

UNITED STATES OF AMERICA

Guantánamo and beyond: The continuing pursuit of unchecked executive power - Executive Summary¹

13 May 2005

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I used to think that America had respect for human rights when it came to prison. Mohammed Nechle, extrajudicially removed from Bosnia and Herzegovina by US agents²

My husband is a tall man with black hair and black eyes...He is now imprisoned in Guantánamo. We don't know why.

Wife of Mohammed Nechle, Algerian national, 2004³

The pursuit of unfettered executive power	1
Appendix 1: Some deaths in US custody in Afghanistan and Iraq	11
Appendix 2: Some additional extracts of CSRT testimony	17
Appendix 3: Alleged detention and interrogation practices.....	23
Appendix 4: Recommendations: Preventing torture & ill-treatment.....	26

The pursuit of unfettered executive power

It seems rather contrary to an idea of a Constitution with three branches that the executive would be free to do whatever they want, whatever they want without a check.

US Supreme Court Justice Stephen Breyer, 20 April 2004⁴

In late December 2001, a memorandum was sent from the United States Justice Department to the Department of Defense.⁵ It advised the Pentagon that no US District Court could “properly entertain” appeals from “enemy aliens” detained at the US Naval Base in Guantánamo Bay, Cuba. Because Cuba has “ultimate sovereignty” over Guantánamo, the memorandum asserted, US Supreme Court jurisprudence meant that a foreign national in

¹ This Executive Summary summarizes the full report, *USA: Guantánamo and beyond: The continuing pursuit of unchecked executive power*, AMR 51/063/2005, 13 May 2005, <http://web.amnesty.org/library/Index/ENGAMR510632005>

² Mohammed Nechle, 19 October 2004. *Nechle v. Bush*. Unclassified records of Combatant Status Review Tribunal, In the US District Court for the District of Columbia.

³ *Ibid.* The name of the detainee’s wife is redacted.

⁴ *Rasul v. Bush*, oral argument, US Supreme Court, 20 April 2004.

⁵ Memorandum for William J. Haynes, II, General Counsel, Department of Defense, *Re: Possible Habeas Jurisdiction over Aliens Held in Guantánamo Bay, Cuba*. From Patrick F. Philbin, Deputy Assistant Attorney General and John C. Yoo, Deputy Assistant Attorney General. 28 December 2001. <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB127/01.12.28.pdf>.

custody in the naval base should not have access to the US courts. The first “war on terror” detainees were transferred to the base two weeks later. The memorandum remained secret until it was leaked to the media in mid-2004 in the wake of the Abu Ghraib torture scandal.

Not long after this leak, on 28 June 2004, the US Supreme Court ruled, in *Rasul v. Bush*, that the federal courts in fact do have jurisdiction to hear appeals from foreign nationals detained in Guantánamo Bay.⁶ Yet almost a year later, none of the more than 500 detainees of some 35 nationalities still held in the base – believed to include at least three people, from Canada, Chad and Saudi Arabia, who were minors at the time of being taken into custody – has had the lawfulness of his detention judicially reviewed. The US administration continues to argue in the courts to block any judicial review of the detentions or to keep any such review as limited as possible and as far from a judicial process as possible. Its actions are ensuring that the detainees are kept in their legal limbo, denied a right that serves as a basic safeguard against arbitrary detention, “disappearance” and torture or other cruel, inhuman or degrading treatment. Amnesty International believes that all those currently held in Guantánamo are arbitrarily and unlawfully detained.

The administration responded to the *Rasul* decision by setting up Combatant Status Review Tribunals (CSRTs), panels of three military officers, to determine if each detainee was an “enemy combatant” as labelled. The detainee has no access to secret evidence used against him in this process or to legal counsel to assist him. The CSRT, meanwhile, can draw on evidence extracted under torture or other ill-treatment in making its determinations. The CSRTs began in July 2004 and were completed for the current detainee population in January 2005, with the final decisions issued in late March 2005. In 93 per cent of the 558 cases, the CSRT affirmed the detainee’s “enemy combatant” status. Eighty-four per cent of the 38 cases where the detainee was found not to be an “enemy combatant” were decided later than 31 January 2005, when a federal judge, District Judge Joyce Hens Green, found that the CSRT process was unlawful, but before the government’s appeal against her ruling was heard (see Appendix 2).

At the end of April 2005, three years and three months after “war on terror” detentions in Guantánamo Bay began, the government filed a brief in the US Court of Appeals arguing that Judge Green’s opinion should be overturned and that the purely executive CSRT process should be accepted as a substitute for judicial review. The government emphasised the CSRT’s “findings in favor of 38 detainees” as a sign of a constitutionally fair system. The brief did not point out – or explain if it was pure coincidence – that all but six of these 38 cases had been decided after Judge Green’s ruling. In any event, the appeal brief shows an administration in unapologetic mood, in continuing pursuit of unfettered executive authority under the President’s war powers as Commander-in-Chief of the Armed Forces, and maintaining a disregard for international law and standards. Among the arguments in the legal brief are that:

⁶ *Rasul v. Bush*, 000 U.S. 03-334, decided 28 June 2004.

- The US Constitution's Fifth Amendment prohibition on the deprivation of liberty without due process of law "is inapplicable to aliens captured abroad and held at Guantánamo Bay." This, the government argues, repeating its pre-*Rasul* position, is because the "United States is not sovereign over Guantánamo Bay". In addition, "if the courts were to second-guess an Executive-Branch determination regarding who is sovereign over a particular foreign territory, they would not only undermine the President's lead role in foreign policy, but also compromise the very capacity of the President to speak for the Nation with one voice in dealing with other governments."
- Even if the Fifth Amendment did apply to foreign nationals held at Guantánamo, the brief argues, the CSRT procedures would exceed whatever process was due in the case of these detainees. The need for deference to the executive on the question of the withholding of classified information and legal counsel from the detainees is "greatly magnified here, where the issue is not the administration of domestic prisons, but the Executive Branch carrying out incidents of its war-making function."
- According to the administration, "the determination of who are enemy combatants is a quintessentially military judgment entrusted primarily to the Executive Branch." The executive, the executive argues, "has a unique institutional capacity to determine enemy combatant status and a unique constitutional authority to prosecute armed conflict abroad and to protect the Nation from further terrorist attacks. By contrast, the judiciary lacks the institutional competence, experience, or accountability to make such military judgments at the core of the war-making powers."
- On the question of the Geneva Conventions, the brief argues, Judge Green's contention that Taliban detainees picked up in Afghanistan should have been presumed to have prisoner of war status is "inconsistent with the deference owed to the President as Commander-in-Chief" who had unilaterally decided otherwise.⁷

This brief is perhaps an unsurprising response from an administration whose outgoing Attorney General decried what he characterized as "intrusive judicial oversight and second-guessing of presidential determinations";⁸ whose Justice Department formulated the position, accepted by the White House Counsel, that the President – who apparently believes that there are people who are "not legally entitled" to humane treatment⁹ – could override the national and international prohibition on torture;¹⁰ and whose Secretary of Defense has authorized

⁷ *Al Odah et al. v. USA et al.* Opening brief for the United States. In the US Court of Appeals for the District of Columbia Circuit, 27 April 2005 (internal quotation marks omitted).

⁸ See, for example, *Ashcroft criticizes judicial oversight*, Associated Press, 13 November 2004.

⁹ President George W. Bush. Subject: Humane treatment of al Qaeda and Taliban detainees. The White House, 7 February 2002. <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB127/02.02.07.pdf>.

