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UNITED STATES OF AMERICA

Updated briefing to the Human Rights Committee on the implementation of the International Covenant on Civil and Political Rights

> ➢ ***UPDATE: The text of this briefing is as submitted to the Human Rights Committee in February 2006 (AI Index: AMR 51/046/2006), with some key updates added in early July 2006, mainly in relation to the "war on terror"***

1) INTRODUCTION

Amnesty International submits the following briefing to the Human Rights Committee (hereinafter HRC or the Committee) with a view to its consideration of the combined second and third periodic report of the United States of America under the International Covenant on Civil and Political Rights (ICCPR or the Covenant).

The submission of periodic reports to the Committee is an important element of the state party's obligation to ensure the effective implementation of the rights recognized in the Covenant. On this background – while noting the considerable delay in contravention with the state party's obligation under Article 40 of the Covenant – Amnesty International welcomes that the USA has finally submitted its long overdue reports.

This briefing builds on Amnesty International's previous submission to the Committee from September 2005, which summarized the organization's principal concerns regarding the counter-terrorism measures taken by the USA following the attacks of 11 September 2001 as they related to the state party's obligations under the Covenant. It expands on a number of the issues raised in the earlier submission and – in light of the presentation of the state report in the meantime – provides additional information relevant to other areas of the implementation of the Covenant by the state party, which are not directly related to the USA's counter-terrorism measures.

This briefing does not aim to cover the full range of Covenant-rights or to respond to all of the government assertions in the state party report. It rather aims at providing supplementary and updated information available to Amnesty International on some issues where the organization considers that the USA have failed to fulfil their obligations under the ICCPR. In particular, this briefing highlights the organization's main concerns with regards to the following provisions of the Covenant:

- the general framework for the implementation of the Covenant by the USA, including the governments position with regards to the applicability of the Covenant (Article 2);
- the prohibition of discrimination on the basis of ethnic origin, race or religion (Articles 2 and 26);
- gender equality and domestic violence (Articles 2,3,7 and 26);
- the right to life, including the application of the death penalty, extrajudicial executions and deaths in police custody (Article 6);
- the prohibition of torture and cruel inhuman and degrading treatment or punishment (Articles 7 and 10);
- the right to judicial review and protection from arbitrary detention (Article 9); and
- the right to a fair trial (Article 14).

2) GENERAL FRAMEWORK FOR THE IMPLEMENTATION OF THE COVENANT – Article 2

2.1. Applicability of the Covenant to US operations abroad and to situations of armed conflict

The United States maintains that its activities in the "war on terror" are exclusively regulated by the *lex specialis* of international humanitarian law, and that human rights law is inapplicable in situations of armed conflict.[1] Moreover, the USA holds, as it has done in its Second Periodic Report to the HRC, that even if human rights law were applicable to the "war on terror", the ICCPR has no extraterritorial effect outside US territory. However, Amnesty International emphasises that even in situations where international humanitarian law applies, it does not displace the human rights legal frameworks and obligations. A significant body of jurisprudence from the Committee and the International Court of Justice (ICJ) establishes the extraterritorial application of the ICCPR, while similar jurisprudence, for instance of the European Court of Human Rights (ECHR) and the Inter-American Commission on Human Rights (IACHR) establishes the extraterritorial applicability of similar human rights treaties. It should be noted that the USA has not disputed the extraterritorial applicability of the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and in particular to its treatment of detainees in Guantánamo Bay, Iraq, Afghanistan etc.[2]

Amnesty International is aware of submissions to the Human Rights Committee from other human rights NGOs which have put forward a comprehensive deconstruction of the relationship between international humanitarian law and human rights law and the US position on extraterritorial jurisdiction of the ICCPR with its reading of the *travaux préparatoires*; this submission will not seek to repeat that analysis; it will instead recall some of the relevant case law on the extraterritorial application of human rights treaties. Additionally, this submission will consider the legal implications of the US position on the extraterritorial application of the Covenant in light of the Status of Forces Agreement with the Government of Afghanistan.

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[1] See for instance Additional Response of the United States to Request for Precautionary Measures-Detainees in Guantánamo Bay, Cuba, July 15, 2002 http://www.ccr-ny.org/v2/legal/september_11th/docs/7-23-02GovtResponsetoObservations_andIACHR_Decision.pdf pp. 3-5; Working Group Report on Detainee Interrogations in the Global War on Terrorism: Assessment of Legal, Historical, Policy, and Operational Considerations, April 4, 2003 http://www.defenselink.mil/news/Jun2004/d20040622doc8.pdf, p. 6.

[2] See Second Periodic Report of the United States of America to the Committee Against Torture, UN Doc. CAT/C/48/Add. 3, 6 May 2005. **Update**: At its recent hearing before the Committee Against Torture in May 2006, the USA disputed the extraterritorial applicability of Article 3 of the Convention against Torture (the *non-refoulement* obligation) and therefore took the view that the Committee had no mandate to consider extraterritorial transfers of detainees (John Bellinger, 8 May: "Article 3 of the Convention in our view does not apply as a matter of law to individuals located outside of US territory".) In its subsequent conclusions, as well as rejecting the USA's opinion that the Convention against Torture is not applicable in times and in the context of armed conflict, the Committee Against Torture rejected the USA's view that Article 3 did not extend to a person detained outside its territory and expressed its concern at the USA's "rendition of suspects… to States where they face a real risk of torture". It called for this practice to be stopped. More broadly, the Committee wrote that the USA should "recognize and ensure" that: "the Convention applies at all times, whether in peace, war or armed conflict, in any territory under its jurisdiction and that the application of the Convention's provisions are without prejudice to the provisions of any other international instrument"; and that "the provisions of the Convention expressed as applicable to 'territory under the State party's jurisdiction' apply to, and are fully enjoyed, by all persons under the effective control of its authorities, of whichever type, wherever located in the world."

Jurisprudence concerning the Extraterritorial Application of the ICCPR and other Human Rights Treaties

The Human Rights Committee itself has held a longstanding position affirming states' obligations to apply ICCPR rights outside their own territories, and clarifying that Article 2(1) of the Covenant is to be read disjunctively. The view of the Committee in this regard is best summarized in *López Burgos v. Uruguay*:

> "*…it would be unconscionable to so interpret the responsibility under article 2 of the Covenant as to permit a State party to perpetrate violations of the Covenant on the territory of another State, which violations it could not perpetrate on its own territory*."[3]

In its General Comment 31, the Committee reaffirmed this position, stating that states must ensure Covenant rights to "anyone within the power or effective control of that State Party, even if not situated within the territory of the State Party."[4] In at least 13 other instances the Committee has upheld the extraterritorial application of the ICCPR.[5]

Similarly, the International Court of Justice has upheld the duty of states to apply the ICCPR when exercising their jurisdiction outside their own territories. In its advisory opinion, *Legal Consequences of the Construction of a Wall in the Occupied Territories*, the ICJ followed the jurisprudence and reasoning of the HRC in confirming the Israeli government's obligation to fulfil its Covenant obligations in the Occupied Territories, rejecting Israel's claim that it did not exercise effective control in those areas.[6]

Though it is considering the application of a different legal instrument, the European Court of Human Rights (ECtHR) has also ruled positively on the question of whether state parties to the European Convention on Human Rights and Fundamental Freedoms must respect and ensure rights under that Convention extraterritorially. Like the HRC, the ECtHR has established a requirement of "effective control" to determine whether or not a state actually exercises jurisdiction over a particular territory or individual, and only in cases where the "effective control" test has been fulfilled can the European Convention be said to apply. Overall, the ECtHR has emphasized the primarily territorial nature of the European Convention and only in exception circumstances where effective control has been established can states be obligated to ensure the applicability of the Convention.[7]

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[3] *López Burgos v. Uruguay*, UN Doc. A/36/40, 6 June 1979, para. 12.3.

[4] Human Rights Committee General Comment 31, UN Doc. CCPR/C/74/CRP.4/Rev.629 (March 2004), para. 10.

[5] See Concluding Observations on Cyprus, UN Doc. CCPR/C/79/Add.88; Concluding Observations on Israel, UN Doc. CCPR/C/79/Add.93, para. 10 and UN Doc. CCPR/CO/78/ISR, para. 11; Concluding Observations on Belgium, Doc. CCPR/C/79/Add.99 para. 14; Concluding Observations on Croatia, UN Doc. CCPR/C/79/Add.15 para. 10; Concluding Observations on Moldova, UN Doc. CCPR/CO/75/MDA, para. 4; Concluding Observations on Bosnia-Herzegovina, UN Doc. CCPR/C/79/Add.14, paras. 4-5; Concluding Observations on Croatia, UN Doc. CCPR/C/79/Add.15, para. 6; Concluding Observations on Serbia-Montenegro, UN Doc. CCPR/C/79/Add.16, paras. 4-7; Concluding Observation on Lebanon, UN Doc. CCPR/C/78, para. 12; *Ng v. Canada*, 5 November 1993, UN Doc. A/49/40, Vol. II, 189; *Kindler v. Canada,* HRC 31 July 1993, UN Doc. A/48/50, 138; *López Burgos v. Uruguay,* HRC 6 June 1979, UN Doc A/36/40, para. 12.1; *Celiberti de Casariego v. Uruguay*, UN Doc. CCPR/ C/13/D/52/1979, paras. 12.1-12.3.

[6] International Court of Justice, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, 9 July 2004, General List, No.131 paras. 109-111.

[7] *Drozd & Janousek v. France and Spain,* ECtHR, Case No. 21/1991/273/344, Judgement of 27 May 1992, para. 91; *Loizidou v. Turkey* (Preliminary Objections), ECtHR, Judgement of 23 March 1995, Series A vol. 310, para. 62; *Bankovic & others v. Belgium and sixteen other contracting States,* (Application no. 52207/99; admissibility decision), Grand Chamber of the ECtHR, 12 December 2001, para. 71; *Ilascu and others v. Moldova and Russia*, Application no 48787/99, ECtHR, Judgement of

Likewise, the Inter-American Commission on Human Rights has ruled on a number of cases which involved the issue of extraterritorial application of the American Convention on Human Rights. Following European jurisprudence, the IACHR has consistently ruled that a state's obligations under the relevant Convention applied outside its national territory. In contrast to the position of the ECtHR, which stressed the territorial scope and limits of the European Convention, the IACHR has taken a less restrictive legal view in its jurisprudence on how and when the Convention duties and rights should be applied extraterritorially. In *Saldaño v. Argentina*, the IACHR expanded the concept of jurisdiction, stating that "this term is not, as submitted by the respondent Government, equivalent or limited to the national territory of the High Contracting party concerned."[8] Similar to the Human Rights Committee and ECtHR, the Commission established a requirement of "effective control", subdivided by three types of extraterritorial conduct: military occupation, military control and detention. In the case of *Alejandre Jr. and Others v. Cuba*, the Commission ruled that the Cuban military's act of shooting down a civilian aircraft constituted effective military control and hence Convention obligations were in effect.[9]

The USA-Afghanistan Status of Forces Agreement and the Implications for Applicability of the ICCPR

The dire consequences of the USA's position are illustrated by the situation in Afghanistan. While the commitment to a bilateral Status of Forces Agreement (SOFA) is common state practice, in the case of the 2003 SOFA between the United States and Afghanistan it poses a particular legal dilemma. Among other things, the SOFA contains the following provisions – note that the proposals of the US Embassy were fully accepted by the Afghan government and incorporated into the agreement:

> "*The Embassy of the United States of America without prejudice to the ongoing military operations by the United States, proposes that such personnel* [all civilian and military personnel of the United States Department of Defense present in Afghanistan] *be given the status equivalent to the one given to the administrative and technical staff of the United States Embassy under the Vienna Convention on Diplomatic Relations of April 18, 1961* […]
>
> *…the Government of Afghanistan authorizes the United States of America to exercise its criminal jurisdiction over the personnel of the United States. The Government of Afghanistan and the Government of the United States confirms that without the explicit consent of the Government of the United States, such personnel may not be surrendered to, or otherwise transferred to the custody of an international tribunal or any other entity or State* […]
>
> *[O]ther than contractual claims, the parties waive any and all claims against each other for damage to or loss or destruction of property owned by either party, or death or injury to any military or civilian personnel of the armed forces of either party, as a result of activities in Afghanistan under this agreement. Claims by third parties that will arise as a result of the actions or omissions of United States personnel should, at the discretion of the United States Government, be dealt with and settled in accordance with United States law."*[10]

July 2004, para. 311; *Issa & others v. Turkey,* (Application no 31821/96; admissibility decision), ECtHR, 30 May 2000, 55; *Őcalan v. Turkey* (Application No. 46221/99) ECtHR, Judgement of 12 May 2005, paras. 91, 190.

[8] *Victor Saldaño v. Argentina,* Petition, IACHR Report No. 38/99, 11 March 1999, para. 18.

[9] *Armando Alejandre Jr. and Others v. Cuba ('Brothers to the Rescue')*, IACHR Report No. 86/99, Case No. 11589, 29 September 1999

[10] Transitional Islamic State of Afghanistan, Ministry of Foreign Affairs, America and Canada Political Affairs Division, Document No. 93, May 28, 2003.

By the terms of the SOFA, all US military personnel operating in Afghanistan have been conferred diplomatic privileges and immunity from legal prosecution in Afghanistan as set out in the Vienna Convention on Diplomatic Relations. In addition, the SOFA absolves the US military for any legal liability which might arise as a result of its activities in Afghanistan.

When considering the US position that the ICCPR does not have extraterritorial effect alongside the blanket legal immunity granted to US military personnel operating in Afghanistan, a noticeable legal vacuum emerges for Afghan nationals who now fall, if the US position is to be accepted, between two conflicting legal frameworks. The US military finds itself unbound by the rules and obligations of the ICCPR, but is equally unaccountable to Afghan legal process.

The result is that any Afghan national whose human rights, as provided in the Covenant, have been violated by US Armed Forces when under their effective control, would be totally stripped of these rights and any recourse to justice: On the one hand, the USA, although a state party to the ICCPR, does not consider these forces as bound to respect Covenant rights in their treatment of Afghans on Afghan territory. On the other hand Afghanistan, although a state party to the ICCPR, has relinquished, at the USA's behest, any jurisdiction its own justice system had over the acts of such personnel within its territory. Amnesty International believes that such denial of Covenant rights is wholly unacceptable. In practice it has resulted, among other things, in the arbitrary arrest of thousands of Afghani nationals on Afghan soil without charge, trial or resort to the Afghan justice system.

2.2. Reservations and declarations - Article 2 (2)

Amnesty International is concerned that the US has failed to withdraw the limiting reservations, declarations and understandings attached to its ratification of the ICCPR, the effect of which is to ensure that the treaty offers no greater protection than already exists under US law. The organization is particularly concerned by the USA's reservations to Articles 6 and 7, which the Committee has stated are "incompatible with the object and purpose of the Covenant".[11] Such reservations can have a serious impact on the protection of rights, as is illustrated by the imposition of death sentences on child offenders. While the US has recently abolished the death penalty for child offenders in the USA, this does not extend to non-US nationals outside its territory who may face military commissions. The US reservation to Article 7, in which the US considers itself bound only insofar as the term "cruel, inhuman or degrading" means the "cruel and unusual punishment" prohibited by the US constitution, also leaves the US open to practices which may fall short of international standards.

➢ **UPDATE**:

In its recent findings on the USA, released on 19 May 2006, the Committee Against Torture reiterated its exhortation to the US government to withdraw its reservations, declarations and understandings lodged at the time of ratification of the Convention against Torture. [12] *The reservation the USA lodged to Article 7 of the ICCPR is the same as the one it attached to Article 16 of the Convention Against Torture.*

Urging the US government to fully comply with the Committee Against Torture's recommendations, Amnesty International stressed that the Senate as well as the executive should recognize the danger inherent in making ratification subject to such conditions, as was illustrated when the conditionality attached to the ICCPR and the Convention

[11] Concluding Observations of the Human Rights Committee: United States of America, April 2005
[12] CAT/C/USA/CO/2, 18 May 2006. *Conclusions and recommendations of the Committee against Torture: United States of America,* Advanced Unedited Version, available at: http://www.ohchr.org/english/bodies/cat/docs/AdvanceVersions/CAT.C.USA.CO.2.pdf.

against Torture was drawn upon in some of the government memorandums that became public after the Abu Ghraib torture came to light.[13]

2.3. Right to an effective remedy for violations of the Covenant

While US domestic law provides a range of remedies for victims of violations, including the right to seek compensation or injunctive relief in the courts, not all victims are able to avail themselves of such remedies in practice. Few states have independent external monitoring bodies authorized to conduct regular inspections of jails or prisons and to report on conditions and investigate abuses. Some police oversight bodies also lack scope, independence or resources. While the Justice Department can seek injunctions to change practices through the Civil Rights of Institutionalized Persons Act and "pattern and practice" lawsuits against police departments, these focus on individual jurisdictions and cannot cover every institution. Individual or class-action litigation brought by or on behalf of the victims of abuses is often the most effective remedy, but such actions are costly and may take years to reach conclusion. The Prison Litigation Reform Act (PLRA) passed in 1996, although not preventing such litigation, imposed restrictions making it more difficult for prisoners to file lawsuits and reducing the compensation for attorneys who represent inmates in civil rights cases.

The US government has systematically sought to prevent the Guantánamo detainees from filing *habeas corpus* claims in the federal courts and to leave them without an effective remedy, both as regards the lawfulness of their detention and their treatment in custody. Other detainees in the "war on terror" (for instance those held incommunicado or "disappeared") have even less access to, or are without, an effective remedy.

3) PROHIBITION OF DISCRIMINATION ON ANY GROUND SUCH AS RACE, COLOUR, SEX, LANGUAGE, RELIGION, POLITICAL OR OTHER OPINION, NATIONAL OR SOCIAL ORIGIN, PROPERTY, BIRTH OR OTHER STATUS – Articles 2 and 26

Despite US laws prohibiting discrimination, factors such as race and poverty continue to affect the enjoyment of rights under the Covenant, including the right to equality before the law. As noted below, there is evidence of racial bias in the capital punishment system and the poor as well as black defendants in capital cases are also often denied access to competent, well-resourced counsel which can affect the quality of their defence. The same applies more generally to indigent defendants in the criminal justice system as they are reliant on often under-resourced legal aid systems or poorly paid court-appointed counsel.

According to the Bureau of Justice Statistics (BJS), 61 per cent of prison and jail inmates in 2004 were of racial or ethnic minorities, even though they comprise only around 12.5 per cent of the US population.[14] The BJS found that an estimated 12.6 per cent of all black men in their late 20s, and 3.6 per cent of Hispanic men, were in jails or prisons, compared to only 1.7 per cent of white men in that age group. While the causes of such disparities are complex and relate in part to differential crime rates, as well as poverty, several studies have found that black and other minority defendants receive harsher treatment at various stages of the criminal justice system than similarly situated white defendants. Racial disparities have also been found in the juvenile justice system.[15]

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[13] *Memorandum to the US Government on the report of the UN Committee Against Torture and the question of closing Guantánamo*, 23 June 2006, available at http://web.amnesty.org/library/Index/ENGAMR510932006.

[14] Bureau of Justice Statistics: Prisoners in 2004.

[15] See, e.g. Eileen Poe-Yamagata and Mihael A. Jones, And Justice for Some (Building Blocks for Youth Initiative for the National Council on Crime and Delinquency, 2000).

Hundreds of Muslim men of Arab or South Asian origin were detained in the USA in broad sweeps for potential suspects in the aftermath of the 11 September 2001 attacks. Most were held for routine immigration violations and were often deprived of rights such as prompt access to counsel or the courts and were subjected to harsh treatment in detention. There is evidence to suggest that many were detained on the basis of their ethnic origin or religion, rather than for suspicion of involvement in specific crimes. Most of those detained in the initial sweeps were released without charge or deported. However, individuals from Muslim, Arab or South Asian communities have continued to report being subjected to "racial profiling" (treated as criminal suspects on the basis of their race or religion) and subjected to stops and searches or other procedures by police and immigration officials or airline personnel. [16] Amnesty International has called on the federal government to support legislation introduced into Congress to end racial profiling (the End Racial Profiling Act) and to ensure that all national laws prohibit all forms of discrimination and provide effective protection against racism.

Inequalities in US society based on class and race were starkly highlighted in the aftermath of Hurricane Katrina, which swept across south-western Louisiana and parts of Mississippi and Alabama in August 2005. Human rights affected in the immediate and long-term aftermath of the hurricane include rights protected under the Covenant, for example, Articles 2, 6, 7, 12, 23, 24 and 26. In the immediate aftermath, following massive flooding in New Orleans and elsewhere, thousands of mainly poor and African American residents were left stranded for days in increasingly desperate and unsafe circumstances, without food, adequate shelter or medical care. Many were left vulnerable to attack as police abandoned the city. There was widespread anger at the government's slow response to the humanitarian disaster which had a disproportionately adverse impact on the poor and the elderly.[17] Many thousands of people are reportedly still living in shelters in Louisiana, or are housed by the Federal Emergency Management Agency (FEMA) in hotel rooms or trailers. There is concern that displaced people, often housed far from the centre of their "host" city, may continue to have their human rights affected by, for example, inadequate access to schooling and employment, which, in turn, could affect their enjoyment of rights under the Covenant. Most of the evacuees are African American. Community and civil rights groups are concerned that some of the hardest hit, predominantly African American, areas of New Orleans, will either not be rebuilt or will exclude many former residents. There is also concern that federally funded rebuilding contracts have not been subjected to sufficient oversight.[18]

(*see also under 6.3 for Amnesty International concerns about abandonment and ill-treatment of prison and jail inmates in aftermath of Katrina*).

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[16] *Threat and Humiliation: Racial Profiling, Domestic Security and Human Rights in the United States,* AIUSA, September 2004. http://www.amnestyusa.org/racial_profiling/report/rp_report.pdf.

[17] See AI news release: *USA: Ensure Safety of victims of Hurricane Katrina* http://web.amnesty.org/library/print/ENGAMR511402005. Only one in three nursing homes was evacuated prior to the hurricane and conditions in remaining facilities reportedly led to one in ten victims of Katrina being elderly (http://www.nola.com/newslogs/breakingtp/index.ssf?/mtlogs/nola_Times-Picayune/archives/2005_09.html.

[18] http://www.sciencedaily.com/upi/?fed=TopNews&article=UPI-1-20050926-06382100-bc-us-katrina-fema.xml/

4) GENDER EQUALITY AND DOMESTIC VIOLENCE – Articles 2, 3, 7 and 26

The Committee has recognized that the Covenant applies to and commits States Parties to ensure women's right to protection from gender based violence and to provide effective remedies for violations by official and private actors.[19]

According to the latest government figures, there were almost 700,000 incidents of domestic violence in the USA in 2001, the vast majority perpetrated against women. Around a third of women murdered in the USA each year are killed by current or former partners. Although there have been important initiatives at the federal and state level to combat violence against women, many women remain unprotected in practice. While issues of concern relating to effective protection extend across class, race and social boundaries, members of marginalized groups can find it particularly difficult to access justice. Immigrant women, for example, are often afraid to report domestic violence to police because they fear being deported. The Violence against Women Act (VAW) of 2005 includes programs, funding and law reform aimed at protecting women in underserved and impoverished communities such as immigrants, communities of colour and Native Americans. These include funding for shelters, a public awareness program, strengthening the capacity of Indian nations to provide tribal-based services to women and other services for victims of abuse. However, funding for the new programs was not included in the US President's Budget Request and the budget proposal actually seeks a decrease of 3.5 per cent in funding for VAW projects.

One area of concern is the government's continued failure to adequately address sexual assault against Native American women. The US Bureau of Justice Statistics (BJS) has recognized that the average annual rate of sexual assault perpetrated against Native American women is 3.5 times the national rate and that 70 per cent of such crimes are committed by non-Indians. However, only a small portion of these crimes are ever investigated or prosecuted. The lack of victims' services, particularly culturally sensitive services, and the lack of appropriate training for law enforcement, contribute to inadequate investigations and discourage women from reporting sexual assault. Because congressional and judicial action has deprived tribes of their ability to prosecute sexual assault as a felony or to exercise jurisdiction over non-Indian perpetrators, in most US states, tribes and Native American women rely upon federal prosecutions for sexual assault cases. However, federal courts decline more than half of all violent sex offence cases that come before them. As a result many perpetrators of sexual assault against Native American women are allowed to commit their crimes with impunity and Native American survivors of sexual assault often receive no protection or justice.

