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# amnesty international

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## USA: Urgent need for transparency on Bagram detentions

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*My administration is committed to creating an unprecedented level of openness in Government... Transparency promotes accountability and provides information for citizens about what their Government is doing*  
President Barack Obama, 21 January 2009<sup>1</sup>

A US federal judge considering the question of whether detainees held by the USA in Bagram air base in Afghanistan may challenge the lawfulness of their detention before courts in the USA has ordered the US administration to provide him, by 11 March 2009, with updated information on the Bagram detainees.

Amnesty International urges the US administration to inject some much needed transparency into the detention regime operated at the Bagram Theater Internment Facility (BTIF), including by making fully available to the public the information requested by the judge. The organization continues to call for the Bagram detainees to be granted access to an independent court to challenge the lawfulness of their detentions, to effective remedies in relation to their treatment and conditions of detention, and to meaningful access to legal counsel for such purposes.<sup>2</sup>

Habeas corpus petitions filed on behalf of four detainees held for more than five years in Bagram are pending before US District Court John Bates in Washington, DC. On 7 January 2009 – seven years after detentions in Bagram began – Judge Bates issued an order requiring the US government to disclose by 16 January the number of people being held in the airbase, how many of them were taken into custody outside of Afghanistan, and how many of them were Afghan nationals. Judge Bates said that the government could file under seal any of the information that was classified. True to form for an administration that consistently exploited classification to keep from public scrutiny its detention and interrogation policies, the Bush administration filed a response to the order in which any detail of detainee numbers, nationalities, or where they were originally taken into custody was classified as secret and redacted from the unclassified version of the filing.

In a follow-up order issued on 2 March 2009, Judge Bates noted that the government's reply of 16 January "may already be out-of-date", given the previous administration's assertion that transfers or releases of detainees from Bagram were expected at that time. This would appear

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<sup>1</sup> Transparency and open government. Memorandum for the Heads of Executive Departments and Agencies, 21 January 2009. Federal Register, Vol. 74, No. 15, p. 4685.

<sup>2</sup> See USA: Out of sight, out of mind, out of court? The right of Bagram detainees to judicial review, 18 February 2009, <http://www.amnesty.org/en/library/info/AMR51/021/2009/en>

to be reflected in figures released by the International Committee of the Red Cross (ICRC), the only organization with access to the Bagram detainees. In late February 2009, the ICRC said that it was visiting around 550 detainees at the BTIF, most of whom were Afghan nationals “captured by the US-led coalition in southern and eastern Afghanistan”.<sup>3</sup> This was down from the figure of “about 615” provided by US Secretary of Defense Robert Gates to the Senate Armed Services Committee on 27 January 2009. With detainee releases from and new arrivals to the BTIF occurring, Amnesty International urges the US authorities to provide regular public information on the numbers and nationalities of those held in the base, and where, when, and in what circumstances they were taken into detention, as well as information on releases and transfers from US custody.<sup>4</sup>

Judge Bates ordered the Justice Department, by 11 March 2009, to provide him in writing updated details on the three questions he had previously asked – how many detainees are being held in Bagram, how many were taken into custody outside Afghanistan, and how many of them are Afghan nationals. In addition, he ordered the government to identify whether those taken into custody outside Afghanistan and still held included the cases of the four men whose habeas corpus petitions are pending before him. These petitions involve nationals of Yemen, Tunisia, and Afghanistan reportedly taken into custody in Pakistan, Thailand, United Arab Emirates and Afghanistan.

Amnesty International urges the administration not to repeat its predecessor’s use of secrecy to conceal from the public its response to Judge Bates. Transparency, essential to accountability and detainee protection, must be central to US detention policy.

As described further below, the United Kingdom (UK) government recently revealed that two individuals it handed over to the USA in Iraq in February 2004 were subsequently transferred to US custody in Afghanistan, where they remain five years later, presumably in the Bagram detention facility. The revelation highlights the need for full disclosure about – indeed a full independent commission of inquiry into – all aspects of the USA’s detention policies and practices in the context of counter-terrorism and armed conflict, including transfers of detainees between countries or governments.

