of transparency is one more reason why a full independent commission of inquiry is required to get to clarify what has occurred and on whose authorization, and to show the world that the USA is serious about its human rights commitments.

Along with the rule of law, another of the “non-negotiable demands of human dignity” to which you have made repeated reference is “limits on the absolute power of the state”. Yet, more than six months after the US Supreme Court ruled that the federal courts have jurisdiction over the detainees held in Guantánamo, your administration continues to argue for any review of their detentions to be kept as far from a judicial process as possible. Hundreds of detainees remain without access to lawyers. Human rights organizations are still denied access. Precisely what interrogation practices and policies remain in force in Guantánamo or elsewhere is unknown. Secret and incommunicado detentions are continuing. Yet full judicial review, as well as access to lawyers and independent human rights monitors, are basic safeguards against arbitrary detention, torture and “disappearance”. The USA’s continuing penchant for secrecy in the field of detentions betray a lack of genuine commitment to its international obligations on human rights and the rule of law.

Amnesty International has spoken to many relatives of detainees who themselves are in deep distress from the lack of transparency and information about their loved ones. In November 2004, for example, the sister and brother of Kuwaiti Guantánamo detainee Abdullah Al Kandari told the organization of how their parents “are not the same people they were three years ago” because of losing their son to the black hole of Guantánamo. Earlier in the year, the brother of Yemeni detainee Jamal Mar’i related how his mother has developed high blood pressure and sinks into bouts of depression from the strain of not knowing what is happening to the son she has not seen for more than three years. In other contexts, the suffering of the relatives of the “disappeared” has been found by the UN Human Rights Committee to amount to torture or cruel, inhuman or degrading treatment. Similar cruelty is inflicted upon the relatives of people held in indefinite virtual incommunicado detention without charge or trial. It is notable that numerous relatives of the Guantánamo detainees have referred to their loved one as having disappeared.

Khalid Al-Odah, father of Kuwaiti Guantánamo detainee Fawzi Al-Odah has appealed to you “from father to father”. “It’s almost three years now we have been suffering and living in misery”, Khalid Al-Odah says, and pleads for you to ensure justice for his son.² Again, Amnesty International recalls the promise you made in your first inaugural speech to be a president who would speak for “greater justice and compassion” and urges you at this time of your re-inauguration and beyond to consider the distress of the families of detainees held without charge or trial by the USA.

Amnesty International believes that the USA’s detention and interrogation policies in the “war on terror” have flouted hard-won principles of human rights. Individual detainees and their families have suffered, the rule of law has suffered, and the reputation of your country has suffered. The USA’s policy and practice have set a bad example to those governments looking for justification to employ their own repressive conduct.

Mr President, Amnesty International urges you to make the eradication of torture and ill-treatment by US agents, and the USA’s full compliance with international law and standards for the treatment and trial of detainees, a hallmark of your second term in office.

² Interview with Khalid Al-Odah is available at <http://news.amnesty.org/index/ENGAMR510012005>

**Amnesty International's recommendations to the US
authorities based on the organization's 12-Point Program
for the Prevention of Torture by Agents of the State**

1. Condemn torture and cruel, inhuman or degrading treatment

The highest authorities of every country should demonstrate their total opposition to torture and other cruel, inhuman or degrading treatment or punishment. They should condemn torture and ill-treatment unreservedly whenever it occurs. They should make clear to all members of the police, military and other security forces that torture and ill-treatment will never be tolerated.

The US authorities should:

- Provide a genuine, unequivocal and continuing public commitment to oppose torture and cruel, inhuman or degrading treatment under any circumstances, regardless of where it takes place, and take every possible measure to ensure that all agencies of government and US allies fully comply with this prohibition;
- Review all government policies and procedures relating to detention and interrogation to ensure that they adhere strictly to international human rights and humanitarian law and standards, and publicly disown those which do not;
- Make clear to all members of the military and all other government agencies, as well as US allies, that torture or cruel, inhuman or degrading treatment will not be tolerated under any circumstances;
- Commit to a program of public education on the international prohibition of torture and ill-treatment, including challenging any public discourse that seeks to promote tolerance of torture or cruel, inhuman or degrading treatment.