A recently published study by Amnesty International USA revealed that police often fail to respond adequately to gender-based hate crimes or domestic violence against lesbian, gay, bisexual and transgender (LGBT) people. While violence in the home is a serious problem in the USA for both heterosexual and same-sex couples, LGBT survivors of domestic violence often feel extreme isolation – a problem exacerbated by the scarcity of programmes and support services available to this group. Amnesty International has recommended *inter alia* that "hate crime" statutes, where they exist, should address acts of violence or discrimination based on actual or perceived sexual orientation and gender identity or expression and that the US government should take steps to ensure it fulfils its obligation to act with due diligence to prevent and protect LGBT individuals from domestic violence.[20]

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[19] General Comment No. 28: Equality of rights between men and women (article 3): 29/03/2000. CCPR/C/21/Rev.1/Add.10, General Comment No. 28. (General Comments).

[20] *AIUSA: Stonewalled: Police abuse and misconduct against lesbian, gay, bisexual and transgender people in the USA*, September 2005. http://web.amnesty.org/library/Index/ENGAMR511222005.

5) RIGHT TO LIFE – Articles 4(1), 4(2) and 6

5.1. Death Penalty

In its Concluding Observations on the USA's initial report to the Committee in October 1995, the Committee urged the US to revise federal and state legislation with a view to restricting the number of offences carrying the death penalty strictly to the most serious crimes, and with a view eventually to abolishing it.

While the fairness of the US capital punishment system has been increasingly questioned, and four states currently have a hold on the death penalty,[21] capital punishment continues to be regularly imposed and carried out. Eighty per cent of the more than 1,000 executions since the death penalty was reinstated in 1976 were carried out in the South, nearly half in Texas and Virginia. Thirty-eight states and the federal jurisdiction have death penalty laws and 60 people were executed in 2005. More than 3,000 prisoners remain on death row.

In March 2005 the US Supreme Court banned the execution of offenders aged under 18 at the time of the crime. While Amnesty International welcomed the ban as long overdue, it is concerned that foreign children held by the US government as "enemy combatants" outside the USA might still face capital trials before military commissions under the Military Order signed by President Bush in November 1991 (see below).[22] While the government has not sought the death penalty thus far in such cases, one child offender (Omar Khadr, a Canadian national) has been named to appear before a commission and the government announced it would not seek the death penalty in that case only after the Canadian government had repeatedly sought such assurances.[23] The USA holds several individuals in Guantánamo Bay, Cuba, who were under 18 when first detained and the executive could transfer children there in the future and name them to stand trial before the commissions on charges carrying a potential death penalty.

Amnesty International considers that the military commissions fall far short of meeting international standards for a fair trial (see Article 14, below). In view of these and other concerns regarding implementation of the death penalty, the US government should immediately withdraw its reservation to Article 6.

In 2002 the US Supreme Court struck down the death penalty in the case of people who were mentally retarded, and sent the issue back to the US states to be implemented. While the US Supreme Court ruling provided some guidance on how to measure mental retardation in a footnote to its decision, there is scope for inconsistency and application of the decision needs to be carefully monitored. Several people have been executed since the ruling who were borderline mentally retarded. Such executions may fall short of international safeguards.[24]

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[21] Illinois has had a moratorium in place for six years; The New Jersey legislature imposed a moratorium in January 2006. Kansas and New York have had their death penalty laws struck down by state courts (see update).

[22] US jurisprudence has restricted the applicability of the constitution in the case of federal government action outside the USA concerning foreign nationals (see, for example, US Supreme Court decisions *Johnson v Eisentrager*, 339 US 763 (1950) and *United States v Verdugo-Urquidez*, 494 U. S. 259 (1990).

[23] C.T.V. November 9, 2005 *Pentagon won't seek execution of Khadr: report* http://www.ctv/a/servlet/ArticleNews/story/CTV News/20051109/Khadr_deathpenalty_051109?s-name=&no.

[24] Safeguards guaranteeing protection of the rights of those facing the death penalty, adopted by the Economic and Social Council in Resolution 1984/50 adopted on 25 May 1984 and Resolution 1989/64 adopted on 24 May 1989, the latter calling on states to eliminate the death penalty in the case of "persons suffering from mental retardation or extremely limited mental competence".

Amnesty International remains deeply concerned that people with serious mental illness short of insanity (the latter very narrowly defined at the time of execution) continue to be sentenced to death and executed. In a recently published report, Amnesty International lists 100 people with mental illness who have been executed since the USA resumed judicial execution in 1977.[25] This represents around 10 per cent of those put to death during this period. The list does not claim to be exhaustive – cases of others who have been executed have also raised serious concerns relating to their mental health. Amnesty International believes that the execution of the mentally ill raises a similar issue of diminished culpability which led the US Supreme Court to abolish the death penalty for the mentally retarded.

Amnesty International is also concerned that, far from moving to reduce the number of crimes carrying the death penalty, there has been an expansion of death sentences under US federal law. In its report to the Committee in 1995, Amnesty International noted that no federal executions had taken place since 1963 but expressed concern about a 1994 law which extended the federal death penalty to more than 50 additional crimes.[26] Since then, three people have been executed under federal jurisdiction, all of them under the 1994 law. They were executed despite a study showing widespread racial and geographic disparities in the application of the federal death penalty which has never been fully addressed.[27] Three more federal executions are scheduled to take place in May 2006; all three prisoners are black.[28]

There have been no executions under US military law since 1961. However, new rules setting out procedures for military executions were issued in January 2006, fuelling speculation that military executions could resume. Nine soldiers are currently on death row. The changes, most of which were technical, would also allow executions to be carried out at sites other than the federal prison at Fort Leavenworth, where military prisoners under sentence of death are currently held. According to reports, this could theoretically open the way for foreign detainees in Guantánamo Bay to be executed, if sentenced to death by military commissions.[29]

Studies continue to indicate that race, particularly the race of the murder victim, plays a role in who is sentenced to death in the USA. In 80 per cent of the cases of the more than 1,000 people executed since 1977, the murder victim was white. Yet whites and blacks are the victims of murder in approximately equal numbers in the USA. Approximately one in five of the African Americans executed in the USA since 1977 had been convicted by all-white juries.[30]

Economic and social status have also been seen to play a role in the capital justice process. Serious questions have been raised about the quality of legal representation provided to indigent defendants facing the death penalty. Allegations of serious prosecutorial misconduct have been made in many cases. Since the 1970s, more than 122 people have been released from death row on grounds of innocence and some people have been executed despite questions remaining about their guilt and the evidence on which they were convicted.

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[25] USA: *The execution of mentally ill offenders*, AI Index: AMR 51/003/2006, January 2006, http://web.amnesty.org/library/Index/ENGAMR510032006.
[26] The Human Rights Committee's General Comment 6 on Article 6 states that States Parties are "obliged to limit" use of the death penalty and that "all measures of abolition should be considered as progress in the enjoyment of the right to life within the meaning of Article 40" (– para 6).
[27] *The federal death penalty system: a statistical survey* (1988-2000), US Department of Justice. The authors said more detailed analysis was necessary to identify the causes of these disparities. Such an analysis was never undertaken and a sketchy supplementary report issued by the Attorney General was dismissed by experts in the field as inadequate.
[28] All three were sentenced under the Anti-Drug Abuse Act of 1988
[29] *Reuters*, 23 January 2006
[30] Amnesty International report *USA: Death by Discrimination – the continuing role of race in capital cases* (AMR 51/046/2003, April 2003), http://web.amnesty.org/library/index/engamr510462003.

Amnesty International is concerned by the enactment of the Anti-Terrorism and Effective Death Penalty Act (AEDPA) in 1996 which severely curtails the powers of federal courts to remedy erroneous decisions by state courts. Designed to expedite executions, the law places strict time limits on the filing of appeals even if substantial issues are raised. In his 1998 report on the USA, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions expressed his concern that the AEDPA, by severely limiting the ability of the federal courts to remedy errors and abuses in state proceedings, had "further jeopardized the implementation of the right to a fair trial as provided for in the ICCPR and other international instruments". Legislation currently pending before Congress would further restrict the right of appeal to the federal courts in capital cases.[31]

In its report to the Committee, the US states its position that methods of execution currently employed in the United States do not constitute cruel and unusual punishment under the US Constitution. Amnesty International considers that imposition of the death penalty in all circumstances constitutes cruel, inhuman or degrading treatment or punishment. In January 2006, the US Supreme Court agreed to decide whether it would hear appeals filed by three inmates arguing that lethal injection (the method used by most states) was unconstitutional because the mix of drugs used caused excessive pain. The appeals were based on a study reported in the medical journal, the *Lancet*, on 16 April 2005, which said that 21 of 49 inmates executed by lethal injection in Arizona, Georgia, North Carolina and South Carolina may have been conscious and feeling pain.[32] Amnesty International has also documented cases in which individuals given lethal injection were moving and apparently conscious and in pain for part of the procedure. A decision by the court on whether to accept the case for appeal is due in April 2005.

In its Concluding Observations on consideration of the USA's initial report in 1995, the Human Rights Committee expressed concern about the long stay on death row which "in specific instances, may amount to a breach of article 7 of the Covenant". Hundreds of prisoners on death row in the USA have been there for many years. For example, Clarence Ray Allen was executed in California on 17 January 2006 after 23 years on death row. A 77-year-old Native American, he was blind, confined to a wheelchair and suffered from serious heart disease and diabetes. One of the US Supreme Court judges, Justice Stephen Breyer, wrote a dissenting opinion to the Supreme Court's decision not to grant a stay of execution in his case stating that he believed, in the circumstances, that it "raises a significant question as to whether his execution would constitute cruel and unusual punishment".[33]

Amnesty International remains concerned about conditions on death rows across the country, where prisoners are typically confined to small cells for most of the day often in conditions of extreme deprivation and isolation. Amnesty International has found the combined conditions on some death rows to constitute cruel, inhuman or degrading treatment in violation of international standards including Article 7 of the ICCPR. Conditions have worsened in some states in recent years, including Texas which abolished a work program for death row inmates in 1999.

➢ **UPDATE**

[31] Although most death sentences are imposed by state courts, many cases are overturned on federal appeal on grounds of error at the trial stage; the pending legislation would require a prisoner seeking federal review to demonstrate innocence before a federal court may intervene.

[32] The study found that sodium thiopental, which is used as anaesthesia in lethal injections, may not work properly, and that a second drug which induced paralysis would mean the condemned person "would experience suffocation and excruciating pain without being able to move or communicate that fact".

[33] *Allen v Ornoski* 06-0091.

Twenty-five prisoners were executed in the USA in the first six months of 2006, bringing to 1,029 the total number of men and women put to death since the USA resumed judicial killing in 1977. The 25 executions to 30 June 2006 were carried out in nine states, with 13 of them being carried out in Texas. Texas thus accounted for 368 of the nationwide judicial death toll since resumption of executions (36 per cent).

On 27 June 2006, the state of Texas executed Mexican national Angel Maturino Reséndiz despite compelling evidence that he suffered from serious mental illness, including paranoid schizophrenia.[34] *Also, the execution went ahead despite the issuance of "precautionary measures" by the Inter-American Commission on Human Rights (IACHR) calling for a stay while the Commission investigated claims raised in the prisoner's petition to it. After the execution the IACHR condemned "the failure by the United States and the state of Texas to respect the Commission's requests..."*[35] *The USA has routinely ignored the IACHR in death penalty cases.*

In Virginia on 8 June 2006, Governor Timothy M. Kaine issued a stay of execution for Percy Levar Walton about an hour before he was due to be put to death. The reprieve is for six months and is for the purpose of obtaining an evaluation of Levar Walton's mental competency. Levar Walton suffers from serious mental illness.[36]

On 26 June 2006, the US Supreme Court found that the Kansas capital sentencing statute was constitutional, overturning a state Supreme Court ruling of 2004. In Kansas v. Marsh, the US Supreme Court held that juries may be required to sentence a defendant to death when there is an equal weight of mitigating and aggravating evidence. Writing for the majority, Justice Clarence Thomas wrote that "our precedents establish that a State enjoys a range of discretion in imposing the death penalty... even in our imperfect system".[37]

In June 2006, in New York State, Members of the state Assembly's Codes Committee voted 13 votes to five against a bill to reinstate the death penalty. The vote appears to reveal growing opposition to capital punishment. The same vote in 2005 was 11-7. New York's death penalty was overturned in 2004 by the state's highest court.

On 8 June 2006, the Governor of South Carolina signed into state law a bill allowing the death penalty for a person convicted for a second time of rape or other sex crimes against children under the age of 11. A day later, the Governor of Oklahoma signed a similar bill in his state providing the death penalty as an option in cases of defendants convicted more than once for the rape or other sexual abuse of a child under the age of 14. Amnesty International acknowledges the serious nature of the crimes that are the subject of these two pieces of state legislation in the USA, but is concerned that they run counter to international standards seeking to narrow the scope of the death penalty, and that they contradict the global trend towards eradication of capital punishment.[38]

In March 2006, the three federal death row inmates mentioned above received indefinite stays of execution from a federal judge. The three had raised challenges to the lethal

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[34] See Amnesty International Urgent Action, http://web.amnesty.org/library/Index/ENGAMR510772006.

[35] *IACHR condemns the execution of Angel Maturino Resendiz by the United States*, press release available at http://www.iachr.org/Comunicados/English/2006/22.06eng.htm.

[36] See Amnesty International Urgent Action, http://web.amnesty.org/library/Index/ENGAMR510782006.

[37] See also, *USA: Blind faith – An appeal to President George W. Bush to admit that the USA's 30-year experiment with the death penalty has failed*, AI Index: AMR 51/100/2006, 1 July 2006, http://web.amnesty.org/library/Index/ENGAMR511002006.

[38] See USA: *More about politics than child protection: The death penalty for sex crimes against children*, 21 June, http://web.amnesty.org/library/Index/ENGAMR510942006.

injection process. The judge's order stayed the lawsuit pending the decision of the US Supreme Court in Hill v. McDonough. The latter decision was handed down on 12 June 2006. In it, the Supreme Court ruled that death row inmates seeking to challenge lethal injection as a method of execution after they have exhausted their regular appeals may pursue the issue as a civil rights claim.

Consistent with much previous research, a new study has looked at all (110) cases in which the death penalty was sought in Colorado between 1980 and 1999. The study found that the death penalty was most likely to be sought for murders with white female victims. It also concluded that the probability of a death sentence being sought was 4.2 times higher for those who killed whites than for those who killed blacks.[39]

5.2. Extrajudicial executions

Amnesty International is deeply concerned that the USA appears to be carrying out, and attempting to carry out, extrajudicial executions in clear violation of its obligations under international human rights law, including Article 6 of the ICCPR. These are cases in which the USA has apparently deliberately killed or attempted to kill suspects in lieu of arrest including in countries where there is no ongoing armed conflict.

In one such incident on 13 January 2006, between 13 and 18 people, including five children, were killed when missiles were fired into three houses in the village of Damadola Burkanday in north western Pakistan. Reports suggest that it was an unmanned Predator drone aircraft which fired Hellfire missiles or aircraft guided by US special forces troops on the ground, and that their intended target was Ayman al-Zawahiri, believed to be a high ranking *al-Qa'ida* operative.

Amnesty International has previously raised its concerns that the Central Intelligence Agency (CIA) has used Predator drones equipped with Hellfire missiles to carry out extrajudicial executions, and is concerned that the pattern of killings using these weapons reflects US governmental policy. Although in public statements the US government has consistently opposed the use of extrajudicial executions and "targeted killings" by other governments, Amnesty International is concerned that what happened in Damadola Burkanday forms part of a pattern of extrajudicial executions and may reflect US governmental policy. [40]

On 3 November, 2002 six men were targeted by a missile while driving in a car in Yemen, believed to have been fired from another unmanned CIA drone. All six men were killed in the attack. The UN Special Rapporteur on extrajudicial, summary or arbitrary executions stated that the attack was "a clear case of extrajudicial killing". [41] Amnesty International has raised concerns that the killing of Libyan national Haitham al-Yemeni in Pakistan on 7 May 2005 using Hellfire missiles, also fired from a Predator drone, along with another man, Samiullah Khan, was another extrajudicial execution. [42] Other cases of US forces reportedly using Predator air vehicles armed with Hellfire missiles to target *al-Qa'ida* suspects in Pakistan include the killing of Nek Mohammad and five others in the village of Dhok in South Waziristan on 17 June 2004; and the killing of Abu Hamza Rabia on the 1

[39] Michael Radelet, Stephanie Hindson and Hillary Potter, 77 Univ. of Colorado Law Review 549 (2006), as reported by the Death Penalty information Center, Washington, DC.

[40] For example the country entry on Israel in the 2004 US State Departments report on human rights noted that Israel's use of "targeted killings" was a "serious human rights abuse", highlighting that these attacks were often "in civilian areas where civilian casualties were likely, killing 47 bystanders in the process, including children".

[41] Report of the Special Rapporteur, Asma Jahangir, UN Doc. E/CN.4/2003/3, 13 January 2003, para 39.

[42] See *USA: an extrajudicial execution by the CIA?* AI Index: AMR 51/079/2005, http://web.amnesty.org/library/index/engamr510792005.

December 2005 in the village of Haisori, in North Waziristan. Abu Hamza Rabia's Syrian bodyguards, and the 17 year old son and the 8 year old nephew of the owner of the house that was targeted were also killed. Abu Hamza Rabia had previously been targeted in another missile attack by US forces on 5 November 2005.

The US government has claimed that, in the context of what it regards as legitimate military operations, "enemy combatants may be attacked unless they have surrendered or are otherwise rendered 'hors de combat'" and that any "*al-Qa'ida* terrorists who continue to plot attacks against the United States may be lawful subjects of armed attacks in appropriate circumstances".[43] The US government has also stated that it does not recognise the mandate of the UN Special Rapporteur on extrajudicial, summary or arbitrary executions in connection with military actions against *al-Qa'ida*.

However the UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, reflecting Articles 4 and 6 of the Covenant, clearly state that *"Exceptional circumstances including a state of war or threat of war, internal political instability or any other public emergency may not be evoked as a justification of such executions".* The US position that it is not bound by human rights law in its "war on terror" has been repudiated by international expert bodies, and addressed above.

Amnesty International has urged the US government to issue an unequivocal statement that extrajudicial executions are illegal and will not be sanctioned in any circumstances. It has also called on those found responsible for initiating and carrying out such actions to be brought to justice.

In addition, Amnesty International is concerned that US forces have launched attacks targeting civilians or indiscriminate attacks, in violation of Article 6 of the Covenant, during operations in Afghanistan and Iraq. For instance, on 9 April 2003 four men and seven women were killed when a US bomb hit their house on the outskirts of Shkin, Paktika province, in eastern Afghanistan.[44] In Iraq, at least 44 people – including many women and children – were reportedly killed when US forces attacked targets allegedly connected to al-Qa'eda near the city of Falluja on 17 September 2004.[45]

➢ UPDATE

By the end of June 2006, it was reported that, since the US-led invasion of Iraq in March 2003, a total of 14 members of the US military had been convicted on charges relating to the deaths of Iraqis. Of the 14 cases, three of the soldiers' sentences involved no prison time (e.g. punishment was dismissal from the military); five soldiers were sentenced to prison terms ranging from 45 days to 18 months; three received prison terms of three years; one received a prison sentence of five years; and two received prison sentences of 25 years (one of which had been reduced from an original life sentence).[46] *It is reported*

[43] Letter dated 14 April 2003 from the Chief of Section, Political and Specialized Agencies, of the Permanent Mission of the United States of America to the United Nations Office at Geneva addressed to the secretariat of the Commission on Human Rights, UN Doc. E/CN.4/2003/G/80, 22 April 2003, Annex, p. 5.

[44] See Amnesty International, *Afghanistan: Security of civilians must be the priority*, AI Index: ASA 11/011/2003, 9 April 2003, http://web.amnesty.org/library/index/engasa110112003.

[45] See Amnesty International, *Iraq: Urgent inquiry needed into civilian killings by US troops*, AI Index: MDE 14/047/2004, 17 September 2004, http://web.amnesty.org/library/index/engmde140472004.

[46] *A look at criminal cases against members of the US military,* Associated Press, 28 June 2006. See also *US military braces for flurry of criminal cases in Iraq*. New York Times, 9 July 2006. See also, case of Mohammad Sayari, a possible victim of extrajudicial execution by US forces in Afghanistan in a case that remained unpunished after a military investigation revealed that there was probable cause to believe that five soldiers had committed crimes, pages 40-41 of *USA: Guantánamo and beyond – The*

that the insurance payment in the case of a US soldier who is killed in the line of duty is US $400,000. Relatives of an Iraqi civilian killed by US troops are reported to receive up to US $2,500 in condolence payments from the US authorities if the killing is acknowledged .[47]

There have been a number of incidents of possible extrajudicial executions or other unlawful killings by US forces in Iraq revealed in recent months. They include the following incidents which have been investigated or are still under investigation by the US military authorities:

- ***Haditha****. It is alleged that US Marines killed 24 unarmed Iraqis, including 15 women and children, on 19 November 2005. The killings are alleged to have been carried out after one of the Marine squad was killed by a roadside bomb and his colleagues raided nearby houses. No one has yet been charged. A separate military review into the circumstances surrounding the deaths, specifically the "training and command climate", has been completed and its findings and recommendations passed on to the commanding authority. It is reported to have found multiple failures of leadership.*[48]
- ***Ramadi****. An unarmed Iraqi man was shot dead on 15 February 2006. One US soldier has been charged with voluntary manslaughter and another with obstructing justice. They, together with a third soldier, are alleged to have placed a rifle near the dead man's body in an attempt to make it appear that he was an armed insurgent who had been shot.*
- ***Mahmudiya****. A number of US soldiers have been charged in relation to the alleged rape and murder of an Iraqi girl (she is reported to have been 14 or 15 years old) and the killing of three other members of her family, including her five-year-old sister, on 12 March 2006. One of those charged, former US Army private Steven D. Green, is facing trial in federal court as he had already been discharged from the army before the alleged crime came to light. Four other soldiers have been charged with conspiring with former Private Green to commit rape and murder, and one soldier has been charged with dereliction of duty for his failure to report the crime.*
- ***Ishaqi****. A military investigation into allegations that soldiers extrajudicially executed as many as 11 Iraqi civilians during a raid on a house on 15 March 2006, and then hid the alleged crimes by calling in an airstrike to bomb the building in order to bury the evidence, has cleared US forces of misconduct. The investigation found that there may have been up to nine "collateral" death, but that the ground force commander properly followed the rules of engagement, having "necessarily escalated the use of force until the threat was eliminated". The findings of the investigation have not been published in full. A spokesman for the Iraqi Prime Minister, Nouri Maliki, reportedly dismissed the findings of the US investigation, referring to them as "unfair".*[49]
- ***Hamdania****. A 52-year-old disabled Iraqi man was shot on 26 April 2006 by US soldiers, who allegedly then placed a shovel and rifle next to his body to make it appear that he had been an insurgent placing a roadside bomb. Seven Marines and a Navy medic have been charged in the alleged crime.*

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continuing pursuit of unchecked executive power, AI Index: AMR 51/063/2005, May 2005, http://web.amnesty.org/library/index/engamr510632005.

[47] *What's an Iraqi life worth?* By Andrew J. Bacevich, Professor of History and International Relations at Boston University. Washington Post, 9 July 2006.

[48] *Haditha probe finds leadership negligent*. Washington Post, 9 July 2006.

[49] Iraqis reject US Ishaqi findings, BBC, 3 June 2006.