¹⁰ Memorandum for Alberto R. Gonzales, Counsel to the President. Re: Standards of Conduct for Interrogation under 18 U.S.C. §§ 2340-2340A., Signed by Assistant Attorney General Jay S. Bybee, Office of Legal Counsel, US Department of Justice, 1 August 2002, <http://www.washingtonpost.com/wp-srv/nation/documents/dojinterrogationmemo20020801.pdf>.

4 **Guantánamo and beyond: The continuing pursuit of unchecked executive power - Executive Summary**

interrogation techniques that violate international law and standards.¹¹ This is an administration that has sought unchecked power throughout the “war on terror” and shown a chilling disregard for international law. The USA’s policies and practices have led to serious human rights violations and have set a dangerous precedent internationally.

USA’s “war on terror” detainees, April 2005 (approximate totals/estimates) ¹²	
USA: Naval Brig, Charleston, South Carolina	2 “enemy combatants”
Cuba: Guantánamo Bay naval base	520 (234 releases/transfers)
Afghanistan: Bagram air base	300
Afghanistan: Kandahar air base	250
Afghanistan: other US facilities (forward operating bases)	Unknown: estimated at scores of detainees
Iraq: Camp Bucca	6,300
Iraq: Abu Ghraib prison	3,500
Iraq: Camp Cropper	110
Iraq: Other US facilities	1,300
Worldwide: CIA facilities, undisclosed locations	Unknown: estimated at 40 detainees
Worldwide: In custody of other governments at behest of USA	Unknown: estimated at several thousand detainees
Worldwide: Secret transfers of detainees to third countries	Unknown: estimated at 100 to 150 detainees

¹¹ Action memo. For Secretary of Defense, from William J. Haynes, General Counsel. Counter-Resistance Techniques. 27 November 2002. Approved by Secretary of Defense Donald Rumsfeld, 2 December 2002. <http://www.defenselink.mil/news/Jun2004/d20040622doc5.pdf>.

¹² Sources: *US to expand prison facilities in Iraq*. Washington Post, 9 May 2005; *Detainee transfer announced*, Department of Defense News Release, 26 April 2005; *ICRC operational update*. International Committee of the Red Cross, 29 March 2005; Department of Defense Briefing on Detention Operations and Interrogation Techniques, US Department of Defense, 10 March 2005; *Rule change lets CIA freely send suspects abroad to jails*. New York Times, 6 March 2005.

Foreign nationals held outside the USA and charged for trial	4
Trials of foreign nationals held in US custody outside the USA	0
Total number of detainees held outside the USA by the US during “war on terror”	70,000

Amnesty International’s report points to an overarching war mentality adopted by the US administration since 11 September 2001 which has led it to manipulate or jettison basic human rights protections for detainees, including instances of the USA refusing to

recognize that United Nations human rights experts have the mandate to raise concerns about US actions in the “war on terror”. For example, UN Special Rapporteurs have raised allegations of extrajudicial executions by US forces, only to have the US reject such concerns out of hand. In April 2005, the mandate of the UN Independent Expert on the Situation of Human Rights in Afghanistan was not renewed. This is alleged to have been the result of US government pressure. The former postholder has said that he believes the non-renewal of his mandate was due to the USA’s dislike of his insistence that he should be allowed to visit detainees in US custody in Afghanistan, particularly in light of allegations of torture and ill-treatment of such detainees.

Over a year after the Abu Ghraib torture scandal broke, and as evidence of torture and other cruel, inhuman or degrading treatment by US forces in the “war on terror” continues to mount, not one US agent has been charged with “war crimes” or “torture” under US law. In over 70 per cent of announced official actions taken in response to substantiated allegations of abuse, the punishment has been non-judicial or administrative. While a small number of mainly low-ranking soldiers have been subjected to courts-martial, members of the administration, who from the outset have claimed that the USA treats all detainees humanely and that any abuses have been the actions of a few aberrant soldiers, have remained free of independent investigation despite possible criminal responsibility in abuses. Congress has failed to initiate an independent commission of inquiry, as Amnesty International has sought. The current Attorney General, like his predecessor possibly involved in a conspiracy to immunize US agents from criminal liability for torture and war crimes under US law, has not appointed a special prosecutor to pursue this matter as Amnesty International and others have urged.

As the culture of impunity and military leniency grows, including in cases in which Afghan and Iraqi detainees have died as a result of abuses by US agents (see Appendix 1), the administration continues to seek to try members of the “enemy” for war crimes in front of military commissions – executive bodies, not independent or impartial courts. It has appealed a federal court ruling that the military commission procedures are unlawful because the defendant can be excluded from proceedings. Amnesty International reiterates its total opposition to the military commissions, which violate international fair trial standards in numerous ways.

Only foreign nationals can be tried by military commissions, violating the international rule that “all persons shall be equal before the courts and tribunals”.¹³ However, the administration is also violating fundamental human rights at home. A US “enemy combatant”, José Padilla, will soon enter his fourth year in untried executive detention on the US mainland. The administration has appealed a recent federal court ruling that he should be released. A court decision is awaited in the case of a Qatari national who remains in military custody in South Carolina nearly two years after he was removed from the ordinary criminal justice system by President Bush who designated him as an “enemy combatant”. Ali Saleh Kahlah al-Marri has now been detained for almost three and a half years, all in solitary confinement, raising serious concerns for his well-being and providing further evidence of the US administration’s willingness to violate human rights in the name of national security. Meanwhile, the administration is continuing to seek the execution of French national Zacarias Moussaoui, so far the only person charged in the USA in relation to the attacks of 11 September 2001.

Thousands of detainees remain in US custody in Iraq – a country which President Bush repeated on 12 April 2005 has become “a central front in the war on terror” since the US-led invasion in March 2003.¹⁴ Hundreds remain in US custody in Afghanistan, with some in Bagram air base having been detained without trial and virtually incommunicado for more than a year. The International Committee of the Red Cross (ICRC), the only international organization with access to some of the detainees in Afghanistan, reiterated on 29 March 2005 that it was “increasingly concerned by the fact that the US authorities have not resolved the question of their legal status and of the applicable legal framework”.¹⁵ In addition, the USA is holding an unknown number of detainees in secret incommunicado custody in unknown locations and unknown conditions in cases that may amount to “disappearance”. Evidence that the US authorities have “outsourced” torture via secret detainee transfers to other countries continues to come to light.

Now, as it faces possible further setbacks in the courts, the administration is said to be intending to outsource some of its Guantánamo detentions to other countries. In late March 2005, a federal court issued an order directing the government to give 30 days’ notice before transferring any one of 13 Yemeni detainees. Other judges have issued similar orders, but on 14 April 2005, a federal judge refused to issue such an order in the case of six Bahraini nationals, and a week later another judge did the same. Amnesty International’s report highlights the question of transfers from Guantánamo, and also describes the recent case of a US national held in Saudi Arabia, Ahmed Abu Ali. His is alleged to have been a case of an outsourced detention, during which he was allegedly subjected to torture and ill-treatment. It appears to have been only the threat of US court action forcing the administration to reveal information on the case that secured the detainee’s return to the USA. In the “war on terror”,

¹³ Article 14(1), International Covenant on Civil and Political Rights, ratified by the USA in 1992.

¹⁴ *President discusses war on terror*. Fort Hood, Texas. 12 April 2005.

¹⁵ ICRC operational update, 29 March 2005.

it seems, the USA is prepared to have countries it annually criticizes in its State Department human rights reports do its dirty work for it. The judiciary and the legislature must do all they can to assert a check on the executive.