2. Ensure access to prisoners

Torture and other cruel, inhuman or degrading treatment often take place while prisoners are held incommunicado — unable to contact people outside who could help them or find out what is happening to them. The practice of incommunicado detention should be ended. Governments should ensure that all prisoners are brought before an independent judicial authority without delay after being taken into custody. Prisoners should have access to relatives, lawyers and doctors without delay and regularly thereafter.

The US authorities should:

- End the practice of incommunicado detention;

- Grant the International Committee of the Red Cross full access to all detainees according to the organization's mandate;
- Grant all detainees access to legal counsel, relatives, independent doctors, and to consular representatives, without delay and regularly thereafter;
- In battlefield situations, ensure where possible that interrogations are observed by at least one military lawyer with full knowledge of international law and standards as they pertain to the treatment of detainees;
- Grant all detainees access to the courts to be able to challenge the lawfulness of their detention. Presume detainees captured on the battlefield during international conflicts to be prisoners of war unless and until a competent tribunal determines otherwise;
- Reject any measures that narrow or curtail the effect or scope of the *Rasul v. Bush* ruling on the right to judicial review of detainees held in Guantánamo or elsewhere, and facilitate detainees' access to legal counsel for the purpose of judicial review.

3. No secret detention

In some countries torture takes place in secret locations, often after the victims are made to "disappear". Governments should ensure that prisoners are held only in officially recognized places of detention and that accurate information about their arrest and whereabouts is made available immediately to relatives, lawyers and the courts. Effective judicial remedies should be available at all times to enable relatives and lawyers to find out immediately where a prisoner is held and under what authority and to ensure the prisoner's safety.

The US authorities should:

- Clarify the fate and whereabouts of those 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 International Committee of the Red Cross are known to have access, and provide assurances of their well-being. These detainees include but are not limited to those named in the 9/11 Commission Report and in this Amnesty International report as having been in custody at some time in undisclosed locations;
- End immediately the practice of secret detention wherever it is occurring, and under whichever agency. Hold detainees only in officially recognized places of detention;
- Not collude with other governments in the practice of "disappearances" or secret detentions, and expose such abuses where the USA becomes aware of them;
- Maintain an accurate and detailed register of all detainees at every detention facility operated by the US, in accordance with international law and standards. This register should be updated on a daily basis, and made available for inspection by, at a minimum, the International Committee of the Red Cross, and the detainees' relatives and lawyers or other persons of confidence;

- Make public and regularly update the precise numbers of detainees in US custody specifying the agency under which each person is held, their identity, their nationality and arrest date, and place of detention;
- Either charge and bring to trial, in full accordance with international law and standards and without recourse to the death penalty, all detainees held in US custody in undisclosed locations, or else release them;
- Comply without delay with Freedom of Information Act requests, and related court orders, aimed at clarifying the fate and whereabouts of such detainees;
- Make public and revoke any measures or directives that have been authorized by the President or any other official that could be interpreted as authorizing “disappearances”, torture or cruel, inhuman or degrading treatment, or extrajudicial executions.

4. Provide safeguards during detention and interrogation

All prisoners should be immediately informed of their rights. These include the right to lodge complaints about their treatment and to have a judge rule without delay on the lawfulness of their detention. Judges should investigate any evidence of torture and order release if the detention is unlawful. A lawyer should be present during interrogations. Governments should ensure that conditions of detention conform to international standards for the treatment of prisoners and take into account the needs of members of particularly vulnerable groups. The authorities responsible for detention should be separate from those in charge of interrogation. There should be regular, independent, unannounced and unrestricted visits of inspection to all places of detention.

The US authorities should:

- Immediately inform anyone taken into US custody of his or her rights, including the right not to be subjected to any form of torture or cruel, inhuman or degrading treatment or punishment; their right to challenge the lawfulness of their detention in a court of law; their right to access to relatives and legal counsel, and their consular rights if a foreign national;
- Ensure at all times a clear delineation between powers of detention and interrogation;
- Keep under systematic review interrogation rules, instructions, methods and practices, as well as arrangements for the custody and treatment of anyone in US custody, with a view to preventing any cases of torture or cruel, inhuman or degrading treatment;
- Ensure that conditions of detention strictly comply with international law and standards;
- Prohibit the use of isolation, hooding, stripping, dogs, stress positions, sensory deprivation, feigned suffocation, death threats, use of cold water or weather, sleep deprivation and any other forms of torture, or cruel, inhuman or degrading treatment as interrogation techniques;

- Bring to trial in accordance with international fair trial standards all detainees held in Guantánamo, or release them;
- Ensure compliance with all aspects of international law and standards relating to child detainees;
- Ensure compliance with all international law and standards relating to women detainees;
- Invite all relevant human rights monitoring mechanisms, especially the UN Special Rapporteur on Torture, the Committee against Torture, the Working Group on Enforced or Involuntary Disappearances (1980) and the Working Group on Arbitrary detention to visit all places of detention, and grant them unlimited access to these places and to detainees;
- Grant access to national and international human rights organizations, including Amnesty International, to all places of detention and all detainees, regardless of where they are held.