- ***Muthanna / Thar Thar Lake****. It is alleged that on 9 May 2006 US soldiers deliberately allowed three Iraqi detainees to flee so that they would have an excuse to shoot them. A fellow soldier was allegedly threatened with death if he informed on his colleagues. Four soldiers have been charged with premeditated murder and conspiracy.*
- ***Samarra****. On 30 May 2006, US soldiers at a checkpoint fired at a vehicle that allegedly failed to heed their command to stop. Two women in the vehicle, Nahiba Husayif Jassim and her cousin Faliha Mohammed Hassan, were shot and killed. Nahiba Husayif Jassim was pregnant and her baby died also. Her brother was quoted in the media as saying that he was driving her to hospital for delivery of her baby and had not seen any signals given by the US soldiers calling on him to stop the vehicle.*

While acknowledging the military investigations into these incidents, Amnesty International is concerned that such cases are not investigated by a fully independent body, and if charges are referred, that they will be prosecuted in military courts martial. As a matter of principle, across all countries, Amnesty International takes the position that justice is best served by prosecuting war crimes, crimes against humanity, and other grave violations of international law, such as torture and extrajudicial killing, in independent and impartial civilian courts. Although a military justice system may be well-suited for trying armed forces personnel for purely military offences, such as insubordination or being drunk on duty, this is not the case for serious human rights violations. There is a growing international consensus on this view.[50]

The findings of the investigations that are carried out must be made public in full. The UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions states: "A written report shall be made within a reasonable period of time on the methods and findings of such investigations. The report shall be made public immediately and shall include the scope of the inquiry, procedures and methods used to evaluate evidence as well as conclusions and recommendations based on findings of fact and on applicable law. The report shall also describe in detail specific events that were found to have occurred and the evidence upon which such findings were based, and list the names of witnesses who testified, with the exception of those whose identities have been withheld for their own protection. The Government shall, within a reasonable period of time, either reply to the report of the investigation, or indicate the steps to be taken in response to it."

On 10 July 2006, the Iraq government said that it would ask the United Nations to end immunity from Iraqi law for the US-led Multinational Force (MNF). Amnesty International has called on the UN Security Council and the Iraqi government to ensure that those who commit crimes under international law in Iraq, including members of the MNF are held to account. The Security Council should reconsider its decision to extend the immunity from legal proceedings for abuses by the MNF or their contractors. Resolution 1637 (2005) extended the mandate of the MNF until 31 December 2006.[51]

[50] See pages 153-160 of *USA: Human dignity denied*: Torture and accountability in the 'war on terror", AI Index: AMR 51/145/2004, October 2004, http://web.amnesty.org/library/index/engamr511452004.
[51] *Iraq: UN Security Council should ensure full accountability for Multinational Force abuses,* 14 June 2006, available at: http://web.amnesty.org/library/Index/ENGMDE140272006.

5.3. Deaths in police custody in the USA

In its General Comment on Article 6, the Committee has stressed that in order to protect against the arbitrary deprivation of life, the law must strictly control and limit the circumstances in which a person may be deprived of life by the security forces.

Most large US police departments have guidelines on the use of lethal force which broadly conform to international standards laid down in the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. Shootings have declined in some jurisdictions following improved procedures and policies. However, there continue to be reports of officers shooting unarmed suspects in questionable circumstances. These include cases where officers have shot at moving vehicles, despite this being generally prohibited except as a last resort. For example, in February 2005 a 13-year-old unarmed African American boy, Devin Brown, died after being shot 10 times by a Los Angeles Police Department (LAPD) officer as the child backed a stolen car towards him. No criminal charges were filed against the officer who was facing possible disciplinary proceedings as of December 2005.[52] In the USA, officers, who usually say they believed their lives were in danger, rarely face criminal charges for on-duty shootings. Even those who breach policies often receive only minor disciplinary action. Research has shown that within police departments a small minority of officers are often responsible for disproportionate numbers of shootings, and some are involved in repeated questionable shootings. While some departments have set up computer based "early warning" systems for identifying and monitoring officers involved in repeated use of force, citizen complaints or shootings, not all departments have such systems.

Amnesty International has urged US authorities to ensure that international standards on the use of lethal force by law enforcement officials are strictly enforced and that officers responsible for breaching such standards are held accountable.

Amnesty International has also raised concern about the fatal shooting by the US Federal Bureau of Investigation (FBI) of prominent Puerto Rican independence activist Filiberto Ojeda Ríos in September 2005. He was shot after agents surrounded the farmhouse where he and his wife were staying. His body was not recovered from the house until 20 hours later, and an autopsy reportedly found that he had bled to death. His family have accused the FBI of initiating the shooting and deliberately leaving him to die, claims the police have denied. In a public statement, Amnesty International called for a full, independent investigation into all the circumstances of the case, pointing out that, if the FBI was found to have deliberately killed Filiberto Ojeda Ríos or left him to die when they could have arrested him, this would amount to an "extrajudicial execution". Investigations by the US and Puerto Rican departments of justice were still pending at the time of writing.

Since 2001, more than 160 people have died after being struck by police tasers, dart-firing electro shock weapons, raising serious concerns about the safety of such weapons (see Amnesty International's concerns under Article 7 below). While US police departments maintain tasers have saved lives by avoiding the resort to firearms, they are rarely used in the USA as an alternative to deadly force. Most of the people who died were unarmed men who did not appear to pose a serious threat, raising concern that some of the deaths could amount to arbitrary deprivation of life.

Deaths continue to be reported of individuals placed in dangerous restraint holds, such as chokeholds or "hogtie" restraint. While some departments have banned such

[52] LA Times, 9 December 2005, *Officer Not Charged in Death of Teenager.*

procedures, many continue to employ them, despite their being known to carry a risk of death or serious injury. These, too, may result in arbitrary deprivation of life.[53]

6) PROHIBTION OF TORTURE AND CRUEL; INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT; TREATMENT OF DETAINEES – Articles 4(1), 4(2), 7 and 10

In its previous submission to the Human Rights Committee from September 2005, Amnesty International provided a short summary of its main concerns with regards to torture and ill-treatment in the context of the "war on terror". The next section draws on this summary – reiterating some of the main concerns and providing relevant updates where necessary. The following two sections provide an overview of further concerns with regards to ill-treatment and excessive use of by law enforcement officers as well as conditions of detention within the USA.

6. 1. Torture and ill-treatment in the context of the "war on terror"

In the Annex to its Second Periodic report to the Committee against Torture, on individuals under the control of the US Armed Forces, an update of which was provided to the Human Rights Committee, the US states that "the commitment of the United States to treat detainees humanely is clear and well documented".[54] The US government continues to assert that abuses have been confined for the most part to aberrant, low-ranking soldiers and were not a result of policy.

However, as pointed out in Amnesty International's previous submission, there is clear evidence that much of the ill-treatment has stemmed directly from officially sanctioned procedures and policies. They include the authorization of interrogation techniques which, even when they did not amount to torture, have constituted cruel, inhuman and degrading treatment equally prohibited under international law.[55]

Also, the US continues to hold thousands of detainees in Iraq, Afghanistan, Guantánamo Bay and undisclosed locations in conditions which can facilitate torture or ill-treatment (e.g. prolonged incommunicado detention, enforced disappearances) and which may, in themselves, constitute torture or other cruel, inhuman or degrading treatment (see below).

A related concern, raised in the organization's previous submission, is the practice of renditions used by the USA to secretly transfer suspects to US detention facilities such as

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[53] See for example, USA: *Excessive and lethal force? Amnesty International's concerns about deaths and ill-treatment involving tasers* (AI Index: AMR 51/139/2004), pages 56-61: "impact of other restraints", http://web.amnesty.org/library/index/engamr511392004.

[54] Update to Annex One of the Second Periodic Report of the USA to CAT, 21 October 2005

[55] In Section 1.2. of the Amnesty International report *Human Dignity Denied* (AI Index 51/145/2004, pages 57-73), *op.cit*., the organization describes in detail the interrogation techniques authorized for use by US forces at various times in Afghanistan and Guantánamo, and later exported to Iraq. The techniques, some of which went beyond standard US army interrogation doctrine, were listed in a series of official documents and memoranda, including directives signed by Secretary of Defense Donald Rumsfeld and the then-Commander of the US Forces in Iraq, Lieutenant General Ricardo Sanchez. They include hooding; stress positions; "mild physical contact"; forced grooming; dietary manipulation; environmental manipulation (e.g. adjusting temperature); removal of clothing; sleep deprivation; prolonged standing; isolation (for longer than 30 days); threat to transfer to a third country (where the subject is likely to fear he would be tortured); increasing anxiety by use of aversions (e.g. presence of dogs). One of the memos was a September 2003 memo signed by Lieutenant General Sanchez authorizing 29 interrogation techniques, including 12 which far exceeded the limits established by the Army's Field Manual (made public for the first time by the ACLU in March 2005 September and posted on-line at http://www.aclu.org/SafeandFree/SafeandFree.cfm?ID=17849&c=206)

Guantanamo Bay and to third countries, as well as to secret detention facilities on which Amnesty International provides more information below.

a) <u>Government responsibility extends beyond interrogation techniques: adequacy of government response</u>

While the US authorities have instituted a number of measures in response to the torture and other ill-treatment exposed at Abu Ghraib and elsewhere, in Amnesty International's view these have not done enough. The inquiries conducted to date have lacked independence and scope and most have consisted of the military investigating itself, looking down the chain of command rather than up. None has examined the extent to which senior administration officials may have engaged in sanctioning acts which constitute torture and other international crimes or to immunize officials from liability. The activities of the CIA remain shrouded in secrecy. Although around 250 military trials have taken place of soldiers accused of abuses, these have involved mainly low-ranking soldiers, and penalties have generally been lenient in view of the gravity of the offences.

As Amnesty International noted in its previous submission, in over 70 per cent of criminal investigations into substantiated abuse, the punishment has been non-judicial or administrative. Most penalties imposed after courts martial have also been very light. For example, in the case of two Afghans who died in Bagram in 2002 from "multiple blunt force injuries" after being severely beaten while hooded, shackled and deprived of food and sleep, 15 soldiers were prosecuted with the heaviest sentence (in one case only) being five months' imprisonment; others received reprimands, reduction of pay and demotion. An army interrogator convicted of criminally negligent homicide in the death of former Iraqi army general Abed Hamed Mowhoush, who died after being stuffed head-first into a sleeping bag tightly bound with wire (done as part of army-approved "stress" and "fear up" techniques), was sentenced to a reprimand and $6,000 forfeiture of pay plus 60 days restrictions on movement. There is evidence that Mowhoush was earlier subjected to a brutal beating by personnel from other agencies, including the CIA, none of whom has been prosecuted. No senior commanders have been prosecuted in these or other cases. [56]

The US government's responsibility for torture and ill-treatment is not limited to the sanctioning of interrogation techniques, but is part of a wider failure to protect the rights of detainees in accordance with US and international law. There is evidence, for example, that the decision not to apply the Geneva Conventions to detainees in Afghanistan and Guantanamo - or to grant them protections under other international treaties or US law - created a climate of impunity which transferred to Iraq. A controversial Justice Department memorandum of 1 August 2002 (narrowing the definition of torture, stating that the president had power in wartime to override the ban on torture and suggesting how US agents could avoid criminal liability for torture) has since been withdrawn. However, the replacement memorandum of December 2004 fails to address whether the President retains authority to order torture in time of military "necessity" and whether the perpetrators in such circumstances would be immune from prosecution.

The USA, including its President, frequently condemns torture and proclaims that the USA does not intend to resort to it, including in its report to the Committee. However, Amnesty

[56] At least 27 people who died in US custody in Iraq and Afghanistan, have had their deaths listed as homicides, in some cases after substantial evidence of their having been tortured. In October 2005 Human Rights First reported that record-keeping in such cases had been "grossly inadequate" and that delays and deficiencies in investigations had hampered investigations. AI has also reported on delays and cover-ups in death investigations (see *Human Dignity Denied* and *Guantánamo and Beyond, op.cit.).*

International has yet to hear the President or his administration declare, clearly and unequivocally, that in the USA no one, the President included, has the right or the authority to torture or ill-treat detainees or to order their torture or ill-treatment; that anyone, the President included, who does so will have committed a crime; and that criminal law defences such as "superior orders", "self-defence" and "necessity" would not be available to perpetrators. Amnesty International believes such clarifying declaration to be crucial, and would welcome it being made by US representatives in front of the Committee.

Until legislation was passed in December 2005, the government had consistently maintained a position that non-US nationals held in US custody outside the USA were not legally entitled to protection from "cruel, inhuman or degrading treatment".[57]

➢ **UPDATE**

John Bellinger, the Department of State Legal Adviser who led the US delegation to the Committee Against Torture, urged the Committee to view the problem of torture and other cruel, inhuman or degrading treatment by US forces as one concerning "relatively few actual cases of abuse and wrongdoing" rather than one that was "systemic". The Committee Against Torture was clearly not persuaded by this appeal in the face of the evidence to the contrary.

The Committee Against Torture was highly critical of the USA's record on torture and ill-treatment, both at home and abroad. In the context of the "war on terror" detentions carried out by the USA, the Committee Against Torture reminded the US government that "disappearances", secret detentions and indefinite detention without charge violate, per se, the Convention against Torture. It called for full registration of all detainees in US custody – wherever they are held – and for the detention camp at Guantánamo to be closed.

The Committee Against Torture called on the USA to "promptly, thoroughly, and impartially investigate any responsibility of senior military and civilian officials authorizing, acquiescing or consenting, in any way, to acts of torture committed by their subordinates." The Committee was clearly troubled by the USA's failure to prosecute anyone under the extraterritorial torture statute and by the evidence of leniency in the case of those soldiers who have been tried under the Uniform Code of Military Justice.

Since the Committee Against Torture issued its findings on the USA, Amnesty International has raised with the US government the cases of Mohamed al-Qahtani and another detainee, believed to be Mohamedou Ould Slahi. These cases illustrate the inadequacy of investigations, the lack of accountability for torture or ill-treatment including at high-levels of government, and how the USA's notion of humane treatment does not meet international standards. No one has been brought to account for the torture and ill-treatment of either of these detainees, despite findings by military investigators that they were ill-treated in Guantánamo, including under techniques authorized by Secretary of Defense Donald Rumsfeld. The ill-treatment of the detainee believed to be Mohamedou Ould Slahi took place when the ICRC was denied access to him for more than a year.[58]

[57] See AI's previous submission to the Committee of September 2005, page 8, note 29.

[58] See pages 15-24 of *Memorandum to the US Government on the report of the UN Committee Against Torture and the question of closing Guantánamo*, AI Index: AMR 51/093/2006, 23 June 2006, http://web.amnesty.org/library/Index/ENGAMR510932006. Discussing allegations of past human

Legislation barring cruel, inhuman or degrading treatment and revised interrogation rules

In December 2005 Congress passed legislation prohibiting the "cruel, inhuman or degrading treatment or punishment" of persons of any nationality under the custody or control of the US government anywhere in the world." (the Detainee Treatment Act of 2005, Title X, Section 1003) [59] Despite initial government attempts to exempt the CIA from these provisions, the legislation applies to anyone in US custody, including those held by the CIA.

Section 1003 stipulates that the term "cruel, inhuman or degrading treatment or punishment" means the "cruel, unusual and inhumane" treatment or punishment prohibited under the US Constitution "as defined in the United States Reservations, Declarations and Understandings" to the UN Convention against Torture, and thus reflects existing US law. While the legislation is an important step forward in providing what are substantial constitutional protections against cruel treatment to "war on terror" detainees outside the USA, this could still leave the US open to a narrower interpretation of what constitutes such treatment than is recognized under international standards. The US should therefore withdraw its reservations to Article 7 and the corresponding reservations to the UN Convention against Torture.

Although Section 1003 applies to the CIA, and some of the "enhanced interrogation techniques" such as "waterboarding"[60] may be outlawed under the legislation,[61] CIA activities remain largely secret and are exempt from new military rules on interrogation when outside a Department of Defense facility (see below). Thus, there is no way of monitoring whether or not they may continue to use interrogation techniques which violate international law.

Disturbingly, the legislation included another amendment (section 1005, also known as the Graham-Levin amendment [62]) which imposes severe limits on the right of the Guantánamo detainees to federal court review, including barring them from seeking review of their treatment or conditions of detention (see Article 9). [63] The amendment also allows evidence obtained by coercion (and therefore, possibly, torture) to be weighed for its probative value by the Combatant Status Review Tribunals in Guantánamo. These measures serve to weaken the prohibition against torture or ill-treatment by removing key enforcement mechanisms.

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rights violations by US forces in the 'war on terror", including Abu Ghraib, Secretary Rumsfeld said in an interview on 7 July 2006: "I can't imagine, frankly, why the people want to go back over those things at this stage." (*Radio Interview with Secretary Rumsfeld on the Eileen Byrne Show, WLS Chicago*, http://www.defenselink.mil/transcripts/2006/tr20060707-13427.html). Amnesty International believes that Secretary Rumsfeld, for one, has a case to answer in regard to past abuses, as described in the above memorandum.

[59] As included in the Defense Appropriations Act, 2006, (H.R. 2863) signed by President Bush on 30 December 2005. It is also included in the Defense Authorization Act, 2006 (Sections 1402-1405).

[60] "Waterboarding" involves strapping a detainee to a board and submerging him in water until he believes he is drowning.

[61] In a classified report written in 2004, the findings of which were leaked in November 2005, the CIA's then inspector general John L. Helgerson, while not concluding that it constituted torture, expressed concern that waterboarding would violate the "cruel, inhuman and degrading" provisions under the Convention against Torture (*Report Warned on CIA's Tactics in Interrogation*, The New York Times 9 November 2005).

[62] Sec. 1005 of the Detainee Treatment Act of 2005, entitled "Procedures for Status Review of Detainees Outside the United States."

[63] The legislation refers specifically to the detainees at Guantánamo Bay as the US courts have previously held that they are entitled to habeas corpus review in the US federal courts (Rasul, June 2004); no such right has been recognized with regard to detainees in Iraq or Afghanistan. It is still unresolved as to whether the legislation applies retroactively to the Guantánamo detainees, nullifying existing cases before the US courts.

Of further concern is the "signing statement" President Bush attached to the legislation, in which he stated that he would construe the law:

> "...in a manner consistent with the constitutional authority of the president ...as Commander-in-Chief" [and] "consistent with the constitutional limitations on the judicial power, which will assist in achieving the shared objective of the Congress and the President ... of protecting the American people from further terrorist attacks."[64]

According to legal experts including, reportedly, White House administration officials, this signals the executive's intention to reserve the right to waive the provision on national security grounds. If this is indeed the case, this would further undermine the protection afforded by the legislation.[65] It would also be inconsistent with the US government's obligation under the Covenant to respect the absolute prohibition of torture and other cruel, inhuman or degrading treatment in all circumstances, including in time of public emergency which threatens the life of the nation[66]

Amnesty International is deeply concerned that this view is not limited to the Executive. In a recent decision, a US Federal Court judge stated the following:

> "*While one cannot ignore the "shocks the conscience" test established in Rochin v. California, 342 U.S. 165, 172-73, 72 S.Ct. 205, 209-10, 96 L.Ed. 183 (1952), that case involved the question whether torture could be used to extract evidence for the purpose of prosecuting criminal conduct, a very different question from the one ultimately presented here, to wit, whether substantive due process would erect a per se bar to coercive investigations, including torture, for the purpose of preventing a terrorist attack. Whether the circumstances here ultimately cry out for immediate application of the Due Process clause, or, put differently, whether torture always violates the Fifth Amendment under established Supreme Court case law prohibiting government action that "shocks the conscience" – a question analytically prior to those taken up in the parties' briefing – remains unresolved from a doctrinal standpoint.*"[67]

It is clear that there is a pervasive view within the USA that in times of war the President enjoys extremely wide discretion, including the power to violate non-derogable human rights protected under the Covenant. Amnesty International believes that this must be rectified through legislation incorporating the provisions of the Covenant, including

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[64] www.whitehouse.gov/news/releases/2005/12/20051230-8.html.

[65] So far the position of the executive remains ambiguous, see for example Reuters, 20 January 2006: *Retired military leaders express concern after the president made ambiguous remarks on the new ban last month*.

[66] It should be noted that a White House memorandum of 7 February 2002 entitled *Humane Treatment of al Qaeda and Taliban Detainees,* in which the government states that some detainees are not entitled to humane treatment has never been withdrawn, thus raising further questions about the US government's position in this regard ("our values …call for us to treat detainees humanely, including those who are not legally entitled to such treatment.").

[67] *Maher Arar v. John Ashcroft et al.,* Civil Action No. CV-04-0249 (DGT)(VVP), United States District Court, Eastern District of New York, Memorandum and Order, 16 February 2006, per David G. Trager J, p. 55. In a footnote (no. 10), the Court distinguishes *Filartiga v. Pena-Irala*, 630 F.2d 876 (2d Cir. 1980) as it "does not address the constitutionality of torture to prevent a terrorist attack." The Court also states that the relevant international obligations could be "repudiated" by "congressional legislation to the contrary." *Ibid.*

provisions on non-derogability of certain rights, and a firm commitment by the US executive, judiciary and legislature to abide by the state's international obligations.

➢ **UPDATE**

The issue of US policies and practices falling short of international minimum standards continues to come to the fore. For example, the instruction for medical personnel involved in detainee operations, issued by the Department of Defense on 6 June 2006, states as a basic principle that any such health care personnel have a duty "to ensure that no individual in the custody or under the physical control of the Department of Defense, regardless of nationality or physical location, shall be subject to cruel, inhuman, or degrading treatment or punishment, in accordance with and as defined in US law" (emphasis added).[68] As noted above, the Detainee Treatment Act suffers from the same limitation.[69] So too does Military Commission Instruction No. 10, issued by the Pentagon on 24 March 2006, that purports to prevent evidence obtained by torture from being admitted in trials by military commission.[70] The Instruction, about which the Committee Against Torture was concerned, portrays the ban as a matter of US policy rather than a binding legal prohibition, defines torture in the narrow way to which the Committee Against Torture objected, and fails to mention cruel, inhuman or degrading treatment at all. Amnesty International notes that the Human Rights Committee has held that states must prohibit in law the use in judicial proceedings of statements or confessions obtained through torture or other cruel, inhuman or degrading treatment or punishment.[71]

Amnesty International submits that the Detainee Treatment Act will not necessarily prevent the cruel, inhuman or degrading treatment of detainees; that the June 2006 Pentagon instruction for medical personnel will not necessarily prevent the involvement of medical personnel in any future torture or other cruel, inhuman or degrading treatment; and that Military Commission Instruction No. 10 will not necessarily prevent statements coerced by torture or other cruel, inhuman or degrading treatment from being admitted at military commission trials. To reiterate, a fundamental problem is that US authorities are employing definitions of humane treatment that do not meet international law and standards.

Revised military interrogation rules

The Detainee Treatment Act of 2005, Section 1002, provided that no person in the custody of the Department of Defense (DoD) or in a DoD facility shall be subjected to any treatment or interrogation technique not authorized by and listed in the US Army Field Manual on Intelligence Interrogation. While this undoubtedly will provide more protection than has hitherto been the case, there remain issues of concern.

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[68] Department of Defense Instruction Number 2310.08E, 6 June 2006, http://www.dtic.mil/whs/directives/corres/pdf/231008_060606/231008p.pdf.

[69] "the term 'cruel, inhuman, or degrading treatment or punishment' means the cruel, unusual, and inhumane treatment or punishment prohibited by the Fifth, Eighth, and Fourteenth Amendments to the Constitution of the United States, as defined in the United States Reservations, Declarations and Understandings to the United Nations Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment done at New York, December 10, 1984." Section 1003(d) of the Detainee Treatment Act.

[70] Instruction No. 10 is available at http://www.defenselink.mil/news/Mar2006/d20060327MCI10.pdf.

[71] CCPR General Comment 20, para. 12, 10 March. The Committee has said that the prohibition on torture or other cruel, inhuman or degrading treatment is a peremptory norm of international law, non-derogable and binding on all states. General Comment 29, UN Doc. CCPR/C/21/Rev.1/Add.11, 31 August 2001. See also, pages 161-164, *USA: Human Dignity Denied*, op. cit.

A new Army Field Manual, the first revision in 13 years and reported to be in near-final form, has not yet been published. While it will reportedly expressly prohibit the use of dogs in interrogations and other practices such as prolonged stress positions, stripping and food and sleep deprivation, there remain questions as to whether it may retain practices – for example "fear up harsh" -- which could involve torture or other ill-treatment. Also, while the field manual would cover treatment of all detainees in DoD facilities (even if questioned by non-military personnel), it does not apply to other facilities, for example, CIA-run secret detention facilities.