Before leaving office, the Bush administration had argued that the Bagram detainees could not challenge the lawfulness or conditions of their detention, that they had no rights under the US Constitution and no rights under international law enforceable in the US courts. The right of detainees in US custody at Guantánamo Bay in Cuba to challenge the lawfulness of their detention was recognized by the US Supreme Court as constitutionally protected in its June 2008 ruling in *Boumediene v. Bush*. In *Boumediene*, the Supreme Court ruled that the detainees held at Guantánamo, though non-US nationals captured and held outside the

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<sup>3</sup> US detention related to the fight against terrorism – the role of the ICRC, 24 February 2009, <http://www.icrc.org/web/eng/siteeng0.nsf/htmlall/united-states-detention-faq-240209>. The ICRC reports that in 2008 it was granted access to “several US-run field detention sites in Afghanistan, where people are often held before being transferred to the [Bagram] Theater Internment Facility”.

<sup>4</sup> New detentions by US and allied forces in Afghanistan continue. According to reports by the American Forces Press Service, at least 120 “militants” were taken into custody by coalition forces during January and February 2009. It is not known how many, if any, have been or will be transferred to Bagram.

sovereign territory of the USA, were entitled to this fundamental legal protection. The detainees held at Bagram are likewise non-US nationals held outside the sovereign territory of the USA. Like the Guantánamo detainees, those held at Bagram are under the complete control of their US captors. They currently have no access to courts in Afghanistan.

On 20 February 2009, responding to an invitation from Judge Bates a month earlier to the new administration to tell him whether it would take “a different approach” to its predecessor on the Bagram detainees, the Justice Department responded simply that “having considered the matter, the Government adheres to its previously articulated position”, that is, the position argued by the Bush administration. Amnesty International regrets this response to Judge Bates, and hopes that it represents a very temporary stance taken as the new administration tackles the detention legacy inherited from its predecessor. The organization reiterates its call to the USA to bring all US detentions anywhere swiftly into compliance with international law.

The right to challenge the lawfulness of detention before a court is a human right so fundamental that it cannot be diminished, even in situations of public emergency up to and including armed conflict. Judicial review is a basic safeguard against abuse of executive powers and a fundamental safeguard against arbitrary and secret detention, torture and other ill-treatment and unlawful transfers from one country or government to another. In the absence of judicial oversight, detainees in Bagram, as at Guantánamo, have been subjected to just such abuses. Even children have not been spared. With this in mind, Amnesty International urges the US government to reveal, in addition to its responses to the questions posed by Judge Bates, how many of the detainees currently in Bagram were taken into custody when they were under 18 years old. A year ago, there were at least 10 children being held in the base, according to information provided by the previous US administration in 2008 to the UN Committee on the Rights of the Child.

It took more than two years until detainees held at Guantánamo gained access to lawyers. It took more than six years for them to be recognized as having the right to challenge the lawfulness of their detentions. It is long overdue for the detainees in Bagram to have the basic protection provided by independent judicial review, and to be granted access to legal counsel to be able to do so.

## **UK government revelations**

The urgent need for transparency in relation to the Bagram detentions was recently highlighted when the UK Secretary of State for Defence, John Hutton, revealed in parliament on 26 February 2009 that two unidentified individuals taken into custody by UK forces in February 2004 in or near Baghdad in Iraq had been handed over to the US authorities and subsequently transferred to Afghanistan, where they remain in detention today.<sup>5</sup> Five years after their transfer from UK to US custody, these two individuals are believed to be held in the Bagram airbase. Amnesty International is calling on the US authorities to publicly confirm whether or not these two individuals are indeed in US custody in Bagram, reveal what their nationalities

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<sup>5</sup> See House of Commons Hansard Debates for 26 February 2009, available at: <http://www.publications.parliament.uk/pa/cm200809/cmhansrd/cm090226/debtext/90226-0008.htm#09022651000004>.

are, what investigations have been carried out into their transfers, and what their treatment and conditions of detention have consisted of over the past five years.