On 6 May 2005, three and a half years late, the USA submitted its Second Periodic Report to the Committee against Torture, the expert body established by the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) to oversee implementation of that treaty. The USA's Initial Report to the Committee had been submitted in October 1999, with the Committee's findings and recommendations made in May 2000.¹⁶ On 21 May 2004, a few weeks after the Abu Ghraib scandal became public, the Committee had asked the USA to provide it with updated information on US detentions in Iraq as part of its Second Periodic Report. In an Annex to this report just filed, which covers the period up to 1 March 2005, the US government provides information on detentions in Iraq, Afghanistan and Guantánamo Bay, including the post-*Rasul* legal framework. The US administration prefaces this information with the following:

*“Since the Initial Report, with the attacks against the United States of September 11, 2001, global terrorism has fundamentally altered our world. In fighting terrorism, the US remains committed to respecting the rule of law, including the US Constitution, federal statutes, and international treaty obligations, including the Torture Convention.”*¹⁷

The USA's report makes the welcome assertion, using the words of Article 2 of the CAT, that the “United States is unequivocally opposed to the use and practice of torture. No circumstance whatsoever, including war, the threat of war, internal political instability, public emergency, or an order from a superior officer or public authority, may be invoked as a justification for or defense to committing torture. This is a longstanding commitment of the United States, repeatedly reaffirmed at the highest levels of the US Government”. This latter sentence serves as a reminder that words alone can never be enough and that torture must be condemned in deed as well as in word. For, at least between August 2002 and June 2004, a Justice Department memorandum to the White House narrowing the definition of torture, arguing that the President could authorize torture, suggesting defences for those accused of torture, and promoting acts that amount to cruel, inhuman or degrading treatment, represented the position of the US administration, albeit in secret. The USA's Second Periodic Report notes that “concerns have been generated” by the 1 August 2002 memorandum, which was withdrawn on 22 June 2004, two months after the Abu Ghraib torture evidence became public. The USA's report to the Committee against Torture notes that the 2002 memorandum was replaced in late December 2004. As Amnesty International points out in its report, the

¹⁶ UN Doc. A/55/44. See USA: A briefing for the UN Committee against Torture, AI Index: AMR 51/56/2000, 4 May 2000, <http://web.amnesty.org/library/Index/ENGAMR510562000>, and USA: A call to action by the UN Committee against Torture, AI Index: AMR 51/107/2000, 1 July 2000, <http://web.amnesty.org/library/Index/ENGAMR511072000>.

¹⁷ Second Periodic Report of the United States of America to the Committee against Torture, submitted, 6 May 2005. <http://www.state.gov/g/drl/rls/45738.htm>. The report had been due in November 2001.

replacement Justice Department memorandum, while undoubtedly an improvement on its now infamous predecessor, has left numerous concerns unanswered and left the door open to possible future abuses.

It is clear from the Second Periodic Report that the USA intends to adhere to its long-standing pick-and-choose approach to international law and standards. In its May 2000 recommendations, for example, the Committee against Torture had urged the USA to withdraw all the conditions it had attached to its ratification of CAT in 1994. This included the USA's reservation to Article 16 of the treaty which calls on the State Party to prevent cruel, inhuman or degrading treatment "in any territory under its jurisdiction". Upon ratification, the USA had said that would be bound by Article 16 only to the extent that it already was so bound under the US Constitution. In its 6 May 2005 submission to the Committee against Torture, the US administration stated that it would not withdraw this or any other conditions attached to its ratification of the CAT, as the Committee had requested, because "there have been no developments in the interim which have caused the United States to revise its view of the continuing validity and necessity of the[se] conditions".

However, there have been developments on this issue, with the USA's reservation to Article 16 being linked to abuses that have been authorized and alleged in the "war on terror", as Amnesty International pointed out in its report, *USA: Human dignity denied: Torture and accountability in the 'war on terror'*, issued in October 2004.¹⁸ Indeed, in January 2005, the then nominee for US Attorney General, Alberto Gonzales, wrote the following among his responses to a US Senator concerned about the nominee's possible responsibility for human rights violations in the "war on terror" and his earlier refusal to give an unequivocal answer to the question of whether or not it was legally permissible for US personnel to engage in cruel, inhuman or degrading treatment "that does not rise to the level of torture":

"[T]he only legal prohibition on cruel, inhuman or degrading treatment comes from the international legal obligation created by the CAT itself. The Senate's reservation, however, limited Article 16 to requiring the United States to prevent conduct already prohibited by the Fifth, Eighth, and Fourteenth Amendments. Those amendments, moreover, are themselves limited in application. The Fourteenth Amendment [right to equality before the law] does not apply to the federal government, but rather to the States. The Eighth Amendment [prohibition on cruel and unusual punishments] has long been held by the Supreme Court to apply solely to punishment imposed in the criminal justice system. Finally, the Supreme Court has squarely held that the Fifth Amendment [right to due process] does not provide rights for aliens unconnected to the United States who are overseas. Thus, as a direct result of the reservation the Senate attached to the CAT, the Department of Justice has concluded that under

¹⁸ See pages 170-172, *USA: Human dignity denied: Torture and accountability in the 'war on terror'*, AMR 51/145/2004, 27 October 2004, <http://web.amnesty.org/library/Index/ENGAMR511452004>.

*Article 16 there is no legal obligation under the CAT on cruel, inhuman or degrading treatment with respect to aliens overseas”.*¹⁹

The USA’s May 2005 submission to the Committee against Torture also paints a picture of the US judicial system reasserting itself over the detentions in Guantánamo. It notes that the *habeas corpus* petitions filed in federal court involve detainees from many countries, including Yemen, Saudi Arabia, Kuwait, Morocco, Algeria, Bahrain, Tunisia, Jordan, Sudan, Syria, Mauritania, China, Egypt, Libya, Palestine, Chad, Qatar, Kazakhstan, Tajikistan, Uganda, Iraq, Australia, Canada, Somalia, Turkey, Afghanistan, Pakistan and Ethiopia. It notes that the courts have access to the CSRT records from Guantánamo, that lawyers have been able to visit detainees in Guantánamo,²⁰ and that the courts “may address allegations of mistreatment that have arisen with respect to Guantanamo Bay.”

The picture the administration provides to the Committee is far from full, however. It does not portray the extent to which the government is resisting due process every step of the way. By seeking the narrowest possible interpretation of the *Rasul* decision, and by appealing every court ruling that goes against it, it is ensuring that the detainees remain in their legal vacuum. Although the government’s report to the Committee notes that about 55 *habeas corpus* petitions involving 153 detainees had been filed by 27 April 2005²¹, it did not explain that one reason why only about a third of those still held in Guantánamo had had petitions filed on their behalf was because the government has placed obstacles in the way of detainees finding lawyers to represent them and in the way of lawyers identifying the detainees who want representation. There is also evidence that Guantánamo interrogators have adopted ploys to undermine detainee/lawyer relationships in those cases where legal representation has been initiated.

On the question of the treatment of detainees, the USA’s report to the Committee paints a similarly one-sided picture. All “enemy combatants”, it claims, “get state-of-the-art medical and dental care”. Yet numerous detainees have alleged that the medical and dental care provided has been slow and on some occasions withheld as part of a punitive and coercive regime. The USA insists to the Committee that “detainees write to and receive mail from their families and friends”. Yet, throughout the detentions, there has been evidence that this system of communications has been slow, over-censored, and even manipulated by the authorities to punish or coerce detainees. US *habeas* lawyers for some Yemeni detainees in Guantánamo have recently revealed that their “clients report that mail from their relatives arrives months later, if at all, and is very heavily redacted. Often the only part that they can read is the greeting, conclusion, and signature... In December 2004, [Abd Al Malik Abd Al Wahab] reported that his last piece of mail he received had been five months ago – a letter that had taken ten months to reach him. [Fellow detainee] Jamal Mar’i receives one out of

¹⁹ Responses of Alberto R. Gonzales, Nominee to be Attorney General, to the written questions of Senator Dianne Feinstein. January 2005.