5. Prohibit torture in law

Governments should adopt laws for the prohibition and prevention of torture incorporating the main elements of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture) and other relevant international standards. All judicial and administrative corporal punishments should be abolished. The prohibition of torture and the essential safeguards for its prevention must not be suspended under any circumstances, including states of war or other public emergency.

The US authorities should:

- Enact a federal crime of torture, as called for by the Committee against Torture, that also defines the infliction of cruel, inhuman or degrading treatment as a crime, wherever it occurs;
- Amend the Uniform Code of Military Justice to criminalize expressly the crime of torture, as well as a crime of infliction of cruel, inhuman or degrading treatment or punishment, wherever it occurs, in line with the Convention against Torture and other international standards;
- Ensure that all legislation criminalizing torture defines torture at least as broadly as the UN Convention against Torture;
- Ensure that legislation criminalizing torture and the infliction of cruel, inhuman or degrading treatment covers all persons, regardless of official status or nationality, wherever this conduct occurred, and that it does not allow any exceptional circumstances whatsoever to be invoked as justification for such conduct, or allow the authorization of torture or ill-treatment by any superior officer or public official, including the President.

6. Investigate

All complaints and reports of torture should be promptly, impartially and effectively investigated by a body independent of the alleged perpetrators. The methods and findings of such investigations should be made public. Officials suspected of committing torture should be suspended from active duty during the investigation. Complainants, witnesses and others at risk should be protected from intimidation and reprisals.

US Congress should:

- Establish an independent commission of inquiry into all aspects of the USA's "war on terror" detention and interrogation policies and practices. Such a commission should consist of credible independent experts, have international expert input, and have subpoena powers and access to all levels of government, all agencies, and all documents whether classified or unclassified.

The US authorities should:

- Ensure that all allegations of torture or cruel, inhuman or degrading treatment involving US personnel, whether members of the armed forces, other government agencies, medical personnel, private contractors or interpreters, are subject to prompt, thorough, independent and impartial civilian investigation in strict conformity with international law and standards concerning investigations of human rights violations;
- Ensure that such investigations include cases in which the USA previously had custody of the detainee, but transferred him or her to the custody of another country, or to other forces within the same country, subsequent to which allegations of torture or ill-treatment were made;
- Ensure that the investigative approach at a minimum complies with the UN Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- Ensure that the investigation of deaths in custody at a minimum comply with the UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, including the provision for adequate autopsies in all such cases;
- In view of evidence that certain persons held in US custody have been subjected to "disappearance", the US authorities should initiate prompt, thorough and impartial investigations into the allegations by a competent and independent state authority, as provided under Article 13 of the UN Declaration on the Protection of All Persons from Enforced Disappearance.

7. Prosecute

Those responsible for torture must be brought to justice. This principle should apply wherever alleged torturers happen to be, whatever their nationality or position, regardless of where the crime was committed and the nationality of the victims, and no matter how much time has

elapsed since the commission of the crime. Governments must exercise universal jurisdiction over alleged torturers or extradite them, and cooperate with each other in such criminal proceedings. Trials must be fair. An order from a superior officer must never be accepted as a justification for torture.

The US authorities should:

- Publicly reject all arguments, including those contained in classified or unclassified government documents, promoting impunity for anyone suspected of torture and cruel, inhuman or degrading treatment, including the ordering of such acts;
- Bring to trial all individuals – whether they be members of the administration, the armed forces, intelligence services and other government agencies, medical personnel, private contractors or interpreters – against whom there is evidence of having authorized, condoned or committed torture or other cruel, inhuman or degrading treatment;
- Any person alleged to have perpetrated an act of “disappearance” should, when the facts disclosed by an official investigation so warrant, be brought before the competent civil authorities for prosecution and trial, in accordance with Article 14 of the UN Declaration on the Protection of All Persons from Enforced Disappearance;
- Ensure that all trials for alleged perpetrators comply with international fair trial standards, and do not result in imposition of the death penalty.