In December 2005, the US government approved a new 8-page policy directive (Directive 3115) governing interrogations of those in military detention to accompany the revised Field Manual. The directive assigns responsibility for interrogation techniques to senior Pentagon civilians and commanders and establishes training and reporting guidelines. However, while it states that "acts of physical or mental torture are prohibited", it does not does elaborate other than to ban the use of dogs in interrogations and to order that detainees be treated humanely "in accordance with applicable law and policy". The directive does not explicitly bar "cruel, inhuman or degrading treatment", nor does it incorporate international standards such as the Covenant, the Geneva Conventions' Common Article 3 or the UN Convention against Torture.

While the directive requires that CIA interrogators follow Pentagon guidelines when questioning military prisoners, this does not apply to detainees outside DoD custody, e.g. in "black sites" . The directive also reflects the Executive's view that ultimately its authority at war is not limited, in that it appears to allow for exceptional authorization even of prohibited techniques, stating, under Section 3.4.1. "Intelligence operations will be conducted in accordance with applicable law, this Directive and implementing plans, policies, orders, directives and doctrine ... *unless otherwise authorized, in writing, by the Secretary of Defense or Deputy Secretary of Defense*." (AI emphasis).

➢ **UPDATE**

By the end of June 2006, the Pentagon had still not released its new Army Field Manual for intelligence interrogation. In this regard, some recent media reports are cause for optimism and others for concern. On the one hand, it has been reported that the Pentagon may be backing away from including a classified set of interrogation techniques in the new manual, and also that it may drop its plan to differentiate in the manual between interrogation methods that can be used in the cases of prisoners of war and those that can be used against so-called "enemy combatants" such as those held in Guantánamo Bay and Afghanistan.[72] *On the other hand, it has been reported that in the face of State Department opposition, the Department of Defense has decided to omit from the manual the prohibition on "humiliating and degrading treatment" contained in Common Article 3 of the Geneva Conventions.*[73]

Since these reports, the US Supreme Court has handed down its ruling in Hamdan v. Rumsfeld, in which the Court found that Common Article 3 applied to the conflict with al-Qa'ida – in other words that it applies to "war on terror" detentions. The International Court of Justice has determined that the rules in common Article 3 "constitute a minimum yardstick, in addition to the more elaborate rules which are also to apply to international

[72] Pentagon rethinking manual with interrogation methods. New York Times, 14 June 2006.
[73] *Army manual to skip Geneva detainee rule*. Los Angeles Times, 5 June 2006.

conflicts; and they are rules which, in the Court's opinion, reflect what the Court in 1949 called 'elementary considerations of humanity'".[74]

President Bush's central "war on terror" memorandum of 7 February 2002 includes the presidential determination that common Article 3 would not apply to either al-Qa'ida or Taleban detainees. Amnesty International believes that the subsequent humiliation and degradation of detainees in US custody in the "war on terror" has been systemic.

Amnesty International has called on President Bush to withdraw or substantially amend his 7 February 2002 memorandum.[75]

In a memorandum dated 7 July 2006, prompted by the Hamdan ruling, US Under Secretary of Defense, Gordon England, instructed Department of Defense officials to ensure that all the Department's personnel adhere to the requirements of Common Article 3.[76]

b) Continuing concerns about torture and other ill-treatment and the conditions of detention outside the USA

Iraq and Afghanistan

Detainees held in US custody in Iraq and Afghanistan are routinely denied access to the courts, families or lawyers, often for prolonged periods. In Iraq, for example, "security internees" held by the US, which leads the Multinational Force (MNF) are not allowed visits with family or lawyers for the first 60 days of internment and even after this period families have reported difficulty visiting their relatives (see 7.3 below). As of November 2005, more than 3,000 "security detainees" were reported to remain in long-term US military detention in Iraq without charge or trial or access to the courts, some for more than two years.[77] Relatives of detainees have testified to the despair caused by the uncertainty of long-term indefinite detention. Hundreds of detainees in Afghanistan continue to be held without access to families, lawyers or the courts in Bagram airbase, some for more than a year.

The International Committee of the Red Cross (ICRC) does not have access to detainees for weeks after arrest, for example those in division or brigade holding facilities in Iraq or forward operating bases in Afghanistan. Nor is the ICRC's presence permanent in any one facility. Detainees are therefore completely cut off from the outside world for prolonged periods and at crucial stages, such as the initial stage of detention when torture or ill-treatment is most likely to occur.

The UN Commission on Human Rights has stated that "prolonged incommunicado detention may facilitate the perpetration of torture and can in itself constitute a form of cruel, inhuman or degrading treatment or even torture".[78] The Human Rights Committee has stated

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[74] See pages 42-43 of *USA: Human dignity denied*, op.cit.

[75] *Memorandum to the US Government on the report of the UN Committee Against Torture and the question of closing Guantánamo*, AI Index: AMR 51/093/2006, 23 June 2006, http://web.amnesty.org/library/Index/ENGAMR510932006.

[76] See Amnesty International public statement, *USA: Applying Common Article 3 is only one step*, 11 July 2006, http://web.amnesty.org/library/Index/ENGAMR511102006.

[77] According to figures provided by US officials, in early November 2005, among the nearly 13,900 detainees held by the MNF about 3,800 were held for more than a year and 200 for more than two years (most in US custody). Source: Associated Press, Katherine Shrader: *US has detained 83,000 in war on terror*, 16 November 2005.

[78] Resolution: 2004/41. para 8, 19 April 2004

that provisions should be made against the use of incommunicado detention[79], and the Committee against Torture has called for its elimination.[80]

Although the US has reportedly improved its procedures since Abu Ghraib, there continue to be reports of torture or ill-treatment of detainees by US troops. In September 2005, several members of the National Guard were sentenced to up to 12 months' imprisonment after pleading guilty at courts-martial to ill-treating Iraqi detainees in March 2005. Although the military authorities have declined to provide full details, the ill-treatment reportedly included using an electro-shock stun-gun on handcuffed and blindfolded detainees. The *Los Angeles Times* referred to a member of the battalion as having reported that "the stun gun was used on at least one man's testicles".[81] In December 2005, five soldiers received sentences ranging from 30-days to six months confinement for kicking and punching Iraqi detainees as they were awaiting transfer to a detention facility in September.

The US authorities apparently took swift action to investigate the abuses and prosecute the perpetrators in the above cases, which Amnesty International welcomes. However, the organization is concerned that there are insufficient safeguards to protect detainees from torture and other ill-treatment. There have been other reports of the abusive use by US troops of electro-shock weapons such as tasers: dart-firing weapons which can also be used close-up as stun guns. Memos obtained by the ACLU in December 2004 under Freedom of Information Act requests, for example, revealed that four members of a US special operations unit had been disciplined for excessive force, including improperly using tasers on prisoners. According to the memos, dated June 2004, detainees held in Iraq often arrived at prisons bearing "burn marks" on their backs.[82] An eye-witness told Amnesty International about a more recent incident in November 2005 in which two detainees were shocked with tasers used as stun guns while they being transferred to a medical facility within Camp Bucca. Such incidents, particularly during transfers, were not uncommon, according to the same source. Amnesty International believes that electro-shock weapons are inherently open to abuse and it has called on the US authorities to suspend their use of tasers (see below).

Amnesty International has also received reports of Iraqi detainees in US custody being subjected to disciplinary sanctions which amount to torture or other ill-treatment. There have been reports that Camp Bucca internees, for example, have been exposed to extreme cold as punishment, including being forcibly showered with cold water and later exposed to a cold air conditioner.

In December 2005, Amnesty International wrote to the US authorities about a photograph in which a juvenile was shown immobilized in a four-point restraint chair in Abu Ghraib prison, reportedly as a punishment. Amnesty International drew attention to international and US standards stipulating that restraints should never be applied as punishment and expressing concern that prolonged immobilization in restraints in the manner shown could carry a health risk. The US authorities informed Amnesty International that they had suspended use of the restraint chair in Abu Ghraib, pending a review of procedures.[83]

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[79] Human Rights Committee General Comment 20, Article 7 (Forty-fourth session, 1992), para. 11.
[80] Human Rights Committee General Comment 20. Committee against Torture : UN Doc. A/52/44 (1997), para. 121 (d).
[81] Associated Press, Jeremiah Marqez, *California Guard sergeant gets year in Iraq detainee abuse case*, 10 September 2005; Los Angeles Times, Scott Gold and Rone Tempest: *More Tumult besets guard unit in Iraq,* 15 October 2005
[82] BBC News 8 December 2004 http://news.bbc.co.uk/1/hi/world/americas/4080761.stm
[83] Letter to Amnesty International from Major General John D. Gardner, Deputy Commanding Genera, Detainee Operations, Multi-National Force-Iraq, 17 January 2006.The original photograph was by John Moore of Getty Images.

However the restraint chair continues to be used in other US facilities housing "war on terror" detainees, including Guantánamo, where there have been further allegations of ill-treatment involving use of the chair (see below).

In Afghanistan there have been reports of detainees held in forward operating bases, at least up to March 2005, being subjected to abuses including hooding, shackling and deprivation of food and water[84]. In October 2005 the Pentagon announced an investigation into television footage purportedly showing a group of US soldiers burning the bodies of two Taliban members and using their charred corpses to taunt villages suspected of harbouring insurgents.

➢ **UPDATE**

On 7 June 2006, two years after they were completed, two reports of military investigations into detention operations in Iraq and Afghanistan were declassified by the US authorities and released a week later under a lawsuit brought by the American Civil Liberties Union under the Freedom of Information Act (FOIA). Both reports were heavily redacted, and as such their already limited scope offered little enlightenment on US policies and practices.

1. *The report of the Article 15-6 Investigation of CJSOTF-AP and 5th SF Group Detention Operations conducted by Brigadier General Richard Formica into allegations of detainee abuse by Special Operations Forces in Iraq was finished on 8 November 2004, but classified secret and "not releasable to foreign nationals" (NOFORN). More than a third of the declassified version of the Formica Report has been redacted. Some detail that can be gleaned includes the following findings:*

    a) *The common occurrence of abrasions or scarring on the wrists of detainees "[hand]cuffed for long periods of time";*
    b) *The use of chains of 3 to 4 feet (0.9m to 1.2m) in length attached to handcuffs to secure detainees to the floor;*
    c) *The use of blindfolding, sometimes with duct tape directly on the skin;*
    d) *The use of "dietary manipulation". For example, detainees fed with bread and water. Detainees could gain additional food by cooperating with interrogators; some detainees fed with bread and water for their entire detention, including in at least one case for 17 days;*
    e) *The use of smalls cells (0.5 m wide, 1.2 m high, 1.2 m deep) to "elicit tactical intelligence". The Formica Report noted that the cells fell short of US minimum standards, but concluded that it was acceptable to hold detainees in them for up to two days, even though they did not allow enough room for the detainee to stand up or lie down;*
    f) *The use of loud music as a "sleep management" technique;*
    g) *Some detainees forced to stand in their cells for prolonged periods with minimal rest; detainees forced to kneel during interrogations; detainees forced to kneel with their forehead against a wall, or forced to stand "after having been kept awake";*
    h) *The use of sleep deprivation;*
    i) *Some detainees washed down and then interrogated in an air-conditioned room or outside in cold weather. Some detainees were interrogated naked,*

[84] Testimony to a BBC radio broadcast on 2 June 2005 of detainees released in March 2005, reported in Amnesty International's report: *USA US detentions in Afghanistan: an aide-mémoire for continued action* (AI Index: AMR 51/093/2005), http://web.amnesty.org/library/index/engamr510932005.

with the interrogator deciding when the detainee would be clothed; according to a footnote in the Formica Report, a detainee who died in custody in April 2004 after interrogation may have been subjected to this technique. Further detail on this case is redacted.

2. *The Report of Inspection of Combined Forces Command-Afghanistan (CFC-A) Area of Operations (AO) detainee operations conducted by Brigadier General Charles H. Jacoby Jr. was begun on 19 June 2004 and completed on 26 June 2004. The Jacoby Report stressed that it was the result of "an inspection in name and spirit – the focus of this inspection was current theater detainee operations, and not the investigation of detainee abuse allegations". It revealed that since January 2001 [sic, presumably January 2002], the military authorities (excluding, for example, the CIA) had operated 19 temporary holding facilities as well as the semi-permanent detention facility at Bagram air base.*

   The Schlesinger Panel report in August 2004 had stated that the Jacoby Report had "found a range of abuses and causes similar in scope and magnitude to those found among conventional forces".[85] *However, this information was not revealed by the heavily redacted version. With page after page redacted and supporting documentation remaining classified, there was little for the public to learn from the Jacoby Report, which the authorities had classified as secret until the FOIA litigation forced them into (partial) declassification.*

   In a telling insight into how the USA fails to apply international definitions to the question of humane treatment, the Jacoby report characterized the use of dogs to "intimidate or humiliate" detainees, and the practice of causing detainees "to be seen naked when not required", as simply culturally inappropriate rather than a violation of international law and standards (not noted in the Jacoby Report is evidence that such techniques were deliberately targeted at the perceived cultural sensitivities of Muslim detainees).[86]

   Other information that can be gleaned from the Jacoby Report includes:

a) *Reference to overcrowding in Bagram detention facility. It also referred to the fact that Low Level Enemy Combatants had already been held at Bagram for "extensive periods" and that they had "little chance for release in the forseeable future";*
b) *The finding that: "While humane treatment of detainees is in fact the understood and practiced standard in the theater, lack of clarity regarding authorities, standards of detention, and standards of interrogation, provides for sufficient friction in the process to create opportunities for detainee abuse…";*
c) *Reference to ICRC concern in March 2003 about "allegations of mistreatment in safe houses".*

Cruel, inhuman and degrading conditions in Guantánamo Bay

Amnesty International considers that the conditions of confinement of the Guantánamo detainees, together with the indefinite nature of their detention, constitutes cruel, inhuman or degrading treatment or punishment in violation of Articles 7 and 10 of the ICCPR.

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[85] Final Report of the Independent Panel to Review DoD Detention Operations. August 2004, page 13 of executive summary, http://www.defenselink.mil/news/Aug2004/d20040824finalreport.pdf.

[86] See *Interrogation techniques with a discriminatory resonance*. Pages 30-36 of *USA: Human dignity denied*, op.cit

The USA has reported to the Committee that detainees receive adequate housing, recreation and medical facilities; write to and receive mail from their families and friends; and may worship in accordance with their beliefs. However, 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.[87] There have been long delays in receiving mail which is often heavily redacted; some mail has allegedly not been received at all. There have also been allegations that detainees have at various times been subjected to religious intolerance by their captors, in violation of Articles 2 (1) and 18 of the ICCPR; these have included allegations of guards damaging copies of the Qu'ran, laughing at detainees while they were praying and playing loud music during the call-to-prayer.

While some detainees have been transferred to a section where they have more out-of-cell time and contact with other detainees, most continue to be confined to small cells with little contact with other inmates and minimal opportunities for exercise. Some detainees are held in extreme isolation in Camp V: a segregation block apparently modelled on "supermaximum" security prisons on the US mainland. Inmates in Camp V are reportedly held for up to 24 hours a day in solitary confinement in small concrete cells. They are allowed out of their cells three times a week for a shower and exercise, although reportedly this is often reduced to once a week. Such conditions fall short of UN minimum standards which provide that prisoners should receive at least one hour of exercise daily. Prisoners in Camp Five are reportedly subjected to 24 hour lighting, which US courts have held to be "cruel and unusual" in US mainland segregation units.

The conditions and uncertainty about their fate has reportedly contributed to severe mental and emotional stress and there have been numerous suicide attempts. The US Department of Defense has reported over 30 suicide attempts but has reclassified others as "manipulative self-injurious behaviour",[88] indicating a disregard for detainees' welfare as well as the circumstances underlying such incidents. As of February 2006, an unknown number of detainees remained on a hunger strike that initially started in mid-2005. Some are reported to be seriously ill.[89]

There have been serious allegations of ill-treatment of the hunger strikers during force-feeding. Although Amnesty International has no position on force-feeding *per se*, it considers that if forcible feeding is done in such a way as deliberately to cause suffering – as is described below – this would constitute torture or other ill-treatment.

Detainees have alleged having nasal tubes roughly inserted into their noses without anaesthetic or gel, causing choking and bleeding. Some of the hunger strikers have alleged being placed in punitive restraints during force-feeding and being subjected to verbal and physical abuse by guards. For example, Yousuf al-Shehri, a Saudi Arabian national, has described how, after seven days without food, he and several others were taken to the camp hospital, where they had shackles or other restraints placed on the arms, legs, waist, chest and head before being force-fed; he said that they were hit in the chest if they moved. Hunger strikers have also described being subjected to verbal abuse.[90] Lawyers for other detainees have told Amnesty International that hunger strikers had been moved into isolation in cold

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[87] See *Guantánamo and Beyond, op. cit.*
[88] David Rose, Vanity Fair, January 2004
[89] On 1 December 2005 the US Department of Defense estimated the number of long-term hunger strikes - described among the guards as "voluntary fasting" – to be between thirty to thirty-three, although some of the detainees' lawyers have given much higher numbers.
[90] These and other cases are described in Amnesty International's report *Guantánamo: Lives torn apart: the impact of indefinite detention on detainees and their families*, 6 February 2006, AI Index AMR 51/007/2006, http://web.amnesty.org/library/index/engamr510072006.

rooms, strapped into restraint chairs and deliberately force-fed too much food, causing them extreme pain and, in some cases, diarrhoea. Detainees on hunger strike have also reportedly been deprived of "comfort items" such as blankets or books. The Department of Defense has denied that detainees have been ill-treated while being force-fed, stating that only in rare cases are the tubes inserted against detainees' will but admitting that uncooperative detainees "would need to be restrained".[91]

Kuwaiti national Fawzi al-Odah told his lawyer that on 11 January 2006 he ended his hunger strike after being threatened with force-feeding using a thick tube with a metal edge whilst restrained, and after hearing the screams of other hunger strikers. Most but not all of the hunger strikers had reportedly stopped the hunger strike by late February.

In February 2006 five UN special rapporteurs, including the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, issued a report on their investigation into conditions at Guantánamo, calling for the facility to be closed. The rapporteurs said that some of the treatment, including use of solitary confinement, holding detainees naked, use of excessive force and the manner of force-feeding of detainees during the hunger strike amounted to torture.[92]

Amnesty International remains deeply concerned by the continued refusal of the USA to open up Guantánamo to independent, outside scrutiny. The organization is particularly concerned by the refusal of the USA to allow visits by independent experts of the UN Commission on Human Rights consistent with the standard terms of reference for such visits.[93] This concern is heightened by the continuing reports of ill-treatment and poor condition of the hunger strikers and conflicting accounts given by the Pentagon and detainees and their lawyers.

Amnesty International has called on the US government *inter alia* to close the Guantánamo facility and open up all US "war on terror" detention facilities to independent external scrutiny; to promptly and impartially investigate all allegations of torture and other cruel, inhuman or degrading treatment or punishment of detainees; to ensure all detainees are provided with appropriate medical care; to ensure that detainees are allowed adequate contact with their families and that the families are kept fully informed of their legal status, health and well-being.

➢ **UPDATE**

[91] http://www.defenselink.mil/news/Dec2005/20051201_3504.html

[92] *Situation of detainees at Guantánamo Bay*, Report of the Chairperson of the Working Group on Arbitrary Detention, Ms. Leila Zerrougui; the Special Rapporteur on the independence of judges and lawyers, Mr. Leandro Despouy; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Mr. Manfred Nowak; the Special Rapporteur on freedom of religion or belief, Ms. Asma Jahangir and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Mr. Paul Hunt, UN Doc. E/CN.4/2006/120, 15 February 2006, para. 54.

[93] AI is concerned that, in October 2005, the US refused to allow the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and the Special Rapporteur on the independence of judges and lawyers to visit Guantánamo. While it extended an invitation to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; to the Special Rapporteur on freedom of religion and belief and to the Chair-person-Rapporteur of the Working Group on Arbitrary detention, this was on strictly limited terms and they were not allowed to interview detainees.

In its observations and recommendations on the USA issued in mid-May 2006, the Committee Against Torture noted that holding people indefinitely without charge constitutes per se a violation of the Convention against Torture. The Committee against Torture called for the closure of the Guantánamo detention camp.

Less than a month later, and three years after the ICRC revealed its concern that the indefinite detention regime was having a serious impact on the psychological health of a large number of the detainees in Guantánamo, three detainees died in the base, apparently as a result of suicide. The three detainees were Saudi nationals Mane'i bin Shaman bin Turki al-Habardi al-'Otaybi and Yassar Talal 'Abdullah Yahia al-Zahrani, who was reportedly 17 when he was taken into custody, and Yemeni national 'Ali 'Abdullah Ahmed. All three had previously participated in hunger-strikes and been subjected to force feeding. All were held in a maximum security section of the detention camp. There are no records publicly available of the men's Combatant Status Review Tribunals. Amnesty International is disturbed by the Guantánamo Commander's description of the deaths as acts of "asymmetric warfare", by which he was tending to prejudge the outcome of the Naval Criminal Investigation Service investigation into the deaths.[94] *Amnesty International believes that the military and the executive, as the authorities that have instigated and maintained a detention regime that has caused serious psychological suffering, and as the authorities that continue to rely on the war paradigm they have consistently used to justify rejection of fundamental human rights law and standards, will be unable to conduct the necessary investigation into the deaths and be seen by the outside world to have done so. Amnesty International called for a full independent and impartial investigation into these deaths.*[95]

Following the reported suicides of the three detainees on 10 June 2006, five UN human rights experts reiterated their call for urgent closure of the facility.[96]

Children in Guantánamo

In 2004 the Pentagon released three children detained in Guantánamo, believed aged between 13 and 15 at the time of their capture, to rehabilitation programs operated by UNICEF in Afghanistan.[97] However, at least three detainees who were under 18 when first detained remain in Guantánamo. They are Mohammed C, a Chadian national picked up in Pakistan, who was transferred to Guantánamo in January 2002 when he was just 15, Omar Khadr, aged 15 when captured in Afghanistan in July 2002, and Yousuf al-Shehri, whose alleged ill-treatment during force-feeding is described above. Mohammed C and Omar Khadr have alleged that they were tortured in US custody, including being beaten, placed in painful shackles, threatened with dogs and subjected to sleep deprivation; Omar Khadr also states he was threatened with rape and had pine solvent poured on him. Throughout their detention, they have been held in the same harsh conditions as adults, including prolonged solitary confinement in Camp V. Neither has been provided with rehabilitation or educational programs consistent with international standards for the treatment of juveniles in custody.

In November 2005, more than three years after his capture, Omar Khadr was named to stand trial before a military commission on a charge of murdering a US soldier in

[94] Three Guantánamo Bay detainees die of apparent suicide. American Forces Information Service, News Article, http://www.defenselink.mil/news/Jun2006/20060610_5379.html.
[95] *USA: Independent investigation must be held into deaths of three Guantánamo detainees*, 12 June 2006, http://web.amnesty.org/library/index/engamr510912006.
[96] *United Nations human rights experts request urgent closure of Guantánamo detention center*. http://www.unhchr.ch/huricane/huricane.nsf/view01/D916F2EB424D1588C1257188004EDB76?opendocument.
[97] http://www.hrw.org/english/docs/2006/01/10/usint12397.htm

Afghanistan. Court documents indicate that during his detention he has undergone repeated interrogations during which he was given none of the special protections children are entitled to under international standards, including the right to counsel and to the presence of a parent or guardian at all stages of proceedings.[98] While Amnesty International considers that military commissions cannot in any case provide a fair trial (see below) it is particularly concerned that Omar Khadr should face such a trial on the basis of alleged acts committed as a child soldier. Amnesty International is also concerned that evidence may be used against him which was extracted while he was held in violation of standards for the protection of children in custody. These circumstances would render his trial in any adult court unfair

The detention of children in the circumstances described is in grave violation of international standards which recognize that children or child offenders are entitled to special care and protection. The standards require, among other things, that children should be detained only as a last resort, with their cases determined promptly. The relevant standards include Articles 10 (2a) and 10 (3) of the ICCPR which provide that juveniles should be detained separately from adults; and that they should be brought as speedily as possible for adjudication. Their treatment also contravenes Article 24(1) relating to the general protection of children by the state without any discrimination as to race, language, religion or national or social origin. Omar Khadr's detention is also contrary to international standards on the treatment of child soldiers.[99] Amnesty International therefore considers his detention and trial before a military commission as violating several provisions of the ICCPR, including Articles 9, 10, 14 and 24.