²⁰ As of late April 2005, according to the US submission to the Committee, only 74 out of more than 500 detainees, including some since released, had been seen by lawyers.

²¹ By 3 May 2005, this had risen to 168 detainees (not all nationalities known) named in 61 petitions.

every ten letters sent to him by his family. A recent letter from his seven-year-old daughter referred to many other letters that he never received.” The USA’s report to the Committee against Torture goes on to assert that “enemy combatants at Guantanamo may worship as desired and in accordance with their beliefs”. Amnesty International has detailed elsewhere that there is evidence that detainees have been subjected to religious intolerance by their captors, and to interrogation techniques that play on their particular religious sensitivities.²²

With illustrated cases, Amnesty International concludes that hypocrisy, an overarching war mentality, and a disregard for basic human rights principles and international legal obligations continue to mark the USA’s “war on terror”. Serious human rights violations, affecting thousands of detainees and their families, have been the result. The rule of law, and therefore, ultimately, security, is being undermined, as is any moral credibility the USA claims to have in seeking to advance human rights in the world. Indeed, the USA’s conduct threatens to legitimize repressive conduct by other governments. With this report, the latest in a series of papers on US conduct in the “war on terror”, Amnesty International continues to campaign for the USA to change course and bring its policies and practices into line with international laws and standards.

²² See, for example, pages 30-36, *USA: Human dignity denied*, *supra*, note 18.

Appendix 1: Some deaths in US custody in Afghanistan and Iraq

Detainee	Date of death	Location	Notes²³
Mohammad Sayari	28 August 2002	Near Lwara, Afghanistan	The detainee was shot repeatedly by soldiers when, they alleged, he lunged towards a weapon. However, army investigators found that there was probable cause to believe that five soldiers had been involved in a murder, and recommended their prosecution for conspiracy, murder, dereliction of duty and obstruction of justice. Commanders decided to take no action, however, on the grounds of insufficient evidence. A soldier received a letter of reprimand.
Name unknown	November 2002	Kabul, Afghanistan	An unidentified Afghan detainee died, reportedly of hypothermia, in a secret CIA facility, after being stripped, assaulted and left in cell overnight without blankets. The case is reported to be under investigation by CIA Inspector General. No charges yet filed.
Mullah Habibullah	4 December 2002	Bagram, Afghanistan	The autopsy revealed that the detainee had suffered blunt force trauma. Army investigators closed the investigation into the death in October 2004, recommending prosecution of 11 military police (MP) officers and four military intelligence (MI) officers for assault (see also case of Dilawar, below).
Dilawar	10 December 2002	Bagram, Afghanistan	The autopsy revealed that the detainee had suffered blunt force trauma. Army investigators closed the investigation into the death in October 2004, recommending prosecution of 20 MPs and seven MI officers, including on charges of assault, cruelty and maltreatment. In this and the above case, the Church review noted that medical personnel may have attempted to cover-up the abuse. By the end of March 2005, in this and the above case, charges had been laid against two military personnel.
Name unknown	January 2003	Wazi village, Afghanistan	During military operations in Wazi village, three detained Afghans were being questioned, when one of them attempted to stand up, reportedly because he did not understand the questions, and a US soldier shot him. Army investigators recommended prosecution of the soldier for murder and another for dereliction of duty for not

²³ This list is illustrative only. Sources: USA's Second Periodic Report to the Committee against Torture, submitted 6 May 2005, *supra*, note 17. *Marine involved in Mosque shooting will not face court martial*. US Marine Corps press release, 4 May 2005. *Prosecution hits snags at hearing on Iraqi killings*. New York Times, 28 April 2005. *Interrogator says US approved handling of detainee who died*. Washington Post, 13 April 2005. *Iraqi general beaten 2 days before death*. The Denver Post, 5 April 2005. *Army Criminal Investigators outline 27 confirmed or suspected detainee homicides for Operation Iraqi Freedom, Operation Enduring Freedom*. United States Army Criminal Investigation Command. 25 March 2005. Unclassified executive summary of review of Department of Defense interrogation operations, conducted by the Naval Inspector General, Vice Admiral Albert T. Church, III, 10 March 2005. *Prisoner deaths in custody*, Associated Press, 16 March 2005. *CIA avoids scrutiny of detainee treatment*. Washington Post, 3 March 2005. Various autopsy reports. Amnesty International, *USA: Human dignity denied*, *supra*, note 18, Pages 146-152.

12 **Guantánamo and beyond: The continuing pursuit of unchecked executive power - Executive Summary**

			reporting the incident. Case under review at the time of writing.
Jamal Naseer	March 2003	Gardez, Afghanistan	Arrested along with seven other Afghan detainees, and during 17 days of detention allegedly subjected to abuse, including electric shocks, beatings, and immersion in water. No autopsy. Army investigation, not initiated until late 2004, ongoing.
Nagem Sadun Hatab	6 June 2003	Nasiriya, Iraq	This 52-year-old died on 6 June 2003, three days after his arrest, as a result of “asphyxia due to strangulation”. Additional findings at the autopsy included “blunt force injuries, predominantly recent contusions (bruises), on the torso and lower extremities”. It also found that he had suffered six fractured ribs and a broken hyoid bone. Army investigators found that he had been hit and kicked in the chest by soldiers on 4 June. On 5 June, he was reported to be lethargic, not eating and drinking very little, and possibly having difficulty breathing. He had diarrhoea and was covered in faeces. The jail commander ordered that he be stripped and taken outside the cellblock. According to the military investigation, he was left “naked outside in the sun and heat for the rest of the day and into the night.” In September 2004, a Marine reservist was convicted of assault and dereliction of duty and sentenced to 60 days’ hard labour and was reduced in rank. The camp commander was sentenced to be dismissed from the army, after being convicted of dereliction of duty and maltreatment. Charges against six other marines and the commander of the detention facility were dismissed by their commanding authorities.
Dilar Dababa	13 June 2003	Baghdad, Iraq	Detainee died of head injuries in a US interrogation facility. He died of “closed head injury with a cortical brain contusion and subdural hematoma.” While in custody he “was subjected to both physical and psychological stress”. He was handcuffed to a chair and the chair secured to a pipe in the room because he was allegedly combative and an escape risk.
Abdul Wali	21 June 2003	Asadabad, Afghanistan	Abdul Wali died in US military custody in Asadabad Fire Base. In June 2004, Justice Department charged a civilian contractor working with the CIA with assault, rather than murder. The indictment stated that the contractor beat Abdul Wali, “using his hands and feet, and a large flashlight”. In court proceedings in 2005, the defendant claimed that the interrogation methods had been indirectly authorized by the US administration via its deliberations over torture and ill-treatment as subsequently revealed in various administration memorandums.
Obeed Hethere Radad	11 September 2003	Nasiriya, Iraq	Detainee died in the Forward Operating Base Packho facility. Soldier shot detainee who was standing close to the perimeter wire. He was charged with murder. However, the commander determined that the soldier had been ill-informed about rules of engagement when a detainee approached the perimeter wire, the charge was dropped and the soldier administratively discharged.
Manadel al-Jamadi	4 November	Abu Ghraib, Iraq	Manadel al-Jamadi died in Abu Ghraib prison. The autopsy report concluded that his “external injuries are consistent with injuries