John Hutton said that “the US Government has explained to us that they were moved to Afghanistan because of a lack of relevant linguists necessary to interrogate them effectively in Iraq.”<sup>6</sup> He said that UK officials were “aware of this transfer in early 2004” and that “the transfer to Afghanistan of these two individuals should have been questioned at the time”. It is not clear from John Hutton’s statement precisely when in 2004 the two men were transferred to Afghanistan, whether the transfer was conducted under the auspices of the Central Intelligence Agency (CIA), the US military or another agency, or whether they have been held in Afghanistan for the entire period. It is also not clear whether the transfer occurred before or after two memorandums were written in the US Justice Department’s Office of Legal Counsel (OLC) in March 2004 on the issue of detainees in US custody in Iraq, although “interim guidance” on detainee transfers from Iraq was in place from October 2003 (see below).

In both Afghanistan and Iraq, the Bush administration applied the theory that there were two separate conflicts underway in each theatre of operations, one of which was part of a global war. In relation to Afghanistan, President Bush determined that none of the provisions of the Geneva Conventions would apply to “our conflict with al Qaeda in Afghanistan or elsewhere throughout the world”, but would apply to the conflict with the Taliban.<sup>7</sup> He determined, however, that Article 3 common to the four Geneva Conventions would apply to neither *al-Qa’ida* nor Taliban detainees (overturned in June 2006 by the Supreme Court in *Hamdan v. Rumsfeld*), and that no detainee from either category would qualify as a prisoner of war. The memorandum indicated that humane treatment was to be a matter of policy rather than law.

In the case of the US-led invasion and occupation of Iraq, the USA took the position that the armed conflict with that country began in January 1991 and continued through the March 2003 invasion and the occupation the following month. As in the case of Afghanistan, the administration also held that it was in a separate global conflict with *al-Qa’ida*, to which, when considered independently, the Geneva Conventions did not apply. In a conclusion relevant to its position on transfers out of Iraq, the US Justice Department held that this analysis was less clear when “the two conflicts became intertwined, as they may when al Qaeda operatives carry on their armed conflict against the United States in Iraq.”<sup>8</sup>

Outside the context of the Iraq conflict, the Bush administration considered it was free to transfer detainees in its custody abroad between its detention facilities around the world, in secrecy and without any judicial oversight. That it viewed the world as the battlefield is

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<sup>6</sup> However, another such transfer known to have taken place in early 2004 was clearly not motivated by a shortage of relevant linguists. In January 2004, an Arabic-speaking Yemeni national, Khaled al-Maqtari, was detained by US forces in Fallujah, Iraq, and transferred to Abu Ghraib (where he was allegedly questioned by UK troops). He was transferred to Afghanistan several weeks later, and held in secret detention in unidentified locations for over two years. See USA: A case to answer. From Abu Ghraib to secret CIA custody: The case of Khaled al-Maqtari, March 2008, <http://www.amnesty.org/en/library/info/AMR51/013/2008/en>.

<sup>7</sup> Humane treatment of al Qaeda and Taliban detainees. President George W. Bush, 7 February 2002.

<sup>8</sup> Memorandum opinion for the Counsel to the President. ‘Protected person’ status in occupied Iraq under the Fourth Geneva Convention, 18 March 2004.

illustrated by the fact that those taken to Guantánamo and held there as “enemy combatants” were picked up in countries as far apart as Azerbaijan, Zambia, Bosnia and Herzegovina, Thailand, Gambia, Indonesia, and United Arab Emirates, as well as from mosques, homes and streets in Pakistani cities, and in Afghanistan. Most of the detainees who ended up at Guantánamo were taken there via the detention facilities in the US airbases at Bagram or Kandahar in Afghanistan.