8. No use of statements extracted under torture

Governments should ensure that statements and other evidence obtained through torture may not be invoked in any proceedings, except against a person accused of torture.

The US authorities should:

- Ensure that no statement coerced as a result of torture or other cruel, inhuman or degrading treatment, including long-term indefinite detention without charge or trial, or any other information or evidence obtained directly or indirectly as the result of torture or cruel, inhuman or degrading treatment, regardless of who was responsible for such acts, is admitted as evidence against any defendant, except the perpetrator of the human rights violation in question;
- Revoke the Military Order on the Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism, and abandon trials by military commission;
- Expose and reject any use of coerced evidence obtained by other governments from people held in their own or US custody;
- Refrain from transferring any coerced evidence for the use of other governments.

9. Provide effective training

It should be made clear during the training of all officials involved in the custody, interrogation or medical care of prisoners that torture is a criminal act. Officials should be instructed that they have the right and duty to refuse to obey any order to torture.

The US authorities should:

- Ensure that all personnel involved in detention and interrogation, including all members of the armed forces or other government agencies, private contractors, medical personnel and interpreters, receive full training, with input from international experts, on the international prohibition of torture and other cruel, inhuman or degrading treatment or punishment, and their obligation to expose it;
- Ensure that all members of the armed forces and members of other government agencies, including the CIA, private contractors, medical personnel and interpreters, receive full training in the scope and meaning of the Geneva Conventions and their Additional Protocols, as well as international human rights law and standards, with input from international experts;
- Ensure that full training be similarly provided on international human rights law and standards regarding the treatment of persons deprived of their liberty, including the prohibition on “disappearances”, with input from international experts;
- Ensure that all military and other agency personnel, as well as medical personnel and private contractors, receive cultural awareness training appropriate to whatever theatre of operation they may be deployed into.

10. Provide reparation

Victims of torture and their dependants should be entitled to obtain prompt reparation from the state including restitution, fair and adequate financial compensation and appropriate medical care and rehabilitation.

The US authorities should:

- Ensure that anyone who has suffered torture or ill-treatment while in US custody has access to, and the means to obtain, full reparation including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition, wherever they may reside;
- Ensure that all those who have been subject to unlawful arrest by the USA receive full compensation.

11. Ratify international treaties

All governments should ratify without reservations international treaties containing safeguards against torture, including the UN Convention against Torture with declarations providing for individual and inter-state complaints. Governments should comply with the recommendations of international bodies and experts on the prevention of torture.

The US authorities should:

- Make a public commitment to fully adhere to international human rights and humanitarian law and standards – treaties, other instruments, and customary law – and respect the decisions and recommendations of international and regional human rights bodies;
- Make a public commitment to fully adhere to the Geneva Conventions, and to respecting the advice and recommendations of the International Committee of the Red Cross;
- Ratify Additional Protocols I and II to the Geneva Conventions;
- Withdraw all conditions attached to the USA’s ratification of the UN Convention against Torture;
- Provide the USA’s overdue second report to the Committee against Torture, as requested by the Committee;
- Withdraw all limiting conditions attached to the USA’s ratification of the International Covenant on Civil and Political Rights;
- Provide the USA’s overdue reports to the Human Rights Committee;
- Ratify the Optional Protocol to the UN Convention against Torture;
- Ratify the UN Convention on the Rights of the Child;
- Ratify the American Convention on Human Rights;
- Ratify the Inter-American Convention on Forced Disappearance of Persons without any reservations and implement it by making enforced disappearances a crime under US law over which US courts have jurisdiction wherever committed by anyone.
- Ratify the Rome Statute of the International Criminal Court.

12. Exercise international responsibility

Governments should use all available channels to intercede with the governments of countries where torture is reported. They should ensure that transfers of training and equipment for military, security or police use do not facilitate torture. Governments must not forcibly return a person to a country where he or she risks being tortured.

The US authorities should:

- Withdraw the USA’s understanding to Article 3 of the UN Convention against Torture, and publicly state the USA’s commitment to the principle of *non-refoulement*, and ensure that no legislation undermines this protection in any way;
- Cease the practice of “renditions” that bypass human rights protections; ensure that all transfers of detainees between the USA and other countries fully comply with international human rights law.