- **UPDATE**

The USA has still not answered the question of how many children it has held in Afghanistan and Guantánamo. The authorities have apparently limited their definition of child to someone who is under 16, contradicting most international legal standards which hold that children are those who are under 18 years old and subject to particular protections.[100] *Recent research suggests that there may have been at least 17 detainees who were taken to Guantánamo when they were under 18 years old.*[101]

c) Treatment of enemy combatants in the USA – case of Ali-Saleh Kahlah al-Marri

In its previous submission, Amnesty International reported on the detention conditions of enemy combatants in the USA. Jose Padilla has since been transferred to the criminal justice system (see 7.5, below). However, Ali-Saleh Kahlah al-Marri, a Qatari national, remains detained without charge or trial in a military prison in Charleston, South Carolina. While there have been some modest improvements in his conditions since our last report, any "privileges" he receives (such as a prayer rug, exercise, items in his cell) are entirely at the discretion of

[98] These are among a range of safeguards set out under the UN Standard Minimum Rules for the Administration of Juvenile Justice which reflect several provisions of the ICCPR. The rules state that the same principles for the protection of children in the juvenile system should guide the treatment of children in the adult criminal justice system. Similar safeguards are set out under the Convention on the Rights of the Child, signed but not ratified by the USA.
[99] The USA has ratified the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, which provides inter alia that State Parties shall take all feasible measures to ensure children in their jurisdiction recruited or used in hostilities are demobilised and shall, when necessary, accord to such persons all appropriate assistance for their physical and psychological recovery and their social reintegration (Article 6(3)).
[100] See pages 21-22 of *USA: The threat of a bad example – undermining international standards as 'war on terror' detentions continue*, August 2003, http://web.amnesty.org/library/pdf/AMR511142003ENGLISH/$File/AMR5111403.pdf.
[101] Information provided from research project of Reprieve, London, UK.

the detaining authority, and are often arbitrarily withdrawn for extended periods of time.[102] He continues to be held in extreme isolation, with no contact with any human being other than military staff and occasional visits with his attorneys.[103] For the two years and eight months of his detention, he has not been allowed any visits or even telephone communication with his family, including his wife and five children, a situation that could continue indefinitely. Letters to and from his family are heavily censored and delayed. No current prisoner or detainee in the USA is subjected to such blanket social isolation and denial of communication with the outside world. Amnesty International considers these conditions to constitute cruel, inhuman or degrading treatment, in violation of Articles 7 and 10 of the Covenant. [104]

As Amnesty International mentioned in its previous submission, lawyers on behalf of Ali-Saleh Kahlah al-Marri filed a complaint in the federal courts in August 2005, seeking injunctive relief for the torturous conditions under which he was then confined (including sleep deprivation, exposure to cold, punitive shackling and denial of a clock and prayer rug as well as the ongoing solitary confinement). The government filed a motion to dismiss on the ground that the plaintiff's claim was "barred by the doctrine of sovereign immunity" as the "United States is engaged in active military hostilities and plaintiff has been declared an enemy combatant". The government stated that, while the courts had played a role in challenges to the legality of the detention of enemy combatants (citing, inter alia, *Hamdi*) "the details of the conditions of detention for military detention has [sic] always been a matter left to the discretion of the military and Executive Branch officials, subject only to international obligations, which are not judicially enforceable".[105] Thus, the government has sought to foreclose judicial review of the conditions of detention of "enemy combatants" held in the USA who would otherwise be protected by the US Constitution, as well as claiming that the USA's international obligations, obviously including the Covenant, are "not judicially enforceable" in US courts. Amnesty International is deeply concerned that this is yet another reflection of the US government's view that in the "war on terror", it has unfettered authority, including the freedom to violate the provisions of the Covenant, even those that are non-derogable. Appeals in the case continue. Meanwhile Al-Marri's treatment remains entirely at the discretion of the US executive.

➢ **UPDATE**

Ali al-Marri has now been detained without charge or trial for more than three years. Amnesty International continues to call on the US authorities to release Ali al-Marri if he

[102] Since filing a complaint in federal court in August 2005, Al-Marri has had access to library items where previously he was denied all books and news and religious items with the exception of the Qu'ran. His lawyers maintain his immediate environment, from adjusting the lights and turning the water supply on and off in his cell, has been "deliberately manipulated to degrade him" and that his prolonged isolation "has irreparably harmed his mental health and wellbeing and continues to do so" and, further, that "no rules or regulations govern" his treatment in custody, and that his treatment changes with each new shift. (*Ali Saleh Kahlah Al-Marri v Donald Rumsfeld*, Plaintiff's Memorandum of Law in Opposition to Defendants' Motion to Dismiss the Complaint": C/A No. 2: 05-v-02259-HFF-RSC, United States District Court for the District of South Carolina)

[103] He has also been visited several times by the ICRC during his detention

[104] His conditions also breach minimum standards under the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, which reflect and elaborate on Covenant provisions. For instance, Principle 19 which provides that a detained or imprisoned person "shall have the right to be visited by and to correspond with, in particular, members of his family and shall be given adequate opportunity to communicate with the outside world, subject to reasonable conditions and restrictions as specified by law or lawful regulation".

[105] *Ali Saleh Kahlah Al-Marri v Donald Rumsfeld*: government's Motion to Dismiss the Complaint, Civil Action No. 2:05-cv-02259-HFF-RSC, United States District Court for the District of South Carolina (filed 27 October 2005).

is not to be charged with a recognizable criminal offence and brought to trial without further delay in full accordance with international law and standards. The authorities must take immediate steps to improve his conditions of detention and provide him with appropriate and continuing medical and psychological care, and access to family members.[106]

d) Rendtions

Another concern is the practice of renditions: secret transfers of suspects from one country to another, without any form of judicial process. Renditions have been used by the USA to transfer suspects to US detention facilities such as Guantánamo Bay and to third countries, as well as to secret detention facilities (see below)

The US administration has acknowledged that it uses "rendition", maintaining that the practice is aimed at transferring "war on terror" detainees from the country where they were captured to their home country or to other countries where they can be questioned, held or brought to justice. It has contended that these transfers are carried out in accordance with US law and international treaty obligations. However, there is mounting evidence that the US has systematically violated international law in the practice of renditions, by carrying out abductions; transfers of individuals to countries with a record of torture; and enforced disappearances. Such actions violate a number of non-derogable rights under the ICCPR, including the prohibition against arbitrary detention, right to a fair trial and the right to be protected from torture and cruel, inhuman or degrading treatment.

Although the US government has denied sending people to countries for the purpose of torture, there is evidence that they have arranged for specifically selected countries with a record of torture to receive certain "war on terror" detainees for interrogation, effectively "outsourcing" torture. In March 2005, based on interviews with current and former government officials, the New York Times reported that the CIA had been given expansive authority to conduct renditions after 11 September 2001 and had since flown 100 to 150 "war on terror" suspects to various countries, including Egypt, Jordan, Pakistan, Saudi Arabia and Syria, known to routinely practise torture. The true number of such transfers may be considerably higher. While the government has provided no details of such cases, there is direct testimony from individuals who allege they were tortured after being rendered by the USA, or with US collusion, to other countries. [107] In addition, numerous detainees are alleged to have been threatened by US interrogators that they would be sent to countries where they would be tortured, if they refused to cooperate.[108]

The US government has said that, when appropriate, it relies on diplomatic assurances from states to which they wish to transfer suspects, that the suspect will not be tortured in custody. Amnesty International considers diplomatic assurances to be

[106] *USA: Three years on – Ali al-Marri remains in solitary confinement without charge or trial,* http://web.amnesty.org/library/Index/ENGAMR510952006.

[107] See, for example, cases cited on pages 20-22 and 122-124 of *Guantánamo and beyond*, op.cit., and pages 182-183 of *Human Dignity Denied*, op.cit. Such cases include Australian national Mamdouh Habib, who was allegedly transferred from Pakistan with US involvement to Egypt where he was allegedly subjected to severe torture, and Osama Nasr Mostafa Hassan, abducted in Milan and allegedly driven to a US airbase in Italy, where he was interrogated and drugged before being taken to a US base in Germany and then flown to Egypt, where he was allegedly tortured, including with electric shocks. In June 2005 an Italian judge ordered the arrest of 13 CIA agents for their alleged involvement in his abduction.

[108] A number of Guantánamo detainees have said they were threatened with transfer to countries such as Jordan, Egypt and Morocco where they were told they would be tortured, see page 20 of *Guantánamo and Beyond, op.cit.*

unacceptable, being both evasive of and erosive of the absolute legal prohibition on torture and ill-treatment in general and on *refoulement* in particular, in addition to being inherently unreliable, morally questionable and in practice ineffective.

In his interim report to the General Assembly, the UN Special Rapporteur on torture discussed the issue of diplomatic assurances at some length. He reached the following conclusions:

> "*It is the view of the Special Rapporteur that diplomatic assurances are unreliable and ineffective in the protection against torture and ill-treatment: such assurances are sought usually from States where the practice of torture is systematic; post-return monitoring mechanisms have proven to be no guarantee against torture; diplomatic assurances are not legally binding, therefore they carry no legal effect and no accountability if breached; and the person whom the assurances aim to protect has no recourse if the assurances are violated.*
>
> *The Special Rapporteur is therefore of the opinion that States cannot resort to diplomatic assurances as a safeguard against torture and ill-treatment where there are substantial grounds for believing that a person would be in danger of being subjected to torture or ill-treatment upon return.*
>
> *The Special Rapporteur calls on Governments to observe the principle of non-refoulement scrupulously and not expel any person to frontiers or territories where they might run the risk of human rights violations, regardless of whether they have officially been recognized as refugees*".[109]

Beyond these concerns, Amnesty International's principled opposition to diplomatic assurances relates to their serious repercussions - agreeing to enforce an exception to a receiving state's general torture practices in an individual case has the effect of accepting the torture of others similarly situated in the receiving country. The organization is concerned that by asking for the creation of such an island of supposed legality in the country of return, the sending state is accepting the ocean of abuse that surrounds it. Put differently – even if they were proven to be effective, which so far has certainly not been the case, diplomatic assurances would still have been discriminatory, saving some prisoners from torture while leaving others, possibly even their cell-mates, to their fate. Thus diplomatic assurances are clearly in violation of the Covenant's provisions prohibiting torture and ill-treatment (Article 7) and discrimination (Article 2).

- **UPDATE**

In its conclusions on the USA issued in mid-May 2006, the Committee Against Torture expressed its concern about the USA's "rendition of suspects, without any judicial procedure, to States where they face a real risk of torture". The Committee Against Torture called on the USA to cease this practice in order to comply with its obligations under the Convention Against Torture (see also footnote 2 above)..

On 5 April 2006 Amnesty International released a report on rendition policy and practice, which included interviews with victims of rendition and secret detention.[110] *The 41-page*

[109] Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, UN Doc. A/60/316, 30 August 2005, paras. 51-2.
[110] *USA: Below the radar: secret flights to torture and "disappearance",* http://web.amnesty.org/library/Index/ENGAMR510512006.

report also linked the US practice of rendition to the torture or ill-treatment of terror suspects and traced the movements and flight patterns of several CIA rendition planes. Three of the men interviewed in the report had been held in secret prisons by the US, and described their detention at a US-run "black site". Based on the details they provided about this facility, it appears that they were held in one of a handful of countries in Eastern Europe.

On 7 June 2006, Swiss Senator Dick Marty, on behalf of the Parliamentary Assembly of the Council of Europe's Committee on Legal Affairs and Human Rights, released a report into its inquiry into secret detentions and renditions in Europe. The report confirmed Amnesty International's findings that several cases of rendition occurred with the involvement or co-operation of Council of Europe member states, and provided additional information about the possibility of secret detention sites in Europe. The report urged the USA and European states to put an end to renditions and to conduct independent and thorough investigations into the practice. It emphasised that European states must ensure accountability of their own and foreign intelligence services. Dick Marty argued that the search for the truth about rendition practice and secret detention cannot and should not end with the publication of his findings, adding that the USA and European states must carry out thorough investigations and provide full disclosure to the Council of Europe and EU Parliament investigations.

In another report issued on 14 June 2006, Amnesty International urged European leaders to end to what it called a "see no evil" policy on CIA renditions.[111] *The report details cases involving Macedonia, Bosnia and Herzegovina, Turkey and EU members Germany, Italy, Sweden and the UK. The report analyses the various levels of involvement by these states and explains how states are complicit under international law for human rights abuses carried out during renditions. Although European governments have persistently denied any wrongdoing, it is clear that European intelligence agencies were actively involved in several cases of rendition, and provided information that contributed to the commission of others. Under international law, states that facilitate transfers to countries where they know or should know that there is a risk of serious human rights abuses are complicit in these abuses and individuals complicit in abductions, torture or "disappearances" should be held criminally responsible.*

On 7 July 2006, the European Parliament endorsed the interim report of the Temporary Committee on the alleged use of European countries by the CIA for the transportation and illegal detention of prisoners. The report states that the CIA or other US services have been directly responsible for the abduction and detention of terror suspects in Europe and their transport to US custody. The European Parliament voted to continue its investigation into alleged CIA secret prisons and flights in Europe for another six months. The European Parliament has documented several transfers of terror suspects to US agents in Europe and accused EU member states of breaching an international treaty governing air traffic regulations by allowing up to 1,000 CIA flights to land on or take off from European territory. The report said that rules for governing the activities of secret services in the EU member states were inadequate and called on governments to establish how European airspace, civil and military airports and NATO bases are used by US secret services.

[111] *Partners in Crime: Europe's role in US renditions,* http://web.amnesty.org/library/Index/ENGEUR010082006.

6.2. Ill-treatment and excessive force by law enforcement officials in the USA.

While statistics show that US police resort to force in only a small proportion of incidents, there continue to be disturbing reports of police ill-treatment and use of excessive force in jurisdictions across the USA. They include cases of physical abuse sometimes amounting to torture and ill-treatment and cases where unarmed suspects are shot in circumstances which do not appear to involve an immediate threat to life. In practice officers are rarely prosecuted for on-duty force and inquiries have found that disciplinary action has often been inadequate.[112] While a number of police departments have improved their policies in recent years – some forced to take action following Justice Department "pattern and practice" investigations -- others still do not have adequate systems for monitoring police abuses, such as monitoring for patterns of racism or tracking officers involved in repeated complaints.

There is evidence that racial minorities are disproportionately the victims of police ill-treatment, including physical and verbal abuse and questionable shootings, contrary to Article 26 as well as Articles 7 and 10 of the ICCPR.[113] Discriminatory treatment during police stops and searches – sometimes leading to other abuses such as excessive force – has often been reported. A survey published by the Justice Department's Bureau of Justice Statistics in 2005 found, for example, that black or Hispanic residents were more likely to be searched or issued with tickets after being stopped by police and more likely to report that police had used excessive force.[114] However, national legislation to prohibit "racial profiling" in law enforcement (the targeting of individuals on account of their race, religion, national origin or ethnicity) at federal, state and local levels, and to provide monitoring and enforcement mechanisms, has yet to be enacted.[115]

Lesbian, gay, bisexual and transgender (LGBT) people are also at risk of discrimination and ill-treatment by police. In September 2005 Amnesty International published a report: *Stonewalled: police abuse and misconduct against lesbian, gay, bisexual and transgender people in the United States*.[116] The report found that, although progress had been made in the recognition of the rights of LGBT people, serious police abuses, including gender-based violence amounting to torture and ill-treatment, against the LGBT community persist. The abuses described in AI's report included use of sexually explicit, abusive language, humiliating and unnecessary searches, threats, physical abuse and rape. Amnesty

[112] AI's reports of police ill-treatment include: *USA: Rights for All*, chapter 3 (AI Index AMR 51/35/98); *Race, Rights and Police Brutality* (AI Index AMR 51/147/99); *Amnesty International renews call for investigation into homophobic abuse by Chicago police officers* (AI Index AMR 51/092/2001); *Amnesty International's Concerns on Police Abuse in Prince George's County, Maryland* (AI Index AMR 51/126/02); *USA: Excessive and lethal force? Amnesty International's concerns about deaths and ill-treatment involving tasers* (AI Index: AMR 51/139/2004).

[113] While national data is not available, this is borne out in local statistics, reports of Justice Department investigations into specific departments and other data. See also reference to the Bureau of Justice Statistics report, below

[114] *Contacts between Police and the Public: Findings from the 2002 National Survey*, Justice Department, Bureau of Justice Statistics, April 2005 (http:www.ojp.usdoj.gov/bjs/pub/pd/pdf/ccp02.pdf) The national found the likelihood of being stopped by police did not differ proportionately among white, black or Hispanic drivers and that the differential treatment occurred afterwards; it also noted that further research was needed to analyse the data. However, other research into specific jurisdictions has shown proportionately more black drivers are stopped by police compared to whites, with similar findings with regard to other types of police stops and searches.

[115] The End Racial Profiling Act (ERPA) of 2004 was reintroduced into Congress in 2005 and is still pending. An earlier version of the act was first introduced in 2001 with bipartisan support but lapsed in the aftermath of September 11 2001. There has been a reported increase in incidents of people being stopped, searched or detained on the basis of their religious origin since 11 September 2001. See Amnesty International USA: *Threat and Humiliation: Racial Profiling, Domestic Security and Human Rights in the United States*, op cit

[116] *Stonewalled*, *Police Abuses against lesbian, gay, bisexual and transgender people in the USA*, op cit

International's research showed that within the LGBT community, transgender individuals, people of colour, youth, immigrants, homeless individuals and sex workers experienced a heightened risk of abuse. The report makes a number of recommendations for better police training and accountability as well as improved procedures for the investigation of complaints.

Electro-shock weapons

Amnesty International is concerned by the use of electro-shock devices by US law enforcement agencies which carry a risk of death or injury as well as being open to abuse. More than 7,000 US local police and jail agencies, as well as the US military (see above), currently deploy tasers: hand-held stun guns which fire darts delivering a 50,000 volt shock. They can also be used close-up as traditional "touch" stun guns. Police departments deploying tasers claim they reduce injuries and save lives by providing officers with an alternative to using their firearms or batons. However, Amnesty International's research shows that tasers are often used in situations where police use of lethal force – or even batons – would never be justified. [117]

As noted above (see 5.3), since 2001, more than 160 people are reported to have died in the USA after being struck with tasers, with the numbers rising annually. While coroners have usually attributed the deaths to factors such as drug intoxication in at least 23 cases coroners have found the taser shock to have directly caused or contributed to the death. Some medical experts believe that taser shocks may exacerbate a risk of heart failure in cases where people are under the influence of drugs or have underlying health problems: factors applying in many of the cases where people have died. Most of those who have died were unarmed men who did not appear to pose a serious threat when they were electro-shocked. Many were given multiple or prolonged shocks. The rising death toll heightens Amnesty International's concerns about the safety of stun weapons and the lack of rigorous, independent testing of their medical effects.

Apart from health concerns, electro-shock weapons are particularly open to abuse as, portable and easy to use, they can inflict severe pain at the push of a button without leaving substantial marks. Despite such risks, there is little independent scrutiny of taser use in the USA, and no consistent or binding standards or guidelines. As AI's research has shown, police have used tasers against unruly schoolchildren; mentally disabled or intoxicated individuals involved in disturbed but non-life-threatening behaviour; elderly people; pregnant women; unarmed suspects fleeing minor crime scenes and people who argue with officers or simply fail to comply with police commands. In many instances, the force used by officers appears to have violated international standards prohibiting cruel, inhuman or degrading treatment, as well as international guidelines on the use of force. Yet in most cases documented by AI, the officers were not found to have violated their departments' policies.

Amnesty International has called on US state, federal and local authorities to suspend all transfers and use of tasers and other electro-shock weapons pending a rigorous, independent inquiry into their use and effects.

In some US jurisdictions, high security prisoners are made to wear electro-shock stun belts during transportation, hospital visits or court hearings. Agencies which deploy them include the US Marshal's Service (a federal agency). Amnesty International has condemned such devices as inherently cruel and degrading because the wearer is under constant fear of being subjected to an electric shock at the push of a remote control button by officers for the whole time the belt is worn.

[117] Cases of deaths and ill-treatment are described in: *USA: Excessive and lethal force? Amnesty International's concerns about deaths and ill-treatment involving tasers* (AMR 51/139/2004)

Other restraint devices/techniques leading to breaches of Article 7

Many US police and prison agencies authorize the use of Oleoresin Capsicum (OC) spray (also known as "pepper spray"), an inflammatory agent derived from cayenne peppers. OC spray inflames the mucous membranes, causing coughing, gagging, choking, shortness of breath and an acute burning sensation on the skin and exposed areas. OC spray has been promoted as a safer alternative to weapons such as chemical mace or batons. However, since its introduction in the early 1990s, there have been many reported instances of abuse. These have included reports of prisoners being indiscriminately exposed to large quantities of OC spray during cell extractions. In Florida, for example, prisoners have alleged being sprayed in their cells with pepper spray for minor offences, causing burning and blistering to their skin.[118] Since the early 1990s, more than 100 people are reported to have died after being exposed to pepper spray during their arrest by police. While most deaths have been attributed by coroners to other causes, there is concern that OC spray could be a factor in some cases, especially when combined with other restraints, as it can restrict breathing. Amnesty International has expressed concern that, as with tasers, OC spray is usually placed at a relatively low level on the police use-of-force scale, for example, in cases of individuals who, although resisting officers, do not pose a serious threat. However, there is evidence in some departments of a decline in the use of OC spray as this is substituted by the taser. Amnesty International remains concerned that there are not enough stringent guidelines regulating the use of chemical sprays by US police and in prisons.

During the past decade many suspects in US custody have died from "positional asphyxia" after being placed in dangerous restraint holds such as a "hogtie" or "hobble restraint", with their wrists or elbows bound behind them to their shackled ankles. This form of restraint is considered to be a particularly dangerous and potentially life-threatening procedure, especially if the subject is in a prone position. The National Institute of Justice has issued guidelines warning of the dangers of hogtying and advising against placing a suspect in a prone position while in restraints.[119] However, Amnesty International is disturbed that many agencies continue to use the procedure in some form.[120]

In recent years, at least 18 people have died in US detention facilities after being immobilized in four-point restraint chairs, including several people who had also been pepper-sprayed and shocked with stun weapons. Amnesty International has documented cases in which people have been strapped into the chairs as punishment, or have been left immobilized in them for prolonged periods without adequate safeguards, in violation of international standards on use of restraints and standards prohibiting ill-treatment.[121] Amnesty International has called for a national inquiry into use of restraint chairs in the USA, based on concerns about their safety and the lack of clear regulations or monitoring of their use. However, they continue to be used in a wide range of US custody facilities including local jails, federal immigration detention centres and juvenile detention centres.

In its conclusions and recommendations to the US government following consideration of its initial report to the Committee against Torture, the Committee recommended, inter alia that the USA should abolish the use of stun belts and restraint chairs

[118] Lawsuit filed by Florida Institutional Legal Services in September 2003 claiming that correctional officers in four Florida prisons "maliciously and sadistically" used pepper spray and teargas on prisoners, some of whom were mentally ill.

[119] National Institute of Justice (NIJ) Advisory Guidelines for the Care of Subdued Subjects (June 1995) and NIJ Bulletin on Positional Restraint, October 1995.

[120] See, for example AI's report: *USA Excessive and Lethal Force*, op cit, pages 56-61

[121] AI report: *The Restraint Chair: How Many More Deaths?* (AI Index AMR 51/31/2002),

against people in custody on the ground that they lead to breaches of the prohibition against cruel, inhuman or degrading treatment.[122]

Ill-treatment during demonstrations (violations of Article 7, 19 and 21)

Amnesty International has also expressed concern at reports of police use of excessive force during demonstrations, sometimes amounting to cruel, inhuman or degrading treatment. In some cases police actions have reportedly hampered demonstrators' right to peaceful protest.