The Bush administration also considered it effectively had *carte blanche* to transfer detainees to other governments, again without judicial oversight. A memorandum written in the Office of Legal Counsel, dated 13 March 2002, and made public by the new administration on 2 March 2009 (a welcome sign of a degree of transparency not implemented by the Bush administration), concluded that “as Commander in Chief and Chief Executive, the President has the plenary constitutional power to detain and transfer prisoners captured in war”. Specifically, it advised that “the President has full discretion to transfer al Qaeda and Taliban prisoners captured overseas and detained outside the territorial jurisdiction of the United States to third countries”.<sup>9</sup> Neither the Geneva Conventions, nor the UN Convention against Torture, posed an obstacle to this, the memorandum advised.<sup>10</sup>

At the time it took custody of the two individuals handed over by UK forces in 2004, US forces in Iraq were bound by the Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), Article 49 of which prohibits the transfer of protected persons, including insurgents who are not part of the military, from the occupied territory. Based on the limited information provided by the UK, Amnesty International considers that the two people in question were “protected persons” under the Fourth Geneva Convention and that the USA violated this provision when it transferred them to Afghanistan. Unlawful deportation or transfer or unlawful confinement, as well as torture and other inhuman treatment, in violation of the Geneva Conventions, are war crimes, and prosecutable as such under US and international law. In addition, international human rights law, which prohibits among other things arbitrary detention, applies even in time of armed conflict.

Jack Goldsmith, a former head of the OLC, has written that soon after taking up the post in October 2003, he was told by then White House Counsel Alberto Gonzales that the

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<sup>9</sup> Memorandum for William Haynes, General Counsel, Department of Defense. Re: The President’s power as Commander in Chief to transfer captured terrorists to the control and custody of foreign nations. Jay S. Bybee, Assistant Attorney General, Office of Legal Counsel, US Department of Justice, 13 March 2002.

<sup>10</sup> Five days before the inauguration of President Obama, the Justice Department issued a memorandum (released by the new Attorney General on 2 March 2009) stating that a number of OLC opinions issued in 2002 and 2003, including the 13 March 2002 opinion, “advanced a broad assertion of the President’s Commander in Chief power that would deny Congress any role in regulating the detention, interrogation, prosecution, and transfer of enemy combatants captured in the Global War on Terror”. The January 2009 memorandum stated that while the President “certainly has significant constitutional powers in this area”, the broad assertion made in the earlier opinions “does not reflect the current view of OLC and has been overtaken by subsequent decisions of the Supreme Court and by legislation passed by Congress and supported by the President”. See Memorandum for the files: Status of certain OLC opinions issued in the aftermath of the terrorist attacks of September 11, 2001. Steven Bradbury, Principal Deputy Assistant Attorney General, Office of Legal Counsel, US Department of Justice, 15 January 2009.

administration required legal advice on whether the Fourth Geneva Convention “protects terrorists in Iraq”.<sup>11</sup> Goldsmith asserts that “near the end of my first week on the job, the lawyers around the government reached a consensus: the convention protected all Iraqis, including those who were members of al Qaeda or any other terrorist group, but not al Qaeda terrorists from foreign countries who entered Iraq after the occupation began... I agreed.”<sup>12</sup>

Assistant Attorney General Goldsmith drafted a memorandum to Alberto Gonzales and circulated it to the head lawyers at the CIA, the Departments of State and Defense, and the National Security Council. This draft memorandum, dated 19 March 2004, “elaborates on interim guidance provided in October 2003 concerning the permissibility under [Article 49 of the Fourth Geneva Convention] of relocating certain ‘protected persons’ detained in occupied territory to places outside that country.”<sup>13</sup> The memorandum concluded that the USA could, “consistent with article 49”, (1) remove from Iraq under local immigration law “protected persons” who were “illegal aliens”; and (2) “relocate ‘protected persons’ (whether illegal aliens or not) from Iraq to another country to facilitate interrogation, for a brief but not indefinite period”, as long as the individual concerned had not been “accused of offences” within the scope of Article 76 of the Convention.

What role such advice may have played in the transfer to Afghanistan of the two individuals handed over to the USA by the UK in Iraq is unknown, although the USA’s assertion to the UK that the two were transferred in order to facilitate their interrogation seems to mirror the above. For his part, Jack Goldsmith has written that he never finalized this particular memorandum and “it never became operational, and it was never relied on to take anyone outside of Iraq”. He further stated that he did know whether the request for legal advice about transferring detainees from Iraq was “associated with a broader rendition program”.<sup>14</sup>