	2003		sustained during apprehension. Ligature injuries are present on the wrists and ankles. Fractures of the ribs and a contusion of the left lung imply significant blunt force injuries of the thorax and likely resulted in impaired respiration. According to investigative agents, interviews taken from individuals present at the prison during the interrogation indicate that a hood made of synthetic material was placed over the head and neck of the detainee. This likely resulted in further compromise of effective respiration.... The cause of death is blunt force injuries of the torso complicated by compromised respiration. The manner of death is homicide.” He was a “ghost detainee” brought into the prison by the CIA and left unregistered and untreated for injuries sustained on arrest. Seven Navy Seals confessed to assaulting the detainee. The army investigation was closed and referred to the Naval Criminal Investigation Service. Several Navy personnel have been charged.
Abdul Wahid	6 November 2003	Gereshk, Afghanistan	Died from “multiple blunt force injuries” in a cell in US Forward Operating Base, Gereshk, 48 hours after being handed over to US by Afghan militia. Army investigation concluded that no US personnel were implicated in his death, and that it had been caused by injuries sustained in Afghan militia custody.
‘Abd Hamad Mawhoush	26 November 2003	Al Qaim, Baghdad, Iraq	56-year-old Major General ‘Abd Hamad Mawhoush died in US custody, after two soldiers slid a sleeping bag over his body, except for his feet, and began questioning him as they rolled him repeatedly from his back to his stomach. Then one of the soldiers, an interrogator, sat on Mawhoush’s chest and placed his hands over the prisoner’s mouth. It was during this interrogation that the prisoner “became non-responsive”. Four soldiers were charged with the death in October 2004. At a preliminary military hearing for three of them in December 2004, evidence emerged that the detainee had been beaten two days earlier by CIA and special forces soldiers, none of whom had been charged at the time of writing. The detainee was allegedly slapped, punched and beaten with a hose. He had several broken ribs and severe bruising. The decision as to whether to try the four charged soldiers by court-martial had not been taken at the time of writing.
Abu Malik Kenami	9 December 2003	Mosul, Iraq	Abdul Kareem Abdul Rutha, also known as Abu Malik Kenami was detained on 5 December 2003 and brought to the US detention facility at “AO [area of operation] Glory” in Mosul. He was interrogated for the first and last time on that day. However, for the next four days, he was kept hooded with a plastic sandbag and his hands were handcuffed in front of him with plastic zip ties. The rule in the facility at that time was that the detainee must not attempt to lift the hood or talk. As punishment for disobeying these rules, Abu Malik Kenami was repeatedly subjected to “ups and downs”, whereby the detainee is forced to stand up and sit down rapidly, in constant motion for up to 20 minutes at a time. On some occasions, he would have his hands handcuffed behind his back while forced to do this. On the morning of 9 December, he was found dead. His body was put in a refrigerated van for the next six days. No autopsy was conducted. An army investigator assigned to the case said that in the absence of an autopsy, “the

14 **Guantánamo and beyond: The continuing pursuit of unchecked executive power - Executive Summary**

			cause of Abu Malik Kenani's death will never be known", and that he could only "speculate" on the cause of death. He concluded that the detainee had died of a heart attack, including because "he was performing ups and downs for ten to twenty minutes several times over a two to three hour period".
Zaidoun Hassoun	3 January 2004	Samarra, Iraq	19-year-old detainee drowned after US soldiers allegedly forced him off a bridge in Samarra. Army investigation recommended prosecution of four soldiers for manslaughter. In the event, one soldier was sentenced to 45 days' confinement for assault, obstruction of justice and dereliction of duty, and one to six months' confinement for assault and obstruction of justice. Two other soldiers received non-judicial punishments.
Abdul Jaleel	9 January 2004	Al Asad, Iraq	47-year-old detainee died at Forward Operating Base Rifles. Autopsy concluded that the cause of death was multiple blunt force injuries and asphyxia. It found "deep contusions of the chest wall, numerous displaced rib fractures, lung contusions" and internal bleeding. He also had "fractures of the thyroid cartilage and hyoid bone". In the initial part of his detention he had been put in isolation and shackled to a pipe that ran along the ceiling. During questioning he was allegedly beaten and kicked in the stomach and ribs. Later, because he was allegedly uncooperative and disruptive, his hands were shackled to the top of his cell door, and he was gagged. He died in this position. The autopsy concluded that "the severe blunt force injuries, the hanging position, and the obstruction of the oral cavity with a gag contributed to this individual's death. The manner of death is homicide". Army investigations recommended prosecution of two soldiers for negligent homicide and nine others for various offences including assault. However, the commanding officers determined that no charges would be referred, concluding that the detainee died as a result of a series of lawful applications of force in response to aggression and misconduct by the detainee.
Naser Ismail	January 2004	Balad, Iraq	A preliminary military hearing was held in January 2005 into the case of a Staff Sergeant with the 4 th Infantry Division charged with murder and obstruction of justice in the case of an Iraqi detainee killed in an incident in January 2004. The hearing was to determine if there was enough evidence to take the case to court-martial. The result was not known at the time of writing.
Mohammed Munim al-Izmerly	31 January 2004	Baghdad, Iraq	On 25 April 2003, this prominent Iraqi scientist was taken, handcuffed and hooded, to an unknown location. He was held for the next nine months, possibly at the "high value detainees" section at Baghdad International Airport. On 17 February 2004, the family received the news from the ICRC that 65-year-old Mohammed al-Izmerly was dead. He had died over two weeks earlier on 31 January 2004. The family commissioned their own autopsy which concluded that he had died from blunt force injury to the back of the head.
Muhamad	28	Near Taal Al	Iraqi detainee shot by a soldier near Taal Al Jal, Kirkuk, when he

Husain Kadir	February 2004	Jal, Iraq	allegedly lunged towards the arresting officer. This was found to be a lie. At a court-martial in August 2004, the soldier was found not guilty of murder but guilty of voluntary manslaughter. Sentenced to three years' confinement and given a dishonourable discharge.
Name unknown	April 2004	Mosul, Iraq	Autopsy indicated blunt force trauma and positional asphyxia. Cause of death undetermined. The army investigation has been closed, and the case referred to Navy whose personnel are implicated.
Hamaady Kareem and Tahah Ahmead Hanjil	15 April 2004	Mahmudiyah, Iraq	The two Iraqi men were allegedly shot in the back after being detained. It was alleged that a soldier shot them in anger after learning that military intelligence officers had decided not to detain them. A Second Lieutenant in the US Marines faced a preliminary military hearing in late April 2005 to determine whether he would face court-martial for the killings, which he maintained were committed in self-defence.
Karim Hassan Abed Ali al-Haleji	21 May 2004	An-Najaf, Iraq	Two wounded Iraqis were captured in An-Najaf. One, Karim Hassan, was shot and killed by a US army captain who was charged with assault with intent to commit murder. He claimed it was a "mercy killing". In March 2005, he was convicted by court-martial of assault with intent to commit voluntary manslaughter, which carried a possible 10-year prison sentence. On 1 April 2005, he was sentenced to dismissal from the army, but received no prison sentence.
Qasim Hassan	18 August 2004	Sadr City, Iraq	16-year-old killed in a purported "mercy killing". In December 2004, one soldier sentenced to three years' imprisonment, and another to one year.
Name unknown	18 August 2004	Abu Ghraib prison, Iraq	US guards used lethal force to subdue an "unruly group of prisoners", according to the autopsy. The detainee was shot in the head.
Thaheer Khaleefa Ahmed	25 October 2004	Balad, Iraq	During a house search, a man was shot by a US soldier. Army investigators established that the soldier lied, that the man was handcuffed when he allegedly lunged towards the soldier. The soldier has been charged with premeditated murder, maltreatment and assault. Trial by court-martial due in May 2005.
Name unknown	11 November 2004	Mosul, Iraq	A wounded Iraqi was captured. When the US soldiers came under attack, they decided to withdraw and leave the detainee behind. As the US unit was withdrawing, a sergeant allegedly shot the detainee twice. The sergeant was charged with attempted murder.
Name unknown	13 November 2004	Fallujah, Iraq	A Marine corporal was videotaped shooting an apparently injured and unarmed Iraqi man in a mosque in Fallujah. He subsequently admitted that he had shot three alleged members of the "Anti-Iraqi Forces" in the mosque, and ballistics evidence confirmed this. According to the military investigation, all three died of multiple gunshot wounds. The commanding officer decided that the corporal should not face a court-martial, finding that the killings were "consistent with the established rules of engagement, the law