For example, Amnesty International expressed concern that police had used unjustified force against largely peaceful crowds demonstrating against the Free Trade Area of the Americas (FTAA) negotiations in Miami in November 2003, when they fired rubber bullets, pepper spray and tear gas canisters into the crowds and struck people with batons. Dozens of people were injured and some hospitalized. A number of lawsuits are pending in which civil rights groups claimed that Miami police unlawfully detained innocent bystanders and protesters exercising the right to free speech. Protesters arrested for demonstrating against the Republican National Convention in New York in August 2004 also reported being ill-treated by police both during the demonstration and while they were held for hours in a makeshift holding facility.

6.3. Prison conditions in the USA

Long term isolation in super-maximum security confinement.

In its Concluding Observations to the USA's initial report in October 1995, the Committee expressed its particular concern at the conditions of detention in certain maximum security prisons which are incompatible with article 10. The Human Rights Committee has also noted that "prolonged solitary confinement of the detained or imprisoned person may amount to acts prohibited by article 7."[123]

Thousands of prisoners, many of them mentally ill, continue to be held in long-term isolation in "super-maximum security" facilities, sometimes referred to as Security Housing Units (SHU Units) or Extended Control Units (ECU).[124] At least 28 states and the federal government operate more than 50 such facilities which include entire prisons or units within prisons.[125] As noted above, the US has also constructed similar facilities to house "war on terror" detainees held outside the USA, for example, Camp V in Guantánamo.

While prison authorities have always been able to segregate prisoners who are a danger to themselves or others, or to impose fixed terms of segregation as a penalty for disciplinary offences, super-maximum security facilities differ in that they are designed to house large numbers of prisoners in long-term, or even indefinite, isolation as an administrative "control" measure. Prisoners in the most restrictive units are typically confined for 23-24 hours a day in small, sometimes windowless, solitary cells with solid doors, with no

[122] Conclusions and Recommendations of the Committee against Torture: United States of America. 15/05/2000. CAT/C/24/6. (Concluding Observations/Comments)

[123] Human Rights Committee, General Comment 20: Article 7 (Prohibition of torture or cruel, inhuman or degrading treatment or punishment), adopted during the forty-forth session (1992), paragraph 6.

[124] At the end of 1998 about 20,000 prisoners, or 1.8% of all those serving sentences of 1 year or more in state and federal prisons, were housed in such facilities (King, R.D. (1999) The rise and rise of supermax: An American solution in search of a problem? *Punishment and Society*, 1, 163-186)

[125] Collins W.C., Supermax Prisons and the Constitution, Liability Concerns in the Extended Control Unit *Department of Justice National Institute of Corrections (NIC)*, November 2004 (citing a 1996 survey by the NIC); Pizarro J., Stenius, V.M.K. Supermax Prisons: Their Rise, Current Practices, And Effect on Inmates, *The Prison Journal* Vol 84.No.2. June 2004 248-264

work, training or other programs[126]; their out-of-cell time is limited to no more than 3-5 hours a week. The facilities are designed to minimize contact between staff and inmates and prisoners are often subjected to regimes of extreme social isolation and reduced sensory stimulation. The length of time inmates are assigned to such facilities varies, but many spend years, and some their whole sentence, in such units.

Many units continue to breach specific standards under the UN Standard Minimum Rules for the treatment of Prisoners: for example standards specifying the need for windows, natural light, fresh air and daily outdoor exercise. The absence of rehabilitation programs in many units is also in breach of international standards for the treatment of prisoners.

Amnesty International believes that conditions in many US super-maximum security facilities are far more punitive than is required for legitimate security purposes and are cruel and dehumanizing, in violation of Articles 7 and 10 of the ICCPR.

Studies have shown that prolonged isolation in conditions of reduced sensory stimulation can cause severe physical and psychological damage. However, mentally ill or disturbed prisoners continue to be held in super-maximum facilities in some states, without adequate treatment or monitoring. In a few jurisdictions, as a result of litigation brought on behalf of prisoners, courts have ordered changes to conditions in super-maximum security units, for example, the removal of the severely mentally ill. However, such rulings are confined only to the specific jurisdiction where the litigation has taken place, and there have been only a few such court decisions. No court to date has found that long-term super-maximum security confinement *per se* violates the US Constitution. In general, US courts have given broad leeway to states to impose harsh conditions of segregated custody on security grounds.

In some states, children under 18 are placed in super-maximum security units, in violation of international standards. Youthful offenders in general tend to be more unruly than older inmates and may be frequently punished with isolation when in adult prisons. A joint report published by Amnesty International and Human Rights Watch in September 2005 described how child-offenders serving life without parole were often placed in long-term isolation as punishment for disruptive or disturbed behaviour. In Colorado, 13 out of 24 child offenders contacted for the report had spent time in Colorado's super-maximum prison.[127]

The US authorities justify the use of supermax units as necessary to contain dangerous or disruptive prisoners who cannot be managed in a less secure setting. However, the evidence suggests that many prisoners assigned to supermax facilities do not warrant such a restrictive regime. For example, prisoners have been assigned to supermax facilities, or have had their stay extended, for relatively minor disciplinary infractions. Others have reportedly been moved to supermax prisons because of lack of space elsewhere. Some states have transferred their whole death row populations to supermax units regardless of their disciplinary records, where their treatment exacerbates the cruelty inherent in being under sentence of death. The procedures for transferring or reviewing transfers to and from supermax units are often inadequate.

Prisoners in the federal system have also been placed in administrative segregation on broad security grounds unrelated to their behaviour in prison. More than a dozen federal prisoners serving sentences for various politically motivated offences unconnected with the attacks of 11 September 2001 were removed from the general prison population shortly after 911 and placed in solitary confinement in high security units. Some were denied phone calls while in segregation; several were also denied all mail and visits and were effectively

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[126] While some units provide in-cell programs through TV these are limited and rarely interactive. Many prisoners are not provided with any programs and remain idle and in complete isolation.
[127] *The Rest of Their Lives: Life without Parole for Child Offenders in the United States*, Amnesty International, Human Rights Watch, p. 58, http://web.amnesty.org/library/index/engamr511622005.

incommunicado for between 10 days and two weeks. None was informed of the reason for their removal to the high security units.

Some prisoners held on terrorism-related charges in the federal system have been held in prolonged isolation in punitive conditions while awaiting trial. For example, Amnesty International raised concern with the US government that the pre-trial conditions of Dr Sami Al-Arian (held on charges of alleged support for Palestinian Islamic Jihad), which included isolation, inadequate exercise and heavy shackling during visits with his attorney, were unnecessarily punitive and inhumane.[128] Amnesty International has also reported on cruel, inhuman and degrading conditions under which detainees arrested after 11 September 2001 were held in the Security Housing Unit of the Metropolitan Detention Center in New York, where they were held in prolonged solitary confinement, with 24 hour lighting in their cells and inadequate exercise.[129]

Women prisoners remain vulnerable to sexual abuse

US states and the federal jurisdiction have taken a number of measures to address the problem of sexual abuse in prisons, including the sexual abuse of women prisoners by male guards. 49 states now have laws which criminalize all forms of sexual contact between staff and inmates.[130] The Prison Rape Elimination Act (PREA) of 2003, drafted primarily to combat inmate-on–inmate sexual assaults, also covers staff sexual misconduct. Although the federal government has yet to adopt national standards as called for under the PREA, several states have implemented the provisions through state legislation.[131]

However, many women in prison remain vulnerable to sexual abuse by staff, and victims may be subject to retaliation for reporting incidents of abuse.[132] In addition to rape, which is a form of torture, other types of sexual abuse commonly include sexually offensive language; male staff intimately touching female prisoners while conducting searches, and male staff watching women while they are naked. Not all such practices may be covered under state sexual misconduct laws. Some jurisdictions continue to allow practices which Amnesty International considers are inherently cruel and degrading or are open to abuse: these include allowing male staff to conduct pat down searches of clothed women prisoners; allowing male staff to patrol areas where women may be viewed in their cells while dressing or washing or when taking showers.

In most US jurisdictions, male guards continue to have unsupervised access to female jail and prison inmates, contrary to international standards which provide that female prisoners should be attended and supervised only by female officers. In some states, male guards make up the majority of custodial staff in women's prisons.[133] Amnesty International

[128] He was tried and acquitted of most charges in December 2005 after nearly three years of detention.
[129] See *USA: Amnesty International's concerns regarding post September 11 detentions in the USA* (AMR 51/044/2002) pages 28-30. The detainees were held for months without charge before being released or deported. They have also alleged they were physically abused by guards, allegations which were sustained by a subsequent Office of Inspector General investigation (see AI's initial report to the Committee).
[130] Vermont is the only state not to have enacted such legislation. Rape and sexual assault have always been crimes under US law. Sexual misconduct laws prohibit all sorts of sexual contact even those which have sometimes been claimed were "consensual".
[131] The PREA, passed in September 2003, provides inter alia for the gathering of national statistics about rape in prison of both male and female prisoners by staff or other inmates; the creation of a national review pane; and grants for state and local authorities to establish more effective programs to tackle the problem.
[132] Protective measures are not always taken or, if they are, this may result in the woman being placed into solitary confinement while the case is under investigation.
[133] Rule 53(2) of the *Standard Minimum Rules for the Treatment of Prisoners* states that no male member of staff shall enter the part of the institution set aside for women unless accompanied by a

believes such policies make women prisoners especially vulnerable to abuse by officials: unlike in male prisons, most complaints of sexual abuse by women prisoners involve abuses by male staff.

The US has argued that anti-discrimination employment laws in the USA mean that they cannot refuse to employ male guards in women's prisons (or female guards in men's prisons). However, some jurisdictions have placed certain restrictions on male duties in women's prisons (often in response to abuse reports) and US courts have upheld such restrictions as lawful.[134] International standards provide that measures which are designed solely to protect the right and special status of women are not considered discriminatory.[135]

Shackling of pregnant women

Amnesty International is concerned that many states continue to use restraints (including chains and leg shackles) on sick and pregnant women when they are transported to and kept in hospital, regardless of their security status. In some jurisdictions women are kept in restraints while in labour up until the moment of birth and shackled again shortly afterwards. The routine use of restraints in such circumstances is cruel and degrading and contravenes international standards which require that restraints should be used only when "strictly necessary". Medical experts have also reported that shackling of women while in labour may endanger the health of the woman and her child. While 17 departments of correction told Amnesty International they have adopted policies prohibiting restraints during labour and delivery or do not restrain women "in practice", other states do not have guidelines or policies prohibiting such practices.[136]

Ill-treatment of children and youth in detention

Most youth offenders are tried in state and federal juvenile justice systems, the underlying aim of which is rehabilitation and reform. However, serious abuses have been reported in some juvenile detention facilities, including beatings, cruel punishments, overcrowding, neglect and inadequate rehabilitation or educational programs. In the past decade, the US Department of Justice has investigated and ordered reforms or closure of a number of facilities. However, allegations of ill-treatment persist, including the cruel use of restraints and use of solitary confinement, despite the latter being prohibited under international standards. There is concern over the use of "boot camps" where children are subjected to particularly harsh regimes.

In January 2006 a 14-year-old boy died hours after being admitted to the Bay County Sheriff's boot camp in Florida. A videotape reportedly showed staff kicking, punching and choking him. There had been previous complaints of abuse at the facility. However, it was revealed that boot camps were exempt from rules introduced in 2004 which restricted use of restraints and force in Florida's juvenile facilities. In California, in August 2005, an 18-year-

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woman officer. Rule 53(3) states that women prisoners shall be attended and supervised only by women officers.

[134] An Amnesty International's report USA: *Not Part of My Sentence* (AMR 51/56/00), published in May 2000 cites several such instances. See also Abuse of Women in Custody: Sexual Misconduct and Shackling of Pregnant Women, AIUSA, March 2001, a state-by-state survey (update due in March 2006).

[135] Principle 5(2), *Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment*.

[136] Only six correctional departments have told AI they have written policies prohibiting use of restraints on inmates during labour and birth (Connecticut, DC, Florida, Rhode Island, Washington and Wyoming); Hawaii, Iowa and Kansas reported they have no policy but that practice is not to restrain women during labour and birth; Alabama, California, Missouri, Montana, New Mexico, New York, South Dakota and Texas told AI they did not use restraints during labour and delivery but it was unclear if this was based on policy or practice.

old mentally disturbed youth committed suicide after spending eight weeks alone locked in his cell, prompting renewed calls for reform of the state's juvenile detention facilities, many of which failed to provide adequate safeguards for vulnerable youth. Extended 23-hour lockdown is now reportedly banned in California youth facilities. However, the practice still exists elsewhere.

Holding children with adults

Thousands of children in the USA are incarcerated with adults in adult prisons or jails, contrary to Article 10 (3) of the ICCPR. Since 1980 there has been a growing trend to try and sentence children as adults and to hold them in adult facilities. By 1997 all but three states (Nebraska, New York and Vermont) had changed their laws to make it easier for child offenders to stand trial and be sentenced in adult criminal courts.[137] A national survey by the US Department of Justice found that, as of 1998, approximately 14,500 youthful offenders (most aged 16 or 17) were in adult facilities (9,100 in jails and 5,400 in prisons).[138] The same survey found that only 13 per cent of institutions maintained separate units for youthful offenders. The Justice Department study also found that 39% of the child offenders in adult prisons had been sentenced for non-violent crimes, such as property or drugs offences. Young people in adult prisons often face harsh conditions and inadequate educational or rehabilitation, and they can be particularly vulnerable to rape or sexual assault by other inmates. As noted above, young offenders in adult prisons are also at risk of being placed in isolation or super-maximum security confinement.

Child offenders serving life without parole

A joint study published in October 2005 by Amnesty International and Human Rights Watch reported that, as of 2004, at least 2,225 child offenders under 18 at the time of the crime were serving sentences of life without parole in the USA.[139] Amnesty International considers such a sentence to constitute cruel, inhuman or degrading punishment in the case of child offenders, who are still developing physically, mentally and emotionally. It is also prohibited under the Convention on the Rights of the Child, signed but not ratified by the USA. Of the cases examined, 16 per cent of the offenders (most of whom were convicted of murder) were aged between 13 and 15 at the time of the crime and 59 per cent received the sentence for their first ever conviction. Many were convicted of "felony murder" based on evidence of their participation in a crime during which a murder took place, but without direct evidence of their involvement in the killing. Once in prison, even when still under 18, they were commonly denied access to vocational or other programs because of their whole life sentence. The report called on the US authorities to stop sentencing children to life without parole and to grant child offenders serving such sentences immediate access to parole procedures.

The study also found that black youth nationwide were serving life without parole sentences at a rate ten times higher than for white youth (and constituted 60% of all child offenders serving life without parole). The study was unable to draw conclusions on the available data as to the cause of the racial disparity. However, it reflected research studies which have found that minority youths receive harsher treatment than similarly situated white youths at every stage of the criminal justice system in the USA.[140]

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[137] *Juvenile Offenders and Victims*: 1999 National Report, p. 89.

[138] *Juveniles in Adult Prisons and Jails: a National Assessment*, US Department of Justice, Office of Justice Programs, October 2002.

[139] *The Rest of Their Lives: Life without Parole for Child Offenders in the United States*, Amnesty International, Human Rights Watch, http://web.amnesty.org/library/index/engamr511622005.

[140] See, e.g. Eileen Poe-Yamagata and Michael A. Jones, *And Justice for Some* (Building Blocks for Youth Initiative for the National Council on Crime and Delinquency, 2000), available online at: http://www.buildingblocksforyouth.org/justiceforsome/jfs/html.

Ill-treatment of prisoners in aftermath of Hurricane Katrina

Scores of jail inmates in a section of the Orleans Parish Prison, New Orleans, were allegedly abandoned by guards following Hurricane Katrina which struck New Orleans on 29 August 2005. The prisoners reported being left locked in their cells for four days without food, water or lighting as flood waters rose around them.[141] There were reports that some prisoners may have drowned, although this was denied by the Louisiana authorities. Some of those left in the locked facility were untried prisoners arrested for offences such as trespass, public drunkenness or disorderly conduct, who were due to be released on bail. While the jail authorities said evacuations had begun the day after the flooding, officials admitted that some prisoners were not evacuated until 1 September 2005.[142] Amnesty International called on the US Justice Department to conduct an investigation into the allegations and for the authorities to ensure that all prisoners were fully accounted for. Amnesty International also called on the Justice Department to investigate allegations that evacuated inmates were ill-treated. Thousands of prisoners, including people jailed for minor misdemeanours, were left in an enclosed field for four days without shelter or protection from violent inmates; others were allegedly subjected to physical and racial abuse by guards at the Jena facility in Louisiana. Amnesty International received no response to its call for an investigation and at the time of writing was seeking information on what, if any, action was taken.

7) RIGHT TO JUDICIAL REVIEW AND PROTECTION FROM ARBITRARY DETENTION – Article 9

The USA has detained more than 83,000 non-US nationals in the four years since 11 September 2001 in US facilities in Afghanistan, Iraq, Guantánamo Bay and undisclosed locations, many held for prolonged periods incommunicado without access to families, lawyers or the courts. Dozens at least have reportedly "disappeared".

Secret, incommunicado detention, without access to any judicial process or other safeguards, violates the right to liberty and security of the person and clearly constitutes arbitrary detention under Article 9(1) of the ICCPR. Amnesty International believes that the failure to provide essential safeguards to detainees held in other locations, such as Guantánamo Bay, also render such detentions arbitrary and unlawful.

While the US government has instituted a number of procedures with regard to detentions in Guantánamo, Afghanistan and Iraq, these do not meet the standard for review required under Article 9 (4). The provision for judicial review of detentions under Articles 9(3) and 9(4), is an important safeguard against arbitrary detention and one which the Human Rights Committee and other expert bodies have stated is also non-derogable, even in states of emergency.[143]

Amnesty International outlined these concerns in its initial submission to the Committee in September 2005. Since then, there have been developments which have, in particular, further undermined the right of Guantánamo detainees to judicial review of the lawfulness of their detention. Theser concerns are updated below.

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[141] Accounts were given to lawyers and representatives of Human Rights Watch who visited the area in late September and October 2005 and interviewed dozens of former jail inmates, guards and officials (see, for example: New York Times, 2 October 2005, Prison Guards accused of abusing inmates in Louisiana; http://www.timesargus.com/apps/pbcs.dll/article?AID=/20051002/NEWS/510020405)

[142] http:///www.officer.com/article/article.jsp?siteSection=15&id=26279.

[143] *Ibid*. Human Rights Committee General Comment 29, States of Emergency (Article 4), CCPR/C/21/Rev,1/Add 11, 31 August 2001, para. 16.

7.1. Guantánamo Bay

Around 500 non-US nationals from some 35 countries remain detained without charge or trial in the US Naval Base at Guantánamo Bay, Cuba, many held for more than four years without charge or trial and virtually no access to the outside world. Most were detained during the international armed conflict in Afghanistan, although some have been transferred to Guantánamo from other locations.

In its Update to Annex One of its report to the Committee against Torture, submitted to the Human Rights Committee, the US government reasserts its position that it is entitled to hold members of the Taleban, al-Qa'ida or their affiliates and supporters as "enemy combatants" under the "law of armed conflict" until the "cessation of hostilities". It justifies its initial decision not to grant POW status to detainees in Guantánamo or Afghanistan, or to have their cases determined by a competent tribunal as required by Article 5 of the Third Geneva Convention, on the ground that: "Because there is no doubt under international law as to the status of al-Qaida, the Taliban, their affiliates and supporters, there is no need or requirement to review individually whether such enemy combatant detained at Guantanamo is entitled to POW status".[144]

This position has been repudiated by international human rights bodies who have emphasized, i*nter alia*, the following principles:

- International human rights law and international humanitarian law complement each other in times of armed conflict, rather than the latter superseding the former. Accordingly, the status of the Guantánamo detainees is well within international human rights law generally and the remit of the Covenant and the Committee specifically (see also under Article 2);
- Under international humanitarian law, of all those captured during an international armed conflict must enjoy the status of prisoners of war (POWs) until and unless a competent tribunal has determined otherwise. In terms of the Covenant, this means that persons so captured who have neither been treated as POWs nor had their status determined by a competent court are being arbitrarily deprived of their liberty, in violation of Article 9;
- Under international humanitarian law, POWs and "internees" captured during an international armed conflict must be released once hostilities have ceased, unless they face criminal proceedings for an indictable offence. The continued detention of those captured during the international armed conflict in Afghanistan, which ceased in June 2002,[145] without charge or trial is therefore arbitrary and contravenes Article 9 of the Covenant;
- Those not captured within an armed conflict cannot be held under provisions of international humanitarian law; instead they are entitled to the full protection of international human rights law, including the Covenant.[146]

Despite the US government's assertion that no doubt exists as to their status, four years on, many questions remain regarding the histories and background of the Guantánamo detainees. Although the government has failed to provide statistics on where people were initially detained or other information, it is now known, through habeas corpus applications and other sources, that the Guantánamo detainees include people seized as far away from

[144] Update to Annex One of the Second Periodic Report of the USA to the Committee against Torture, 21 October 2005, B: Status of Detainees at Guantánamo Bay and in Afghanistan.
[145] The international armed conflict in Afghanistan is deemed to have ended with the conclusion of the Emergency Loya Jirga and the establishment of a Transitional Authority on 19 June 2002.
[146] See for instance, *Situation of detainees at Guantánamo Bay*, above, in section. I. And see page 12 of *Guantánamo and Beyond, op.cit,* for a summary of the relevant international legal framework.

Afghanistan as Gambia, Zambia, Bosnia and Egypt and Thailand.[147] There is also evidence to suggest that some of those detained during the conflict in Afghanistan were not involved in fighting but may have been innocent civilians who were simply in the wrong place at the wrong time; some detainees were reportedly handed over to the US for bounty or were detained on the basis of flawed intelligence.[148] The US military itself has reportedly admitted to detaining innocent civilians in Guantánamo as well as low level fighters.[149] None has ever received a fair opportunity to raise their claims that they are unjustly imprisoned. The US lack of transparency about who is being detained and its failure to provide a list of detainees, have been further obstacles to justice in such cases.

- **UPDATE**

By the end of June 2006, according to the US Department of Defense, there were "approximately 450" detainees held in Guantánamo, with "approximately 310" detainees having been released or transferred from the base. A further "approximately 120" detainees had been determined to be eligible for transfer or release.

Although this total of "approximately" 760 detainees who had been or were currently held in the base now approximates to the number of detainee names (759) published (under court order) by the Department of Defense in May 2006, Amnesty International notes that the numbers have frequently failed to add up. The authorities released a list of 759 names of people held in Department of Defense custody at the base between January 2002 and 15 May 2006. Three days later, upon the transfer of 15 Saudi detainees from the base, the Pentagon stated that 287 detainees have been released or transferred from the base and "approximately 460" remained there, making a total of 747.[150] Two weeks earlier, in its statement announcing the release of five Chinese Uighur detainees to Albania, the Department's detainee totals came to "approximately" 752 detainees. Amnesty International has previously raised concern that the lack of precision over detainee numbers raised the possibility that individual detainees could be moved to and from their places of detention, or between different US agencies, without any public knowledge of such transfers.[151]

In addition, in its responses to the Committee Against Torture, the USA asserted that individuals detained by the Department of Defense in Afghanistan and at Guantánamo are now held pursuant to the Military Order signed by President Bush on 13 November 2001. However, this is entirely contrary to what the administration argued in federal District Court in Rasul v. Bush, when the government categorically denied that any detainee was held under the Order, and asserted instead that they were held more

[147] They include six Algerians seized in Bosnia-Herzegovina in January 2002 whose removal was found by the Human Rights Chamber of Bosnia and Herzegovina and the UN High Commissioner for Human Rights to have been in violation of international law (see Amnesty International document: *USA: Beyond the Law*, page 4, note 5 (AI Index AMR 51/184/2002), http://web.amnesty.org/library/index/engamr511842002.

[148] Some cases are described in AI's report *Guantánamo: Lives Torn Apart, The impact of indefinite detention on detainees and their families*, published 6 February 2006 (AMR 51/007/2006), hereafter referred to as *Lives Torn Apart.* http://web.amnesty.org/library/index/engamr510072006.