Assistant Attorney General Goldsmith did finalize another legal opinion, dated 18 March 2004, relating to detentions in Iraq. This memorandum concluded that “al Qaeda operatives captured in occupied Iraq who are neither citizens nor permanent residents of Iraq are not entitled to ‘protected person’ status”. By “al Qaeda operatives”, the memorandum referred “not only to individuals who are formal members of al Qaeda”, but also to “members or associates of other terrorist organizations that are sufficiently connected to al Qaeda that they may be deemed participants in its armed conflict against the United States, as well as to members or associates of terrorist organizations that are not so connected to al Qaeda but are separately engaged in global armed conflict against the United States”. The Geneva Conventions,

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<sup>11</sup> Jack Goldsmith, *The Terror Presidency: Law and judgment inside the Bush administration*. W. W. Norton (2007), page 32.

<sup>12</sup> *Ibid.*, page 40.

<sup>13</sup> Permissibility of relocating certain ‘protected persons’ from occupied Iraq. Memorandum for Alberto R. Gonzales, Counsel to the President, from Jack Goldsmith III, Assistant Attorney General, US Department of Justice, Office of Legal Counsel, Draft, 19 March 2004.

<sup>14</sup> *The Terror Presidency*, *op. cit.*, pages 172-173. See also, Dana Priest, Memo Lets CIA Take Detainees Out of Iraq: Practice Called Serious Breach of Geneva Conventions, *Washington Post*, 24 October 2004 (“A US government official who has been briefed on the CIA’s detention practices said some detainees are probably taken to other countries because ‘that’s where the agency has the people, expertise and interrogation facilities, where their people and programs are in place’.”)

Assistant Attorney General Goldsmith wrote, were not designed to confer “protected person” status on “operatives of an international terrorist organization who are in occupied territory as part of a global armed conflict”.<sup>15</sup>

Although the two detainees transferred from UK to US custody and sent to Afghanistan have been reported in the media as being nationals of Pakistan, John Hutton himself did not reveal their nationality in his statement to the UK parliament. He only said that they were “members of Lashkar-e-Taiba, a proscribed organization with links to al Qaeda”.<sup>16</sup>

Only a month before John Hutton’s statement, the UK Foreign Secretary, David Miliband, had written that the “war on terror” was a “misleading and mistaken” notion, one that encouraged a “primarily military” response and gave the impression of “a unified, trans-national enemy, embodied in the figure of Osama bin Laden and al-Qaida. The reality is that the motivations and identities of terrorist groups are disparate.” Among other examples, Secretary Miliband said, “Lashkar-e-Taiba has roots in Pakistan and says its cause is Kashmir.” Any cooperation between such groups and *al-Qa’ida* has been “opportunistic”. To lump terrorist groups together, he said, is to “play into the hands of those seeking to unify” them. He concluded that “We must respond to terrorism by championing the rule of law, not subordinating it, for it is the cornerstone of the democratic society...That is surely the lesson of Guantánamo and it is why we welcome President-elect Obama’s commitment to close it.”<sup>17</sup>

Amnesty International, too, has welcomed President Obama’s order to close the Guantánamo detention facility.<sup>18</sup> However, the erosion of the rule of law wrought by the USA’s detention and interrogation policies since 11 September 2001 has reached far beyond Guantánamo. The organization remains concerned that the US government has not yet rejected the global “war” framework developed and relied upon by the Bush administration under which the USA has manipulated international humanitarian law and disregarded human rights law protections in the case of those designated as “enemy combatants”. Indeed, several officials in the new administration, including Attorney General Eric Holder, have indicated a measure of support for this global war theory. Furthermore, by adopting the position argued by the Bush administration that detainees held as “enemy combatants” in US military custody in Bagram do not have the right to judicial review or any rights under international law enforceable in US courts, the new administration has effectively adopted the global war paradigm in relation to at

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<sup>15</sup> Memorandum opinion for the Counsel to the President. ‘Protected person’ status in occupied Iraq under the Fourth Geneva Convention, 18 March 2004, Assistant Attorney General Jack L. Goldsmith III.