16 ***Guantánamo and beyond: The continuing pursuit of unchecked executive power - Executive Summary***

			of armed conflict and the Marine's inherent right of self-defense".
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Appendix 2: Some additional extracts of CSRT testimony

Detainee	Selected extracts of detainee testimony at Combatant Status Review Tribunals, as per records filed in US District Court
<p>Mohammed Necle Algerian national Detained in Bosnia and Herzegovina On 19 October 2004, CSRT confirmed him as an “enemy combatant”</p>	<p>We were surprised that we were handed over to the American forces that are present in Bosnia. We were bound by our hands and our feet, and we were treated the worst treatment. For 36 hours without food, sleep, water or anything and we were treated the worst treatment. We came to this place so they could interrogate us. Now I have been here for three years... I thought the case was about an [alleged plan to bomb the] American embassy and until now no one has directed one question to me regarding this case.</p> <p>Believe me, I came to this place as a mistake and I think that I was wronged. It was unfair to me... I have a clear conscience that I am not part of these terrorist organizations. I am not afraid of anything because I am not a terrorist. If you interrogated me for 20 years you would find that I am Mohammed Nechle.</p> <p>I used to think that America had respect for human rights when it came to prison.</p> <p>In the beginning [in Guantánamo] they didn't [medically] treat me. I asked them to treat me and they left me for a long time without treatment. I had a haemorrhage, that's what I had and talked to them about that. I used to tell them there was blood; I was bleeding. I used to tell them about it time after time and [they] just left it.</p> <p>In the end the way that this happened, the way I was brought here and the accusations that brought against me, I feel that my future has been destroyed. A person does not even know what to say to their kids now. That's a really big thing.</p>
<p>Omar Rajab Amin Kuwaiti national Detained on Pakistan/Afghanistan border On 1 November 2004, CSRT confirmed him as an “enemy combatant”</p>	<p>I hope this Tribunal is a fair one. I've already been classified as an enemy combatant but from what I know of the American justice system is that a person is innocent until they are proven guilty. Right now, I'm guilty trying to prove my innocence. This is something I haven't heard of in a justice system.</p> <p>The fact that the Americans would not apply the Geneva Conventions to us; that they would capture us and bring us here, never did I expect this to happen.</p>
<p>Bisher al-Rawi Iraqi national, UK resident Detained in Gambia, transferred to Guantánamo via Afghanistan On 25 September 2004, confirmed as “enemy combatant” by CSRT</p>	<p>The way things happened in Gambia was similar to the way a criminal gang would operate (from what I have seen on television)... In Gambia, the Americans were running the show.</p> <p>As I have stated before, the US was there [Gambia] and in charge from day one. They were not very respectful to the Gambians...</p> <p>[Bisher al-Rawi's hearing in front of the CSRT took place over two separate sessions].</p> <p>After my last Tribunal, I was taken to Camp Echo. In Camp Echo, I was isolated from all detainees.</p> <p>I am participating in this Tribunal in an effort to clear my name.</p>

	<p>My interrogations will reveal that my story hasn't changed. If I were lying, I wouldn't remember what I told you and my story would change.</p> <p>As you know, we were taken from Gambia to Kabul and then to Bagram Airbase. In Bagram, I provided information only after I was subjected to sleep deprivation, and various threats were made against me...</p> <p>I don't understand why I am shackled in here.</p>
<p>Yasin Qasem Muhammad Ismail Yemeni national On 28 September 2004, CSRT confirmed him as an "enemy combatant"</p>	<p>From there they [the Afghans] sold me to the Americans. I was afraid in the beginning, because whenever we spoke to the interrogators we were punished. We were hit and tortured. Not only did I get hit and punched, they broke my nose. The Americans did this to me. When I arrived in Cuba, I got hit in the place where we eat. I got hit on the shoulder and it was very painful, it was dislocated or something. They threatened to break it monthly, even when I got to Cuba they told me I would be here for a long time...</p> <p>Q. When you got here in Cuba from Afghanistan, you stated you were tortured here?</p> <p>A. Yes, I still use the medication for my shoulder.</p> <p>Q. You were hit on the shoulder one time?</p> <p>A. More than that. When they brought me here they tied my foot to my back and they threw me on my face. I feel there is something torn in my shoulder from the way I was lying on the floor.</p> <p>Q Did you receive medical treatment here?</p> <p>A. I got treatment for the first two weeks I was here.</p> <p>Q. But since that incident there has been no other torture?</p> <p>A. I haven't, but I have seen other people in the camp mistreated and tortured and that affects me psychologically. I was afraid for my life. When the interrogators asked me if I was al-Qa'ida, I would say yes to avoid torture...</p> <p>I have nothing [more] to say. I have no witnesses and this Tribunal is not a legal proceeding, it is a military proceeding. It doesn't matter what I say, it's military and there are no judges.</p>
<p>Jamal Mar'i Yemeni national On 30 September 2004, CSRT confirmed him as an "enemy combatant"</p>	<p>[T]hey apprehended me on September 23rd 2001. They didn't capture me, but some people simply kidnapped me while I was asleep. I was captured with a Pakistani cook. There was nobody else with us. An American interrogator interrogated me, then we were given to Pakistan... They did not release me. They turned me over to the United States. They took me from Pakistan to Jordan... The United States is the one who took me to Jordan... I am not an enemy combatant, I am a sleeping combatant because I was sleeping in my home... How can you call a person an enemy combatant when you're sleeping in your own home and somebody comes to your home and takes you somewhere and you don't know where that is?</p>
<p>Fahmi Abdullah Ahmed Yemeni national On 1 October 2004, CSRT</p>	<p>When the Pakistani authorities captured us, there were two civilian Americans with them... When the Pakistani authorities captured us, they delivered us to Lahore [Pakistan]. In Lahore, some civilian Americans interrogated us. I had only one interrogation with them and it was the same with the other detainees. After that we were delivered to Islamabad... We stayed there for two months... After the two</p>