[149] See for example Center for Constitutional Rights: Graham Myths (http://www.cr-ny.org/v2/reports/report.asp?ObjID-V9mCOgUtSh&Content=666) Amnesty International provides accounts of the histories of some individual Guantánamo detainees in case sheets entitled: *Who are the Guantánamo Detainees?* (http://web.amnesty.org/pages/guantanamobay-library-eng#cases)

[150] *Detainee Transfer Announced*. Department of Defense News Release, 18 May 2006, http://www.defenselink.mil/releases/2006/nr20060518-13076.html.

[151] See page 101-102, *USA: Human dignity denied, op.cit*.

generally under the President's Commander-in-Chief powers. Clearly, a government's vague or shifting description of the legal basis for detentions is a cause for serious concern in relation to the need to protect detainees from arbitrary arrest and ill-treatment.

Review of 'enemy combatant' status for Guantánamo detainees

The US government continued to argue that "enemy combatants" were not entitled to meaningful judicial review, even after the US Supreme Court ruled in *Rasul v Bush* in June 2004[152] that the US federal courts had "jurisdiction to consider challenges to the legality of the detentions". As Amnesty International noted in its previous submission to the Committee, neither the Combatant Status Review Tribunal (CSRT) nor the Administrative Review Board (ARB) satisfy the requirements for a judicial review of the legality of the Guantanamo detentions under articles 9(3) and 9(4) of the Covenant.

The CSRTs, set up by the Department of Defense in July 2004 to "serve as a forum for detainees to contest their status as enemy combatants" [153], consist of hearings before panels of three military officers who may consider classified and hearsay evidence and evidence extracted under torture and other ill-treatment. The detainees have no access to legal counsel (only a "personal representative" – a military officer) or to classified evidence, yet the burden is on the detainee to disprove his "enemy combatant" status. Of 558 CRST decisions finalised by 29 March 2005, all but 38 (93%) affirmed that the detainee was an "enemy combatant" as broadly defined by the US government. Many of these cases appear to have been based on classified evidence. [154]

The Administrative Review Board (ARB) is another purely administrative process to review each case once a year to determine whether an "enemy combatant" as affirmed by the CRST is a continuing threat. As with the CRST the detainee has no access to legal counsel or to secret evidence and there is no rule excluding evidence extracted under torture or other other ill-treatment.

Curtailment of the right to habeas corpus

In December 2005, an amendment to a defence spending bill (the Graham-Levin amendment) severely curtailed the right of Guantanamo detainees to US federal court review of the legality of their detention. The amendment, contained in Section 1005 of the Detainee Treatment Act of 2005, provides that

> *"...no court justice or judge shall have jurisdiction to hear or consider (1) an application for a writ of habeas corpus filed by or on behalf of an alien detained by the Department of Defense at Guantanamo Bay, Cuba; or (2) any other action against the United States or its agents relating to any aspect of the detention by the Department of Defense"* (Sec. 1405 (e) (2)).

It further states that the US Court of Appeals for the District of Columbia (DC) circuit can only consider appeals brought by detainees against the decision of the CRST, and on what

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[152] *Rasul v. Bush* 124 S. Ct. 2686, 2693-95, ruling of 28 June 2004.

[153] United States Department of Defense, News Release No. 651-04, July 7, 2004, "Combatant Status Review Tribunal Order Issued," http://www.globalsecurity.org/security/library/news/2004/07/sec-040707-dod02.htm.

[154] A more detailed analysis of Amnesty International's concerns, with reference to actual transcripts of proceedings, is given on pages 44-67 of *Guantánamo and Beyond*, op.cit.

are arguably narrow procedural grounds.[155] The same section also allowed – for the first time – limited appeals to a federal court against military commission decisions (see below).

The stripping of the right to bring applications for *habeas corpus* in the federal courts effectively negates the 2004 *Rasul* ruling and allows the US government to hold detainees indefinitely, with recourse only to limited appeals against decisions by the CRST, which Amnesty International considers in themselves do not meet required international standards for review (see above). Any detainee brought to Guantánamo would have no right to file an action until the CRST had considered the case. Those whom the CRST decides are not enemy combatants have no recourse to the federal courts under the legislation. Section 1405 (e) (2) prevents detainees "currently in military custody" in Guantánamo from seeking relief in the federal courts "relating to any aspect of the detention", which would include actions concerning their treatment or detention conditions.

The US government has sought to apply the legislation retroactively. In January 2006 it filed a motion before the DC court to dismiss some 200 pending cases in which Guantánamo detainees have challenged their detentions (including their treatment and conditions), arguing that the federal courts no longer have jurisdiction to hear such cases. The motion was still pending review as of February 2006 and it remains to be seen whether the courts will agree to comply with the government's request to apply the new legislation retroactively to these cases.

While the scope and language of the legislation may be subject to legal challenge, it has presented a further obstacle to the Guantánamo detainees in seeking access to justice and a meaningful review of their cases.

No longer an 'enemy combatant' but still detained

There are believed to be nine men now determined no longer to be 'enemy combatants' who remain detained in Guantánamo despite a decision by the US authorities at Guantánamo that they should be released and despite a District Court ruling in two of the cases that their continued detention at Guantánamo is unlawful. They are held in Camp Iguana, the facility at Guantánamo once used to hold juvenile detainees.

Among the men are five ethnic Uighurs from China and another ethnic Uighur from Saudi Arabia.[156] All six are believed to be at high risk of further human rights violations, including torture and execution, if returned to China. The other three men are believed to be from Uzbekistan or Russia, Algeria and Egypt. It is unclear whether the US authorities have also determined that these three men cannot be returned to their home countries because they risk further human rights violations. What is clear, however, is that they remain locked up in Guantánamo's Camp Iguana despite no longer being considered 'enemy combatants'.

On 12 August 2004, the then US Secretary of State Colin Powell said that none of the ethnic Uighurs held in US military custody in Guantánamo Bay, would be returned to China,

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[155] These are limited to the consideration of whether the CRST status determination is "consistent with the standards and procedures specified by the Secretary of Defense for Combatant Status Review Tribunals". Appeals may also consider whether the use of such standards and procedures are consistent with US law and the Constitution "to the extent the Constitution and laws of the United States are applicable"; the government is likely to seek a narrow interpretation of the latter based on its previous assertion of the constitutional authority of the president to detain "enemy combatants"

[156] They are Abu Bakker Qassim, Adel Abdul Hakim, Ayob Haji Mamet, Ahmed Doe and Aktar Doe, from China and Saddig Ahmed Turkistani an ethnic Uighur born in Saudi Arabia after his parents fled from China and who was reportedly stripped of his Saudi Arabian citizenship after being arrested for drugs offences.

stating that "the Uighurs are a difficult problem and we are trying to resolve all issues with respect to all detainees at Guantánamo. The Uighurs are not going back to China, but finding places for them is not a simple matter, but we are trying to find places for them… and, of course, all candidate countries are being looked at."[157]

Amnesty International welcomes such a declaration, which it interprets to include not only protection from forcible return to China, but also from relocation or resettlement to a third country from where they might face the risk of forcible return to China. However, the organization continues to maintain that there is no basis for their continued detention in Guantánamo and that they should be immediately released.

The US authorities have long been trying to find a solution whereby a third country would accept to resettle the Uighurs, to date without success. For the men who have been cleared by the CSRT process, the reason for their continued detention is now given as "the Executive's necessary power to wind up wartime detentions in an orderly fashion."[158] At a hearing on 12 December 2005 in the US District Court for the District if Columbia, the US authorities asserted that progress is being made on the cases but declined to elaborate except *in camera.*

On 22 December 2005 a federal judge ruled in two of the Uighur cases that the continued indefinite imprisonment of Abu Bakker Qassim and Adel Abdul Hakim[159] at Guantánamo was unlawful. However, the court was not in position to order their release on parole until the government could arrange for their transfer to another country. The ruling held that their release onto the US mainland would have national security and diplomatic implications beyond the competence or authority of the court. The judge noted that,

> *"Ordinarily, a district judge reviewing a habeas petition does not need to proceed very far beyond determining that the detention is unlawful before ordering a petitioner's release…The question in this case is whether the law gives me the power to do what I believe justice requires. The answer, I believe, is no."*[160]

Little or no progress appears to have been made on resettlement to another country or release onto the US mainland. Amnesty International considers that the primary responsibility for finding a durable solution to the plight of the nine men in Camp Iguana rests with the US authorities.

➢ **UPDATE**

On 5 May 206, the Pentagon announced that it had released five Uighur detainees from Guantánamo to Albania. There remain some concerns about their vulnerability to being returned to China and their cases continue to be monitored.

[157] CRS Report for Congress, U.S. China Counter-Terrorism Cooperation: Issue for U.S. Policy Updated May 12, 2005. http://www.fas.org/sgp/crs/row/RS21995.pdf

[158] Respondent's Supplemental memorandum. At 12, quoted in *Abu Bakker Qassim, et al. v. George W. Bush et al.*, Civil Action No. 05-0497 (JR), United States District Court for the District of Columbia, Memorandum of 22 December 2005

[159] Two of the ethnic Uighurs. In March 2005 a CSRT determined that they should no longer be classified as "enemy combatants".

[160] *Abu Bakker Qassim, et al v. George W. Bush et al.*, Civil Action No. 05-0497 (JR), United States District Court for the District of Columbia, Memorandum of 22 December 2005.

Guantánamo detainees returned to countries where they are at risk of human rights violations

Former Guantánamo detainees have been returned to countries where they were at risk of arbitrary detention, unfair trials, torture or ill-treatment in violation of the USA's obligations under international law, including Article 7 of the Covenant (see also **renditions**, 6 (d) above). In September 2004, for example, 29 Pakistan nationals were returned from Guantánamo to the "control of Pakistan for continued detention".[161] More than six months later they were still detained in Pakistan without charge or trial. Karama Khamisan returned to Yemen after being determined not to be an "enemy combatant" remains detained in Yemen without charge or trial where he is held virtually incommunicado. On their return to Russia from Guantánamo on 1 March 2004, seven Russian nationals were re-arrested and held for four-and-a half months in detention before being released and all charges dropped; however, they and their families reportedly continue to be subjected to constant harassment and surveillance and some former detainees have been rearrested and allegedly tortured in Russian custody. One of them, Rasul Kudaev, was detained in October 2005 and reportedly kicked in the head, beaten and severely injured members of the Organized Crime Squad in Nalchik, in the North Caucasus region of Kabardino-Balkaria. He was then transferred from police headquarters but continued to be detained without charge, without any information given to his family about his whereabouts or state of health.[162]

7.2. Afghanistan

Hundreds of detainees continue to be held in US custody in Afghanistan, with no recourse to due legal process or human rights protection. Some have been detained without charge or trial at Bagram US airbase for more than a year, yet have no access to lawyers, relatives or the courts. Some of the worst abuses of detainees (including torture and deaths in custody) in 2002/3 are reported to have occurred in a section of the Bagram facility to which the ICRC had no access. While Amnesty International has been told that the ICRC now visits detainees in Bagram every two weeks, detainees remain incommunicado during the initial period of detention as well as between visits. The ICRC still has no access to detainees held in an unknown number of US Forward Operating Bases, where detainees may reportedly be held for up to 10 days, or possibly longer.[163]

Amnesty International is concerned at the lack of a clear or recognized legal framework governing the US forces' actions in Afghanistan, including in respect of detentions and interrogations. As the US government has described in its submissions to the Human Rights Committee, once a detainee in the custody of the US Department of Defense in Afghanistan is designated as an "enemy combatant", there is an initial review of that status by a Commander or designee within 90 days of the detainee being taken into custody. After that, "the detaining combatant commander, on an annual basis, is required to reassess the status of each detainee". Detainees assessed to be enemy combatants under this process "remain under DOD control until they no longer present a threat".[164]

As noted, there is no longer an international armed conflict in Afghanistan, and persons detained for reasons of security are protected by international human rights law, including the Covenant. There is no provision under present procedures for a court to review

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[161] *Transfer of detainees completed*. Department of Defense news release, 18 September 2005

[162] http://web.amnesty.org/library/Index/ENGEUR460412005.

[163] There were reports in early 2005 of detainees being held for up to two months in such facilities (see AI report: *USA:US detentions in Afghanistan: an aide-mémoire for continued action* (AI Index: AMR 51/093/2005), http://web.amnesty.org/library/index/engamr510932005.

[164] Update to Annex One (op cit) D. 2. Afghanistan

the legality of detentions in US custody and the procedures do not therefore meet the standard required under Article 9(4) of the ICCPR.

> **UPDATE**

There may now be more detainees held in US custody in Bagram air base in Afghanistan than are held in Guantánamo Bay. According to the Pentagon, by late June 2006 there were "approximately 450" detainees in Guantánamo Bay detention facility. As of May 2006, the ICRC was visiting approximately 560 detainees in Bagram air base. The current detainee population is unknown as releases and detentions continue. For example, some 30 Afghan detainees were reportedly released from Bagram in early July 2006. Detainees held in Bagram do not get even the minimal and inadequate process (CSRT and ARB) that has been provided to the cases of Guantánamo detainees. Some are held for months if not years in Bagram without charge or trial.

The Committee Against Torture in May 2006 expressed that detainees in Department of Defense custody in Afghanistan and Iraq (below) are limited to an administrative review of their detentions by the same Department that holds them. The Committee concluded that the USA should ensure that "independent, prompt and thorough procedures to review the circumstances of detention and the status of detainees are available to all detainees as required by Article 13 of the Convention".

7.3. Iraq

The US-led Multi-National Force (MNF) in Iraq has continued to detain people in connection with the ongoing insurgency, the vast majority of them in US military custody. Thousands of "security internees" have been held by the US for months, many for more than two years, without being charged or tried and with no right to challenge the lawfulness of the detention before a judicial body. According to the MNF website, more than 14,000 security detainees were in US custody as of November 2005. [165] With the handover of power to the interim Iraqi government in June 2004, there is no longer an international armed conflict in Iraq. While provisions of international humanitarian law, such as Article 3 common to the four Geneva Conventions do apply to the ongoing non-international armed conflict in which the MNF is involved, they provide little or no guidance as to the procedural aspect of "internment." Therefore strict adherence to relevant provisions of international human rights law, such as Article 9 of the Covenant, is crucial with regard to all of those deprived of their liberty. Amnesty International believes that the rules and practice of internment by the MNF in Iraq constitute arbitrary detention in violation of this article.

The United Nations Assistance Mission for Iraq has expressed concern about the situation of people interned by the MNF in Iraq in its Human Rights Report of November 2005, stating:

> *"There is an urgent need to provide remedy to lengthy internment for reasons of security without adequate judicial oversight".*[166]

On 27 June 2004, the Coalition Provisional Authority (CPA) issued a memorandum (Memorandum No. 3) setting out procedures regarding "security internees" detained by members of the Multi-National Force (MNF) after 28 June when the interim Iraq government

[165] MNF, Number of Security Detainees, last update 28 November 2005, http://www.mnf-Iraq.com/TF134/Numbers.htm. It appears that these numbers do not include the detainees held by UK forces.

[166] UN Assistance Mission for Iraq (UNAMI): Human Rights Report, 1 September – 31 October 2005

replaced the CPA.[167] In its previous submission Amnesty International already expressed concern that these procedures fail to meet international standards for judicial review of the lawfulness of detentions as provided by Article 9.

Memorandum No. 3 stipulates that, after an initial review within seven days of the decision to intern a person, there should be a further review at intervals of at least every six months. The latter is conducted by the Combined Review and Release Board (CRRB), a non-judicial body composed of six representatives of the Iraqi government (two from each of the Ministries of Justice, Interior and Human Rights) and three representatives of the MNF. However the final approval for all releases rests with the MNF's Deputy Commanding General for Detainee Operations, after consultation with the Iraqi Minister of Justice. Neither the internee nor his or her legal counsel are permitted to be present during these case reviews, although internees have reportedly been encouraged to make submissions to the CRRB in writing.

In the Update to Annex One of its report to the Committee against Torture, the US government refers to the practice of having a military magistrate conduct the initial review (within 7 days of the decision to intern). However, such review appears to be generally conducted on the basis of files on individual internees without his or her presence and without the presence of legal counsel.

In fact, detainees are not entitled to receive visits by legal counsel until after the first 60 days of internment. It appears that, in practice, visits of security detainees by legal counsel at any time are extremely rare, the main reason being the belief that it is futile to seek legal counsel when the detainee will not be brought before a court of law.[168] Access to legal representation is essential to ensuring that detainees – even if their detention is reviewed by a court or judge – have a meaningful opportunity to challenge the lawfulness of their detention. The absence of any ongoing control of detentions by a court following the initial review fails to meet the standards required under Article 9 (4).

As pointed out in Amnesty International's submission from September 2005, according to the CPA Memorandum No. 3, "security internees" "placed in internment after 30 June 2004 … must be either released from internment or transferred to Iraqi criminal jurisdiction not later than 18 months from the date of induction into an MNF internment facility".[169] However, the memorandum goes on to state that for "continued imperative reasons of security" a "security detainee" may be held for longer than 18 months, that is, indefinitely.[170] Such extended internment requires the approval of the Joint Detention Committee (JDC). By mid-February 2006, an application for the extension of internment beyond 18 months of 266 detainees had been made to the JDC.[171]

Amnesty International is concerned about hundreds of security detainees who have been detained by the MNF since before the handover of power in June 2004 and may be held indefinitely with no formal review procedure. In a letter to Amnesty International dated 19 February 2006, Major General Gardner, Commander of Task Force 134, which is in charge of MNF operations, stated that at the end of 2005 the number of security internees held for more

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[167] CPA Memorandum No 3 (revised): Criminal Procedures, 27 June 2004

[168] Amnesty International's detailed concerns regarding the current detention system in Iraq are outlined in a report to be published in March 2006: *Beyond Abu Ghraib: detention and torture in Iraq,* http://web.amnesty.org/library/Index/ENGMDE140012006.

[169] *Ibid*, para 5.

[170] *Ibid*, para 6.

[171] Letter of 19 February 2006 to AI by Major General Gardner, Commanding Officer, MNF Task Force 134.

than 18 months was estimated to be 751. The letter confirmed that approval by the JDC to keep an internee beyond 18 months is only required for those "internees detained after 30 June 2004".[172]

Memorandum No. 3 suggests that the ICRC is in principle allowed to visit MNF-held detainees at locations throughout the country. Amnesty International has been told that, in practice, the ICRC has access to detainees in internment facilities, but not to those held in US division or brigade holding facilities immediately after arrest. Detainees may be held for up days or weeks in such facilities. On 28 November 2005, the MNF were holding 650 persons in such facilities.[173]

Amnesty International considers indefinite internment as practiced by the MNF with regard to security internees held since before the handover of power to be unlawful. According to the UN Working Group on Arbitrary Detentions:

> "*With regard to derogations that are unlawful and inconsistent with States' obligations under international law, the Working Group reaffirms that the fight against terrorism may undeniably require specific limits on certain guarantees, including those concerning detention and the right to a fair trial. It nevertheless points out that under any circumstances, and whatever the threat, there are rights which cannot be derogated from, that* ***in no event may an arrest based on emergency legislation last indefinitely,*** *and it is particularly important that measures adopted in states of emergency should be strictly commensurate with the extent of the danger invoked.*"[174] [emphasis added]

Amnesty International also considers that indefinite internment may constitute a violation of the prohibition on torture and other cruel, inhuman or degrading treatment or punishment in Article 7 of the Covenant. Any deprivation of liberty, even when carried out in accordance with international humanitarian law, inevitably causes some stress or a degree of mental suffering to the internee and his or her family, although this will not automatically render the deprivation unlawful. However, Amnesty International is concerned that the "security internees" held by the MNF, are being deprived of their liberty in circumstances that cause unnecessary suffering, such as indefinite and incommunicado detention, that cannot be justified as an unavoidable part of a "lawful sanction".[175] The Human Rights Committee has referred to prolonged, indefinite "administrative detention" as incompatible with Article 7 of the ICCPR.[176] Similarly, the UN Committee against Torture has found that administrative

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[172] *ibid*

[173] See MNF website, http://www.mnf-Iraq.com/TF134/Numbers.htm

[174] Report of the Working Group on Arbitrary Detention, UN Doc. E/CN. 4/2004/3, 15 December 2003, para. 60.

[175] Under the definition of torture in Article 1(1) of the UN Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the UN Convention against Torture, respectively.
Reports in recent years on persons held in indefinite detention in the context of the "war on terror" have shown the severe psychological effects of such detention. For instance, in October 2004, in a report on the mental health of detainees held at the time indefinitely in Belmarsh high security prison, in the UK, under the Anti-Terrorism Crime and Security Act (2001), eminent psychiatrists concluded that the detainees had become seriously clinically depressed and were suffering from anxiety, some of them becoming psychotic as a result of their indefinite detention. (Professor Ian Robbins, Dr James MacKeith, Professor Michael Kopelman, Dr Clive Meux, Dr Sumi Ratnam, Dr Richard Taylor, Dr Sophie Davison and Dr David Somekh, *The Psychiatric Problems of Detainees under the 2001 Antiterrorism Crime and Security Act*, 13 October 2004, http://www.statewatch.org/news/2004/nov/belmarsh-mh.pdf).

[176] Human Rights Committee, Annual Report, vol.1 (1998), UN Doc. A/53/40, para.317.

detention by a party to an armed conflict may constitute cruel, inhuman or degrading treatment or punishment, based *inter alia* on its excessive length[177]

7.4. Secret detention

The USA is believed to be holding an unknown number of detainees in secret CIA-run detention facilities (sometimes called "black sites") outside the USA. Such facilities have reportedly been located at various times in countries which include Jordan, Diego Garcia, Pakistan, Egypt, Thailand, Afghanistan Jordan and countries in Eastern Europe. Not even the ICRC has access to such detainees whose names, fate and whereabouts remain unknown, leaving them outside the protection of the law in what therefore constitute "disappearances", a crime under international law. Such a practice obviously constitutes arbitrary detention and facilitates the perpetration of torture and other grave violations. "Disappearance" has also been found by the Committee in and of itself to amount to torture. [178]

The US government has refused to confirm or deny it is holding suspects in secret detention, but sources allege that the practice was instituted under enhanced powers given to the CIA to conduct covert operations following 11 September 2001.[179] The government has admitted to taking a number of senior alleged members of al-Qa'ida into custody, whose whereabouts remain unknown, in some cases for more than three years. They include Ramzi bin al-Shibh, Khalid Shaikh Mohammed and Abu Zubaida. Amnesty International's inquiries to the US authorities about these and other cases have been without response. [180]

Although the practice is shrouded in secrecy, there is also a growing body of testimony from individuals who allege having been held in secret US detention facilities and subjected to torture or ill-treatment. They include detainees who have reported being held in a secret US-operated prison in Afghanistan before being transferred to Guantánamo. While in Afghanistan, they say they were held in total darkness, chained to walls, subjected to loud music and tortured with sleep deprivation.[181]

In 2005, Amnesty International conducted extensive interviews with three Yemeni men who separately gave consistent accounts of having been held for between 14 and 18 months in a series of secret detention centres apparently run by US agents, one of which was underground. All three remained in isolation, including from each other, for the whole period of their detention. According to their testimony, they were held for more than a year in one facility apparently designed for incommunicado detention and were kept in cells with blank walls, no floor coverings, no windows and constant artificial light. They spoke to no-one but their interrogators. They allege that in their cells there was a constant low-level hum of "white noise" (indistinct non-musical sounds), sometimes replaced by loud western music. They did

[177] Report of the Committee against Torture, UN Doc. A/53/44. 16 September 1998, para. 283(b).
[178] *El-Megreisi v. Libyan Arab Jamahiriya*, Communication No. 44/1990, UN. Doc. CCPR/C.50/D/440/1990 (1994): the Human Rights Committee determined that the "disappearance" in circumstances not unlike those in US undisclosed locations ("prolonged incommunicado detention in an unknown location") amounted to torture. See also the statement by the UN Commissioner for Human Rights Louise Arbour, 7 December 2005: undisclosed detention "amounts to disappearance", which in and of itself has been found to amount to torture or ill-treatment of the disappeared person or of the families and communities deprived of information about the missing person".
[179] This is believed to be a Memorandum of Notification signed by Bush on 17 September 2001, see *Human Dignity Denied*, op. cit. pages 107-116.
[180] See *Human Dignity Denied*, pages 107-114, op cit. *Guantánamo and Beyond*, pp 118-122, op.cit.
[181] Human Rights Watch: *US Operated Secret "Dark Prison" in Kabul*, 19 December 2005, http://hrw.org/english/docs/2005/12/19/afghan12319.htm. see also AI report Guantánamo and Beyond, p.122 reference to Khaled El Masri, kept in secret detention in the "Salt Pit" in Kabul, even after the CIA realised it had the wrong man in a case of mistaken identity.

not know which country they were in or whether it was night or day.[182] Although none of the men alleged that they were beaten, prolonged solitary confinement in the conditions described can have severe physiological and psychological effects. One of the men told Amnesty International that over time, the daily horror of his isolation took a profound toll, so much so that he began to think he might already be dead. "I did believe this for a long time", he said, "and sometimes I am still afraid it is true".