<sup>16</sup> Lashkar-e-Taiba (LT) is a Pakistan-based insurgent group fighting against Indian control of Kashmir. According to the US State Department, the arrest of Abu Zubaydah, an alleged senior *al-Qa’ida* member, at an LT safehouse in Pakistan in March 2002 “suggests some members are facilitating the movement of al-Qa’ida members in Pakistan”. Abu Zubaydah was subjected to enforced disappearance and torture by the USA before his transfer four and a half years after his arrest to Guantánamo, where he remains held without charge.

<sup>17</sup> ‘War on terror’ was wrong. By David Miliband, 15 January 2009, <http://www.guardian.co.uk/commentisfree/2009/jan/15/david-miliband-war-terror>.

<sup>18</sup> See USA: The promise of real change. President Obama’s executive orders on detentions and interrogations, 30 January 2009, <http://www.amnesty.org/en/library/info/AMR51/015/2009/en>.

least those detainees held in Bagram who were taken into custody outside any zone of armed conflict.

John Hutton said that the US authorities had told the UK that the two men who had been handed over to US forces in Iraq in February 2004 “continued to represent significant security concerns” and that it was “neither possible or [sic] desirable to transfer them to either their country of detention or country of origin”. Instead they were being held in Afghanistan as “unlawful enemy combatants” and the USA was reviewing their status “on a regular basis”. This presumably refers to the Unlawful Enemy Combatant Review Board (UECRB) which – like the inadequate and flawed Combatant Status Review Tribunal and the annual Administrative Review Board operated only at Guantánamo – consists of panels of three military officers who assess the detainee’s status, including through the use of secret information from those involved in the capture and interrogation of the detainee. The “implementing guidance” for the UECRBs is classified, but given that the CSRTs and ARBs used at Guantánamo can rely on information obtained under torture or other cruel, inhuman or degrading treatment, there is no reason to believe that the UECRBs cannot. The documentation prepared for the UECRB evaluations of detainees is classified. The detainee has no access to legal counsel for this review scheme (or at any other time, including during interrogation). The ICRC has emphasised that the development of this review system “does not mitigate the need for more robust procedural safeguards at Bagram”.

In its *Boumediene* ruling in June 2008, the US Supreme Court found that the narrow judicial review of CSRT decisions provided under the Detainee Treatment Act of 2005 to Guantánamo detainees was an inadequate substitute for habeas corpus. Administrative review by the UECRB – an executive body at least as flawed as the CSRT and the decisions of which are not even subject to narrow judicial oversight – is an even less adequate substitute for habeas corpus.

John Hutton also told the UK parliament that “We have been assured that the detainees are held in a humane, safe and secure environment that meets international standards that are consistent with cultural and religious norms”. However, the current conditions of detention in Bagram are publicly unknown, due to the absence of judicial oversight and denial of access to independent human rights organizations.<sup>19</sup> Allegations of ill-treatment made in a sworn declaration given by an Afghan journalist released from Bagram in September 2008 give cause for concern.<sup>20</sup> Moreover, prolonged indefinite detention without charge can itself constitute a violation of the UN Convention against Torture, as the UN Committee against Torture found in 2006 in the case of the Guantánamo detainees.<sup>21</sup>

Whatever the current treatment of the Bagram detainees, the transfer from Iraq to Afghanistan of the two individuals in question occurred at a time when detainees were being subjected to

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<sup>19</sup> The ICRC is an international humanitarian organization which maintains a general policy of confidentiality in relation to its findings.

<sup>20</sup> See, USA: Out of sight, out of mind, out of court? *op. cit.*

<sup>21</sup> “The Committee, noting that detaining persons indefinitely without charge, constitutes per se a violation of the Convention, is concerned that detainees are held for protracted periods at Guantánamo Bay, without sufficient legal safeguards and without judicial assessment of the justification for their detention”. UN Doc.: CAT/C/USA/CO/2, para. 22.



torture or other ill-treatment in US custody in Afghanistan. Even as recently as the summer of 2007, the ICRC was complaining of dozens of detainees being hidden from the organization in secret isolation cells in Bagram. Moreover, the bare details provided by the UK Secretary of State for Defence on the cases, including of the assurances he said the UK government had been provided by their US counterparts, do not reveal what the treatment of the men over the past five years had entailed. Were they held in secret detention by the USA at any time? Were they subjected, like other detainees, to any interrogation techniques or detention conditions that violated the prohibition of torture or other ill-treatment? If so, has anyone been held accountable? Given the fact that the UK government handed these individuals over to the USA in the first place, the UK authorities should be among those who press the US government for answers and for the detainees to be provided access to the courts and legal counsel.