<p>confirmed him as an “enemy combatant”</p>	<p>months, we were delivered to the Islamabad airport. The airplane took us to Bagram. The American government received us from the Islamabad airport. It was an American military airplane and the soldiers were Americans. We arrived at the military base in Bagram and stayed there for two or three months. I was interrogated about four or six times. Then they took us to Kandahar and it was the same thing; American airplanes with American soldiers. Again, we were received by Americans. We stayed in a small camp with wires, at the Kandahar airport. After two or three weeks, we walked from the camp to a plane and they took us to Cuba.</p> <p>Just know that I have been here for three years and have [not] been in touch with my family. I don’t think this is just and it’s not right for the American legal system to not allow people to talk to their families. It is a very small right that is allowed to all detainees around the world. I have a mother, brothers and sisters and I am the man of the house because my father is now out of our house.</p>
<p>Jamil El Banna Jordanian national, long-term UK resident On 9 October 2004, CSRT confirmed him as an “enemy combatant”</p>	<p>Q. You said you were kidnapped in Gambia. Who kidnapped you? A. The Americans. Q. Were they American soldiers or American civilians? A. Civilians from the embassy. That is what I was told... When they came and arrested and handcuffed me, they were wearing all black. They even covered their heads black... They took me, covered me, put me in a vehicle and sent me somewhere. I don’t know where. It was at night. Then from there to the airport right away... We were in a room like this with about eight men. All with covered up faces... They cut off my clothes. They were pulling on my hands and my legs... They put me in an airplane and they made me wear the handcuffs that go around your body so I would not do anything on the airplane... This is all kidnapping. Yes. They took me underground in the dark. I did not see light for two weeks... Bagram, Afghanistan. Right there in the dark. They put me in the dark. I was surprised. I did not know what I did wrong or what I did. They starved me; they handcuffed me, there was no food... I was under their control. They are the ones who took me and put me there. They know what they have done. I was surprised that the Americans would do such a thing. It shocked me.</p>
<p>Abd Al Aziz Sayer Uwain Al Shammeri Kuwaiti national On 29 September 2004, CSRT confirmed him as an “enemy combatant”</p>	<p>Also, if I had wanted to fight against the Americans, the matter did not require me travelling to Afghanistan. The Americans are present in Kuwait. So, if I wanted to fight with them, I would have fought them in Kuwait. You saw how people are bombing Americans in Saudi Arabia. If I had any hatred on my part, I would have done that to the Americans in Kuwait. There was no need for me to travel. If you’re saying that the American is my enemy, these Americans are there in front of me. The mind does not say to leave my enemy when he is in front of me and go to another country to fight him. When that did not happen, it is proof that there is no hatred on my part towards the Americans...</p> <p>I hope that you really are fair in this Tribunal and that you do not punish me for things that other people have done. If I made a mistake, and you want to punish me for that, I don’t have a problem with that because it was something that I did. Don’t place other people’s mistakes on me.</p>
<p>Abd al Malik Abd Al</p>	<p>We were tortured in Kandahar by beatings. Since we arrived in Cuba we have been mentally persuaded. We have been here for three years. We have nothing here, no</p>

<p>Wahab Yemeni national On 6 October 2004, CSRT confirmed him as an “enemy combatant”</p>	<p>rights, no trials, nothing.</p> <p>I have never taken part in any act of hostility against America. I am not an enemy combatant, are you trying to force me to be an enemy combatant? That’s all I can say and I swear it is the truth.</p> <p>I just hope this hearing is useful. It is a step forward to solve the situation on this island. If you have any evidence against me that shows I am an enemy of the United States or that I fought against the United States, I am willing to face that trial.</p>
<p>Mohammed Mohammed Hassen Yemeni national On 12 October 2004, CSRT confirmed him as an “enemy combatant”</p>	<p>Q. Have you ever been to Afghanistan?</p> <p>A. I had never gone there until I was taken to the prison by the Americans...</p> <p>Q. Were you ever a member of Al Qaida?</p> <p>A. No. Never. I only heard of Al Qaida here in Guantanamo.</p>
<p>Boudella Al Haji Algerian national Seized in Bosnia and Herzegovina On 18 October 2004, CSRT confirmed him as an “enemy combatant”</p>	<p>I’ve never heard of [al-Qa’ida] until the 9/11 incident. I heard about it through the media. How can you associate me with an organization I’ve never heard of? As I said before, I’m against terrorist attacks...</p> <p>I’m asking you. You are just people, if I did a crime in the United States, would you take me to the courts in the United States? Of course. You are not going to deliver me to another country. If you find me innocent you’d let me go free, if not, you’d take me to jail. If I was innocent, it is impossible that you would give me to another nation. Even though we were innocent, we were delivered to another nation and we don’t even know why...</p> <p>The only thing I know is we were taken by the Bosnians, delivered to the Americans and the next thing we knew, we were here. We spent four days with our eyes closed, with bandages on our eyes, tape on our mouths, with shackled hands and feet. Tuesday through Sunday...</p>
<p>Mustafa Ait Idir Algerian national Seized in Bosnia and Herzegovina On 20 October 2004, CSRT confirmed him as an “enemy combatant”</p>	<p>Now I would like to talk about the three days when we were being moved. During those three days we were being transferred here, animals would never have been treated the way we were. In Bosnia, the temperature was -20 degrees and there was ice and snow. It was very cold. They took off all my clothes and they gave me very thin clothes - like that tablecloth [detainee points to the white sheet covering the Tribunal table]. They placed me in a room that was very cold. As they moved me from country to country, my ears, mouth and eyes were covered. I could not even talk or breathe. A mask with a metal piece was placed over my mouth and nose. Why am I saying this? ...I was given a letter from the American Ambassador in Bosnia that lied and said I was moved in a humane manner, when I got to Cuba, the first four or five months I could not feel my left leg. From my thigh to my back, I could not feel anything at all...</p> <p>Regarding my treatment here in prison, I am a person that lived very good life. I never had any problems with people whatsoever. Within my family itself, I had no problems. I never had any problems with my neighbours. The team I trained with consisted of Muslims, Catholics and Orthodox; many different people. My neighbours, were the same way. I made very good wages from my jobs. I never had any problems with money, people, anything. My life has changed completely. It</p>

	<p>has turned 360 degrees to this, where I am now. There are times when a soldier, who maybe never even went to school and barely knew how to hold a weapon, comes to you and swears at you; he says things to you that you have never ever heard of in your life. As an example, a soldier broke my finger. Can you see? I cannot bring this finger close to my other fingers. I cannot close this gap. On the middle finger, my knuckle has been broken. You probably cannot see that. But my finger, you can see that clearly.</p> <p>Q: Let me ask you a question? Are you saying a soldier in Guantanamo Bay, Cuba, broke your fingers?</p> <p>A: Yes. Soldiers took me and placed me on the ground in the rocks outside. My hands and my feet were bound. The soldiers put my face on the ground. You can see maybe my eye - a small little hole near my eyes. One soldier put my head on the ground, and then another soldier came and put his knee on my face. The soldier hit me on the other side of my face that was not touching the ground. If my head was turned a little bit more, the rocks would have gone into my eye. Next to my eye there is a little hole. There are a lot of things regarding the soldiers, but I won't talk about all of them.</p> <p>I just want to say a small thing. I hope that this is real. I am not berating you with these words, but this is something I don't want to keep inside. I hope this Tribunal is really real. I hope that a person who has made a mistake would admit to making a mistake. No matter who this person is. Even if he is the closest person to you. What I mean by this is, if America made a mistake by bringing me here to Cuba, not just because it is hard for them to admit a mistake was made, but to prevent me from leaving here, then bring all these accusations against me. I will tell you something else, if you have evidence, big or small, that I have any relationship with terrorism or if I helped any terrorists, I am prepared for any kind of punishment in any country. I am saying this to you now, and if you wish for me to, I will sign a piece of paper saying these same words.</p>
<p>Saifullah Paracha</p> <p>Pakistan national seized in Thailand</p> <p>On 8 December 2004, CSRT confirmed him as an "enemy combatant"</p>	<p>Tribunal President: Let me clarify that; you do understand this is an administration hearing, and this is not a legal proceeding. I do know you had some questions about the legality of your detention. That would be referred to other organizations of the government, but you will be receiving more specific instructions shortly of how to bring your question to US courts.</p> <p>Detainee: Your honor, I have been here over 17 months; would that be before I expire?</p> <p>Tribunal President: I would certainly hope so.... [T]his is a US government executive decision in regards to the detention of enemy combatants...</p> <p>Detainee: Your honor, my question is that is your Executive Order applicable around the earth?</p> <p>Tribunal President: It is a global war on terrorism.</p> <p>Detainee: I know sir, but you are not the master of the earth, sir.</p>
<p>Saber Lahmar</p> <p>Algerian national</p> <p>Seized in Bosnia and</p>	<p>I hope this hearing looks at the truth and represents true justice. This country has been a symbol of justice for more than two hundred years. I hope these hearings are not just one movie from many movies that have passed by us. I also hope I will be judged by the law and not by politics...</p> <p>I would like to point out something important. My detention from Sarajevo to Cuba</p>