While the Yemeni detainees said they never saw another detainee, they described signs in one facility suggesting that others were also being held (for example, swabs left in the shower-room and a reading list in various languages). None of the three, who were eventually handed over to Yemeni custody, appeared to be "high value" detainees. Their cases suggest that the network of clandestine interrogation centres may be larger, more comprehensive and better organized than previously suspected.

➢ **UPDATE**

In its conclusions and observations of 19 May 2006, the Committee Against Torture expressed particular regret at the USA's position that "disappearances" do not constitute a form of torture. Indeed, the Committee made it clear that it considers the following policies or practices – all of which the USA is implicated in, in the "war on terror" – to constitute, per se, violations of the Convention Against Torture: secret detention, "disappearance" and indefinite detention without charge. Amnesty International fully endorses these conclusions.

The Committee Against Torture also stated that the USA "should investigate and disclose the existence of any [secret detention] facilities and the authority under which they have been established and the manner in which detainees are treated. The [USA] should publicly condemn any policy of secret detention."

The CIA's past and present activities in the "war on terror" remain largely secret. Documents that have come into the public domain or been referred to in media reports point to a possible attempt within the executive to immunize the CIA from prosecution for torture and war crimes, an alleged conspiracy that may lead up to the office of the President.[183] Litigation in federal court under the Freedom of Information Act (FOIA) has so far failed to shed any further light on this, with the CIA, for example, currently arguing that it must not be compelled either to confirm or deny the existence of two documents that have been reported, namely an "alleged presidential directive authorizing the CIA to establish detention facilities outside the United States and outlining interrogation methods that may be used against detainees", and a "purported memorandum from the Department of Justice to the CIA specifying interrogation methods that the CIA may use against top al-Qaeda members".[184] To acknowledge the existence or non-existence of these documents, the CIA argues, would reveal whether the CIA has the authority to maintain detention facilities outside the USA or to conduct interrogations "independently", or has an interest in such authority. Such a revelation, the agency submits, would be likely to cause serious damage to the national security of the USA.

There is, of course, much information already in the public realm alleging that in the "war on terror" people have been held in CIA custody, interrogated in CIA custody, "disappeared" in CIA custody, secretly transferred between countries in CIA custody,

[182] See Amnesty International Report: *USA/Yemen: Secret Detention in CIA "Black Sites"* (AI Index: AMR 51/177/2005), http://web.amnesty.org/library/index/engamr511772005.
[183] For examples, see pages 128-129 of *USA: Guantánamo and beyond, op.cit.*
[184] *ACLU et al. v. CIA et al*., Brief for Defendant-Appellee: Central Intelligence Agency, Docket No. 06-0205-cv, United States Court of Appeals for the Second Circuit, 1 May 2006.

tortured or ill-treated in CIA custody, and even to have died in CIA custody (as well as the apparent extrajudicial execution of individuals by CIA remote-controlled Predator aircraft).[185] *Except for a CIA contractor charged in 2004 with assaulting an Afghan detainee who died in a US base in Afghanistan in June 2003, to Amnesty International's knowledge no other agent working for the CIA has been charged with any crime involving torture or other cruel, inhuman or degrading treatment, secret detention, unlawful transfer or "disappearance".*[186]

Like the Committee Against Torture, Amnesty International considers that the US government's policy of "no comment" regarding the existence of secret detention facilities is unacceptable.

7.5. 'Enemy Combatants' in the USA

The US continues to assert its unilateral authority to designate individuals in the USA, including US cizitens, as enemy combatants and to hold them without charge or trial in indefinite military custody. Amnesty International considers that such treatment constitutes arbitrary detention in violation of Articles 9 and 14 of the ICCPR.

In November 2005, after being held without charge more than three years in military detention, José Padilla was named as one of five people indicted on broad federal charges of conspiracy and providing material support for terrorism. He has since been moved from military custody into the federal civilian system where he is currently awaiting trial.

While welcoming his transfer to the federal criminal jurisdiction, his attorneys have expressed concern that his sudden removal from military custody may have been done in order to avoid a hearing by the Supreme Court on the issue of the President's power to detain him as an enemy combatant. The announcement of the indictment – which made no mention of the alleged bomb plot for which Padilla was originally detained – came only two days before the government's brief in response to Padilla's appeal to the US Supreme Court was due to be filed. The US District Court was also scheduled to accept briefings from the government on the question of whether Padilla had been properly designated as an enemy combatant.

While the government has continued to assert that the President has such authority with only minimal judicial review, the issue is by no means settled. It is possible that the US Supreme Court may have taken a different view of Padilla's detention than it did in the prior case of *Hamdi v Rumsfeld*, as Padilla was arrested at Chicago airport and transferred to military custody from the US judicial system not, as in Hamdi's case, detained on the battlefield in Afghanistan. Even in Hamdi's case the plurality of the Supreme Court said that "due process demands that a citizen held in the United States as an enemy combatant be given a meaningful opportunity to contest the factual basis for that detention."[187]

The US government continues to hold Ali Saleh Kahlah al-Marri, a Qatari national, as an enemy combatant without charge or trial in military custody in Charleston, South Carolina.

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[185] See, for example, pages 100-116 of *USA: Human Dignity Denied*, op. cit.; pages 116-130 of *USA: Guantánamo and beyond*, op. cit., and *USA/Yemen: Secret detention in CIA 'black sites'*, November 2005, http://web.amnesty.org/library/pdf/AMR511772005ENGLISH/$File/AMR5117705.pdf.

[186] David Passaro is the CIA contractor charged in June 2004 with assault of Abdul Wali in a US base near Asadabad in Afghanistan in 2003 (see pages 159-160 of *USA: Human Dignity Denied*, op. cit.). As of mid-June 2006, no date had been set for his trial in the US District Court for the Eastern District of North Carolina.

[187] *Hamdi v Rumsfeld*, 03-6696, decided 28 June 2004. Hamdi was eventually released to Saudi Arabia while court proceedings were still pending.

He has been in such detention since June 2003 and had no access to an attorney for more than a year after he was first detained. Appeals are pending in his case. Meanwhile, he continues to be held in virtual solitary confinement in harsh conditions, still without family visits, conditions Amnesty International considers to amount to cruel, inhuman or degrading treatment or punishment (see 6.1.c above).

8) RIGHT TO ASYLUM (Articles 13 and 7)

Post-Sept. 11 changes in law are harming refugees

Because of extremely broad laws passed since September 11th, the US government is closing the doors to many refugees and asylum seekers. The REAL ID Act, passed in May 2005, greatly expanded the definition of a 'terrorist organization' and 'terrorist activity, giving the Department of Homeland Security (DHS) authority to deport a non-citizen for membership in any group "of two or more individuals, whether organized or not", which has a subgroup deemed to be terrorist. The REAL ID Act did not require that the government provide public notice that it considers such a group a 'terrorist organization'. Definitions of 'terrorist organization' had already been similarly broadened by the 2003 USA PATRIOT Act.

As a result, persons targeted by terrorist or armed groups have been immediately deported or denied asylum because they were subject to extortion by those groups, and were therefore excluded from refugee protection for having given 'material support' to putative terrorists. Colombian and Burmese refugees who have been forced to make payments to armed groups that appear on the State Department's list of 'foreign terrorist organizations' are being denied refuge on that basis.

Provisions of the same law also made immigrants deportable—and refugees ineligible for asylum—based on the actions of their spouses and parents.

Amnesty International is also concerned about pending Congressional legislation that would damage the United States' compliance with its international legal obligations to refugees. One bill would erode due process for non-citizens, increasing the likelihood that asylum-seekers will be sent back to persecution without access to fair procedures. [188] The bill would, *inter alia*, give extraordinary power to low-level immigration officials within 100 miles of the border to expel without a hearing anyone believed to be a recently arrived migrant; would criminalize all violations of immigration law, with serious consequences for genuine refugees; and would provide extraordinary power to detain non-citizens indefinitely without meaningful review.[189] Another would increase penalties for people travelling on false documents by making the use of such documents an "aggravated felony" (it is already a crime) which would also put people seeking asylum at risk of deportation.[190] Refugees often travel on false documents for lack of other options; to unconditionally deport persons seeking asylum for use of false travel documents is to deny them a chance at obtaining asylum.

Asylum detention conditions and abuse in detention

Amnesty International continues to be greatly disturbed by ill-treatment of asylum-seekers in US detention, and by poor conditions including inadequate medical treatment. For example an 81-year-old Haitian asylum seeker, Reverend Joseph N. Dantica, died in November 2004 after

[188] Border Protection, Anti-Terrorism, and Illegal Immigration Control Act of 2005 (HR 4437).
[189] See ACLU Memo to Interested Persons Regarding Concerns in HR4437, 12 December 2005. (http://www.aclu.org/natsec/gen/22371leg20051207.html).
[190] The Passport and Travel Document Fraud Prevention Act (S. 524), while recent modifications to the bill were made to address certain refugees, they do not go far enough to protect all vulnerable populations.

being confined in Miami's Krome detention centre where he received questionable medical care. An investigation by the Inspector General of the Department of Homeland Security (DHS), released in December 2005, was criticized as unsatisfactory by advocacy groups, including AIUSA who stated that the report had fallen short of its responsibility to investigate the situation without bias. In another notable case, Nigerian national Daso Abibo, who had an asylum claim pending, was severely beaten by DHS deportation officers in Oklahoma City and the DHS employee who reported the incident later lost her job. These cases seem to be part of a larger pattern of mistreatment, medical neglect and poor conditions. Amnesty International is also concerned by detainees' lack of access to telephones, legal counsel, and human rights reports (necessary for filing an asylum claim).

9) RIGHT TO FAIR TRIAL – Article 14

9.1. Military commissions. Articles 2, 14 and 26

Eleven of the Guantánamo detainees have been named to stand trial before the military commissions established by President Bush under a military order in November 2001 to try certain non-citizen "enemy combatants for war crimes and related offences". Amnesty International stated in its briefing submitted in September 2005 that it considers that the commissions – which are executive bodies, not independent and impartial courts – fall far short of meeting international standards for a fair trial as set out, *inter alia*, under Article 14 of the ICCPR

In August 2005, the Department of Defense announced some changes to the commissions' rules[191] which include making the presiding officer (a military judge advocate) responsible for deciding questions of law while the other commission members decide questions of fact (a measure the DOD said would bring the commissions more in line with the "judge and jury" system); a limit on the ability of the presiding officer to exclude an accused from the proceedings; and limits on when "protected information" can be withheld from the accused.

In December 2005, Section 1405 of the Detainee Treatment Act provided, for the first time, a right of appeal to a US court against a final decision of the military commissions. The legislation provided that the US District Court of Appeals for the DC circuit would have exclusive jurisdiction in such cases, and that the right of appeal would apply only to capital cases or those where the defendant was sentenced to a term of imprisonment of 10 years or more; appeals in other cases are at the court's discretion.

These changes do not address the substance of Amnesty International's concerns as summarized in its previous submission to the Committee, and the commissions remain fundamentally flawed on the following grounds. .

- They lack independence from the executive which determines the rules for the commissions, selects the personnel, and decides who will appear before them;
- The defendant can face secret evidence which he will be unable to rebut The new rules on disclosure, for example, still allow secret evidence to be admitted on approval of the Chief Prosecutor and Presiding Officer.
- The right to counsel and to an effective defence is restricted. The defendant is assigned a military lawyer, who may have little or no experience in criminal trials. Although the accused is also allowed to retain a US civilian defence lawyer, the civilian lawyer may be denied access to "protected" (classified) information on

[191] Department of Defense: Military Commission Order No. 1, August 31, 2005.

national security grounds. Communications with the defendant and his lawyers may be monitored for "security purposes".

- The ability of the prosecution to introduce secret evidence and restrict information available to the accused or his civilian defence counsel undermines the principle of equality of arms included in the concept of a fair trial under Article 14(1)
- The commission can admit evidence based on hearsay and statements extracted under torture or other ill-treatment considered of "probative" value.[192]
- The right of appeal to an independent court is restricted to the limited right provided under the Detainee Treatment Act (see above). Anyone sentenced to a term of imprisonment less than ten years will have no right of appeal.
- Only foreign nationals are eligible for such trials, violating the prohibition on the discriminatory application of fair trial rights under Article 14 (equal protection of the law) and article 26.

In November 2005 the US Supreme Court agreed to hear an appeal lodged in the case of Salim Ahmed Hamdam, a Guantánamo detainee who has challenged the legality of the military commissions. However, the US government filed a brief with the Supreme Court in January 2006, arguing that the Court no longer had jurisdiction to hear his case under the Detainee Treatment Act of 2005 (see 7 (1) above). The issue had not yet been decided at the time of writing.

➢ **UPDATE**

On 29 June 2006, the US Supreme Court issued its ruling in Hamdan v. Rumsfeld. It rejected the government's argument that the Detainee Treatment Act had stripped the Court of jurisdiction to consider the case. It also rejected the government's argument that it should abstain from ruling on the case prior to the military commission trials. By five votes to three, the Court found that the military commissions as constituted violated US law and the Geneva Conventions.

In a ruling with potentially broad ramifications for the administration, the Court ruled that Common Article 3 of the Geneva Conventions applies to the case of Hamdan, thereby specifically refuting a central tenet of President Bush's "war on terror" policy. In a memorandum of 7 February 2002, President Bush had decided that Common Article 3 would not be applicable either to al-Qa'ida or Taleban detainees. Fundamental protections of Common Article 3, as well as the prohibition of torture, cruel, humiliating or degrading treatment, include guarantee of trials under "regularly constituted courts affording all the judicial guarantees…recognized as indispensable by civilized peoples",. Noting that the Geneva Conventions did not define the latter phrase, the majority opinion footnoted (#66) the fact that the USA had ratified the International Covenant on Civil and Political Rights containing "basic protections" for fair trial.

Amnesty International has called on the US government to interpret the Hamdan ruling broadly, and to use it as a stepping stone to full reconsideration of its 'war on terror'

[192] The relevant provision of sec. 1405 of the Detainee Amendment Act of 2005 reads:
"*(b) Consideration of Statements Derived With Coercion-*
(1) ASSESSMENT- The procedures submitted to Congress pursuant to subsection (a)(1)(A) shall ensure that a Combatant Status Review Tribunal or Administrative Review Board, or any similar or successor administrative tribunal or board, in making a determination of status or disposition of any detainee under such procedures, shall, to the extent practicable, assess--
(A) whether any statement derived from or relating to such detainee was obtained as a result of coercion; and
(B) the probative value, if any, of any such statement."

detention policies and practices. The organization has urged the administration not to resurrect military commissions in other forms or via other means, including congressional authorization.

9.2 Fair trial concerns in the USA

There are substantial due process protections for defendants facing trial in the US criminal justice system. However, indigent defendants may have difficulty accessing competent counsel, a concern Amnesty International has raised in particular with regard to capital cases. Amnesty International has documented many instances in which capital defendants have been inadequately represented by incompetent or inexperienced and poorly paid court-appointed counsel at key stages of the proceedings. For example, at the sentencing phase of a capital trial, juries are supposed to weigh aggravating and mitigating factors before deciding on whether to impose death or a lesser sentence; however, there are many cases in which, despite the presence of mitigating factors, lawyers have presented little or no such evidence.[193] Failure to ensure adequate counsel is contrary to international safeguards which require that capital defendants receive adequate legal assistance at all stages, "above and beyond the protection afforded in non-capital cases".[194] Restrictions on the right to appeal in federal courts has made it more difficult for errors at the trial or sentencing phase, or the direct state appeal stage, to be remedied at a later stage (see Death Penalty, 5.1.).

As noted above, race and economic and social status have been seen to play a role in the capital punishment system. There is also a link between poverty and race. A Pennsylvania Committee on Racial and Gender Bias in the Justice System, for example, pointed out in its March 2003 report that "issues of racial and ethnic bias cannot be divorced from the issue of poverty. Unless the poor, among whom minority communities are overrepresented, are provided adequate legal representation, including ample funds for experts and investigators, there cannot be a lasting solution to the issue of racial and ethnic bias in the capital justice system".[195]

Amnesty International has raised or noted fair trial concerns in several other cases, including the following:

Amnesty International concluded that the trial of Ahmed Omar Abu Ali, convicted in a US federal court in November 2005 on charges of conspiracy to commit acts of terrorism[196], was flawed as the jury was not allowed to hear evidence supporting the defendant's claim that his videotaped confession, on which the prosecution had relied almost exclusively, had been obtained as a result of torture in Saudi Arabia. Ahmed Abu Ali told the court that he was flogged and beaten by the Saudi Arabian Ministry of Interior's General Intelligence while held in prison in Saudi Arabia, with the apparent knowledge of the USA. Coerced statements are inadmissible in trials in the USA. However, during the trial, general statements on the treatment of detainees from Saudi Arabian officials were used to undermine Abu Ali's allegations, while the defence lawyers were not allowed to present any evidence pertaining to

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[193] See for example, AI reports: *Arbitrary, Discriminatory and Cruel: an aide-mémoire to 25 years of judicial killing,* pages 13 and 14 (AMR 51/003/2002) http://web.amnesty.org/library/index/engamr510032002 and *USA: Death by discrimination – the continuing role of race in capital cases,* pages 12-15 (AMR 51/046/2003), April 2003, http://web.amnesty.org/library/index/engamr510462003.

[194] Economic and Social Council Resolution 1989/64, adopted 24 May 1989, relating to Safeguards guaranteeing protection of the right of those facing the death Penalty (ECOSOC resolution 1984/50, 25 May 1984).

[195] Final Report of the Pennsylvania Supreme Court Committee on Racial and Gender Bias in the Justice System.

[196] *United States v. Ahmed Omar Abu Ali*, US District Ct. for Eastern District of Virginia.

Saudi Arabia's general record on torture, not even from the US State Department's reports. Amnesty International is seriously concerned that the trial may set a precedent in US courts by which statements obtained by torture and ill-treatment are accepted as evidence. Amnesty International is further concerned that failure to allow the defence to present its evidence, while accepting general claims from Saudi officials denying torture, breached the fundamental fair trial principle of "equality of arms".

Gerardo Hernández Nordelo, Ramón Labañino, Antonio Guerrero, Fernando Gonzáles and René Gonzáles, are Cuban nationals convicted in a federal court in Miami in 2001 of acting as unregistered agents for the Cuban government and related charges. In August 2005 a three-judge panel of a federal appeals court overturned the convictions and ordered a retrial on the ground that prejudicial pre-trial publicity and pervasive hostility in the Miami area towards the Cuban government had made it impossible for them to receive a fair trial in that venue. The US government appealed and, in October 2005 panel's ruling was vacated by the full court of appeals. Further appeals on both sides are due to be heard in 2006. In May 2005 the UN Working Group on Arbitrary Detention (WGAD) issued an opinion that the five had been arbitrarily deprived of liberty based on failure to guarantee the right to a fair trial. The WGAD's opinion was based on the prejudicial trial venue, the defence attorneys' limited access to classified evidence which "undermined the equal balance between the prosecution and the defense", and the fact that the five defendants were kept in solitary confinement for 17 months before trial, making access to evidence and communication with their attorneys more difficult.[197]

Amnesty International has raised concern about the US government's refusal to allow the Cuban wives of two of the above prisoners, René Gonzáles and Gerardo Hernández, temporary visas to visit them in prison. The organization believes that this denial, in the absence of a clear and immediate threat, is unnecessarily punitive and contrary to standards for humane treatment and states' obligation to protect family life. In its submissions to the US government on this issue, Amnesty International noted the Human Right's Committee's General Comment 21 on Article 10 which states that persons deprived of their liberty may not be subjected to "any hardship or constraint other than that resulting from the deprivation of liberty" and shall enjoy all the rights set forth in the Covenant "subject to the restrictions that are unavoidable in an enclosed environment", and that respect for the humanity and dignity of persons deprived of their liberty shall be applied "without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or status".

Amnesty International has raised concerns with the US government about the fairness of proceedings leading to the 1977 conviction of former American Indian Movement leader Leonard Peltier of the murder of two federal agents. While not reaching a conclusion on the question of guilt or innocence, Amnesty International is concerned by evidence that the FBI had knowingly relied on false testimony to secure Leonard Peltier's extradition from Canada and that evidence which may have assisted in his defence was withheld by the prosecution at the trial. Noting that numerous appeals have failed to dispel doubts about the fairness of the case, Amnesty International has sought executive clemency for Leonard Peltier, who has now served 30 years in prison.

[197] Opinion No. 19/2005. Apart from the issue of the trial venue, the concerns raised by the WGAD, based largely on information presented on behalf of the defendants, have not yet been the subject of appeal before the US courts. Because the Fourth Circuit Court of Appeal vacated the convictions and ordered a new trial on the issue of the trial venue, it did not to rule on other grounds of appeal.

APPENDIX 1: INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS. ARTICLES 1 TO 27.

International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, *entered into force* Mar. 23, 1976.

(Relevant Articles)

PART I

Article I

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

PART II

Article 2

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

3. Each State Party to the present Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies when granted.

Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

Article 4

1 . In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.

2. No derogation from articles 6, 7, 8 (paragraphs I and 2), 11, 15, 16 and 18 may be made under this provision.

3. Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.

Article 5

1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.

2. There shall be no restriction upon or derogation from any of the fundamental human rights recognized or existing in any State Party to the present Covenant pursuant to law, conventions, regulations or custom on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

PART III

Article 6

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.

3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.

4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.

5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.

6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.

Article 7

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

Article 8

1. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.

2. No one shall be held in servitude.

3. (a) No one shall be required to perform forced or compulsory labour;

(b) Paragraph 3 (a) shall not be held to preclude, in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court;

(c) For the purpose of this paragraph the term "forced or compulsory labour" shall not include:

(i) Any work or service, not referred to in subparagraph (b), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention;

(ii) Any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors;

(iii) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;

(iv) Any work or service which forms part of normal civil obligations.

Article 9

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.

4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

Article 10

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

2. (a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;

(b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication. 3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

Article 11

No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation.

Article 12

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

2. Everyone shall be free to leave any country, including his own.

3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.

4. No one shall be arbitrarily deprived of the right to enter his own country.

Article 13

An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.

Article 14

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

(a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

(b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;

(c) To be tried without undue delay;

(d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

(e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;

(g) Not to be compelled to testify against himself or to confess guilt.

4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.

5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

Article 15

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby.

2. Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.

Article 16

Everyone shall have the right to recognition everywhere as a person before the law.

Article 17

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

2. Everyone has the right to the protection of the law against such interference or attacks.

Article 18

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others. 4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

Article 19

1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (ordre public), or of public health or morals.

Article 20

1. Any propaganda for war shall be prohibited by law.

2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

Article 21

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 22

1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.

3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.

Article 23

1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

2. The right of men and women of marriageable age to marry and to found a family shall be recognized.

3. No marriage shall be entered into without the free and full consent of the intending spouses.

4. States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.

Article 24

1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.

2. Every child shall be registered immediately after birth and shall have a name.

3. Every child has the right to acquire a nationality.

Article 25

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

(a) To take part in the conduct of public affairs, directly or through freely chosen representatives;

(b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;

(c) To have access, on general terms of equality, to public service in his country.

Article 26

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 27

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.