### **Transparency and accountability**

As at Guantánamo, in the absence of judicial oversight, the detentions in Bagram have been marked by the torture or other ill-treatment of detainees. If anything, detainees at Bagram suffered more deprivations and had less legal protection than those at Guantánamo. As in the case of Guantánamo, accountability for such abuses has been minimal. As at Guantánamo, the detainees at Bagram have included children, denied their right under international law to special treatment according to their age. As at Guantánamo, detainees have been subject to transfers into and out of the base without judicial or other independent oversight or notification of family members. As at Guantánamo, the CIA is believed to have conducted secret detentions and interrogations at Bagram, and both facilities have served as hubs for the program of unlawful 'renditions' operated largely by the CIA. At least two of the cases currently before Judge Bates concern individuals who are alleged to have been held in secret detention – becoming victims of enforced disappearance – at unknown locations by or on behalf of the CIA before being taken to Bagram.

As President Obama has himself said, transparency of government action promotes accountability. As well as ensuring ongoing transparency in relation to detainees in US custody, his administration and the US Congress must ensure accountability and remedy for human rights violations committed by or at the instigation of the USA, including in Bagram and other facilities in Afghanistan.<sup>22</sup> Among other things, the US authorities should:

- Set up an independent commission of inquiry into all aspects of the USA's detention and interrogation policies and practices since 11 September 2001.
- Ensure that all allegations of particular violations of individuals' rights under international human rights or humanitarian law are thoroughly and effectively investigated, and ensure effective access to remedy for human rights violations.
- Ensure that all those responsible for crimes under international law are brought to justice, including through criminal prosecution with sentences that take account of the grave nature of the acts concerned.

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<sup>22</sup> See USA: Investigation, prosecution, remedy: Accountability for human rights violations in the 'war on terror', December 2008, <http://www.amnesty.org/en/library/info/AMR51/151/2008/en>.

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In an executive order signed on 22 January 2009, President Barack Obama ordered the establishment of an interagency task force to review the “lawful options” available to the US government with respect to the “apprehension, detention, trial, transfer, release, or other disposition of individuals captured or apprehended in connection with armed conflicts or counterterrorism operations”.

US Attorney General Eric Holder and Secretary of Defense Robert Gates, or their designees, will co-chair this interagency task force. The Attorney General said in a speech on 2 March 2009 that the task force would “study options for managing the custody of individuals apprehended in connection with terrorist activities. It is our responsibility to find a solution to this issue that employs the rule of law instead of circumventing it. In developing this solution, the task force will engage Members of Congress, the military, the intelligence community, and others who share the interest of confronting this challenge.... We are certain that there is room for improvement, and we are committed to ensuring that we create a system that is strongly rooted in American values.”<sup>23</sup>

Amnesty International is calling on the new administration to ensure that the USA adopts laws and policies on detentions fully consistent with its international obligations, not just its constitutional precedents and its legal traditions. It has made a number of recommendations to this end, which it has sent to the new administration.<sup>24</sup> The organization is also sending this update report on the Bagram detentions to the Attorney General, the Secretary of Defense and other officials involved in the interagency task force. It earlier sent its fuller briefing on the Bagram detentions to these officials.<sup>25</sup>

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<sup>23</sup> Remarks as prepared for delivery by Attorney General Eric Holder at the Jewish Council for Public Affairs Plenum, Washington, DC, 2 March 2009.

<sup>24</sup> See USA: The promise of real change. President Obama’s executive orders on detentions and interrogations, 30 January 2009, <http://www.amnesty.org/en/library/info/AMR51/015/2009/en>.

<sup>25</sup> The February 2009 briefing, USA: Out of sight, out of mind, out of court? The right of Bagram detainees to judicial review, is available at: <http://www.amnesty.org/en/library/info/AMR51/021/2009/en>.