<p>Herzegovina</p> <p>On 8 October 2004, CSRT confirmed him as an “enemy combatant”</p>	<p>was not legal. There is no current law in the world that allows for my detention from my country to another country. If I am accused of something in a country I was in, I should have been detained in that country. That country is recognized worldwide and therefore it has laws and courts. The court from the country should have tried me.</p> <p>Let’s assume I was guilty of something and received punishment for it. The punishment should have been in that country. I have nothing to do with Cuba. The intimidation from the Americans is what caused my illegal detention from one country to another country.</p> <p>The Combatant Status Review Tribunal states I am an enemy combatant. Those words in my view are ridiculous and have no meaning. A sane person or a small child would never say anything like. The words ‘enemy combatant’ means a prisoner that has been arrested on the frontlines of the battlefield holding a weapon. In my case, I was kidnapped from my home by Americans. Therefore, the words enemy combatant doesn’t apply to me.</p>
<p>Adil Kamil Abdullah Al Wadi</p> <p>Bahraini national</p> <p>On 26 September 2004, CSRT confirmed him as an “enemy combatant”</p>	<p>Q: Adil, do you have any other evidence to present to this Tribunal?</p> <p>A: I don’t have any other proof or evidence. All what I have is my biography. Everybody knows me in Bahrain. I am a very correct person. I have never had any problems with the government or anything.</p> <p>Q: Anything else?</p> <p>A: I have no proof. I have been here for two years. I don’t have anything.</p>
<p>Fouzi Khalid Abdullah Al Awda</p> <p>Kuwaiti national</p> <p>On 11 September 2004, CSRT confirmed him as an “enemy combatant”</p>	<p>I do not know what is the nature of the classified evidence [against me]...</p> <p>After a Government is liberated by another Government – my country was liberated by the United States, so it is impossible after that happening, and after my being surrounded by and living with Americans in my country, and visiting the United States, after all that, it is impossible for me to be an enemy combatant against the United States. In my whole life, I have never been an enemy against anyone. I wish for that to be taken into consideration. Maybe the United States Government knows my father’s military history during the time of the occupation of Kuwait. My father was in the military and helped the United States during that time of the occupation. That is all I have.</p>

Appendix 3: Alleged detention and interrogation practices

The following are some of the detention or interrogation practices that are alleged to have been authorized or used by the USA during the “war on terror”. Some appear to have been tailored to specific cultural or religious sensitivities of the detainees, thereby introducing a discriminatory element to the abuse. Techniques are often used in combination. 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. This list does not claim to be exhaustive.

- Abduction
- Barbed wire, forced to walk barefoot on
- Blindfolding
- “Burking” – hand over detainee’s mouth/nose to prevent breathing
- Cell extraction, brutal/punitive use of
- Chemical/pepper spray, misuse of
- Cigarette burns
- Claustrophobia-inducing techniques, e.g. tied headfirst in sleeping bag, shut in lockers
- Death threats
- Dietary manipulation
- Dogs used to threaten and intimidate
- Dousing in cold water
- Electric shocks, threats of electric shocks
- Exposure to weather and temperature extremes, especially via air-conditioning
- Flags, wrapped in Israeli or US flags during or prior to interrogation
- Food and water deprivation
- Forced shaving, ie of head, body or facial hair
- Forcible injections, including with unidentified substances
- Ground, forced to lie on bare ground while agents stand on back or back of legs
- Hooding
- Hostage-taking, i.e. individuals detained to force surrender of relatives
- Humiliation, eg forced crawling, forced to make animal noises, being urinated upon.

- Immersion in water to induce perception of drowning
- Incommunicado detention
- Induced perception of suffocation or asphyxiation
- Light deprivation
- Loud music, noise, yelling
- Mock execution
- Photography and videoing as humiliation
- Physical assault, eg punching, kicking, beatings with hands, hose, batons, guns, etc
- Physical exercise to the point of exhaustion, e.g. “ups and downs”, carrying rocks
- Piling, i.e. detainee is sat on or jumped on by one or more people (“dog/pig pile”)
- Prolonged interrogations, eg 20 hours
- Racial and religious taunts, humiliation
- Relatives, denial of access to, excessive censorship of communications with
- Religious intolerance, eg disrespect for Koran, religious rituals
- Secret detention
- Secret transfer
- Sensory deprivation
- Sexual humiliation
- Sexual assault
- Shackles and handcuffs, excessive and cruel use of. Includes “short shackling”
- Sleep adjustment
- Sleep deprivation
- Solitary confinement for prolonged periods, eg months or more than a year
- Stress positions, eg prolonged forced kneeling and standing
- Stripping, nudity, excessive or humiliating use of
- Strip searches, excessive or humiliating use of
- Strobe lighting

- Suspension, with use of handcuffs/shackles
- Threat of rape
- 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 bright lighting
- Withdrawal of “comfort items”, including religious items
- Withholding of information, e.g. not telling detainee where he is
- Withholding of medication
- Withholding of toilet facilities, leading to defecation and urination in clothing

Appendix 4: Recommendations: Preventing torture & ill-treatment

Amnesty International's recommendations to the US authorities based on the organization's 12-Point Programme for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by Agents of the State

1. Condemn torture and other ill-treatment

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

The US authorities should:

- Provide a genuine, unequivocal and continuing public commitment to oppose torture and other 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 other ill-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 ill-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 and other ill-treatment take 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 the courts, and others with a legitimate interest, such as the International Committee of the Red Cross (ICRC). 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 ICRC, 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 other ill-treatment 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 other ill-treatment; 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 other ill-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 ill-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 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 and other ill-treatment in law

Governments should adopt laws for the prohibition and prevention of torture and other ill-treatment 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 other ill-treatment 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 or other ill-treatment 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 or other ill-treatment 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, impartial and non-partisan 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 Attorney General should:

- Appoint an independent Special Counsel to carry out a criminal investigation into the conduct of any administration officials against whom there is evidence of involvement in crimes in the "war on terror".

The US authorities should:

- Ensure that all allegations of torture and other ill-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 or other ill-treatment 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 should exercise universal jurisdiction over those suspected of these crimes, extradite them, or surrender them to an international criminal court, and cooperate in such criminal proceedings. Trials should be fair. An order from a superior officer should never be accepted as a justification for torture or ill-treatment.

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 ill-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 or other ill-treatment

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

The US authorities should:

- Ensure that no statement coerced as a result of torture or other ill-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 ill-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 and other ill-treatment are criminal acts. Officials should be instructed that they have the right and duty to refuse to obey any order to torture or to carry out other ill-treatment.

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 ill-treatment, 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 or other ill-treatment 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 and other ill-treatment, including the International Covenant on Civil and Political Rights and its first Optional Protocol; and 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 and other ill-treatment.

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;
- 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;²⁴
- Ratify the Optional Protocol to the UN Convention against Torture;
- Ratify the UN Convention on the Rights of the Child;

²⁴ The Human Rights Committee has requested a special report from the US government on its detention practices. The Committee expected to have the report ahead of its July 2005 session. *Press Briefing by Human Rights Committee Chair*, 1 April 2005.

- 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 or other ill-treatment are reported. They should ensure that transfers of training and equipment for military, security or police use do not facilitate torture or other ill-treatment. Governments must not forcibly return a person to a country where he or she would be at risk of torture or other ill-treatment.

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;
- Not rely on diplomatic assurances as evidence that no risk of torture or ill-treatment exists in the receiving state.