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USA: The promise of real change

President Obama's executive orders on detentions and interrogations

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Within days of taking office, President Barack Obama has begun to act on the words of his inaugural address, that governments can and must "reject as false" the choice between safety and ideals. Amnesty International, which has welcomed President Obama's initial actions, will be monitoring progress to ensure that his administration follows through on the full meaning of those words.

Sixty years on from the adoption of the Universal Declaration of Human Rights, Amnesty International urges that the principles articulated in this seminal document, and since codified in international human rights treaties including several to which the USA is party, finally be taken to heart by the US government. Under the Declaration everyone has the right, among other things, to be free from arbitrary detention, unfair trial, and torture and cruel, inhuman or degrading treatment or punishment, and has the right to be equal before the law and to effective remedy for violations of his or her rights. Under the previous administration, the USA failed to live up to such principles, and indeed systematically undermined them in the name of national security.

Two weeks after the attacks of 11 September 2001, Amnesty International wrote to President George W. Bush to urge him to put respect for human rights at the heart of the USA's response to this crime against humanity. "In the wake of a crime of such magnitude, principled leadership becomes crucial", the organization wrote; "We urge you to lead your government to take every necessary human rights precaution in the pursuit of justice". In his inaugural address eight months earlier, President Bush had promised to be a president who would "speak for greater justice". After the 9/11 attacks, he and his administration repeatedly said that the government's counter-terrorism measures would go hand in hand with respect for the "non-negotiable demands of human dignity", including the rule of law, that all detainees would be treated "humanely", and that the USA would lead the global struggle against torture "by example". Sworn in for a second term on 20 January 2005, President Bush said that "America's belief in human dignity will guide our policies". Injustice and denial of human dignity nevertheless became hallmarks of the USA's unlawful detention and interrogation policies in its so-called "war on terror".

Forty-eight hours after taking office, President Obama signed three executive orders and a memorandum which hold out the promise that his administration will reject these unlawful policies. Amnesty International will campaign for this promise to be fully realized, and for the USA to adopt laws and policies truly consistent with its international obligations. The four presidential documents signed on 22 January 2009 are the starting point for this report outlining Amnesty International's initial response to them.

Central to the measures that the USA has taken in the name of 'countering terrorism' until now, has been the pursuit of unfettered executive power over those taken into US custody, under the perceived constitutional authority of the President. President Obama has used his executive office to begin to take a different approach to those deprived of their liberty by the USA. While his moves are to be applauded and built upon, they must not be used by the other two branches of the federal government as an excuse to fail in their oversight and legislative functions. Over the last seven years, the interaction between the legislative, executive and judicial branches on issues where the threat of terrorism has been invoked has ultimately left the USA on the wrong side of its human rights obligations.

Under international law, neither the assertion that all measures taken in the name of 'countering terrorism' constitute actions in a 'global armed conflict', nor the country's domestic laws or structure of government, may be invoked as justification for failure to comply with international legal obligations. All three branches must work – whether in collaboration or when independently checking each other's actions – to ensure the USA's full respect for international law at all times.

1. Ending detentions at Guantánamo

- **Executive order, 22 January 2009: *Review and Disposition of Individuals Detained at the Guantánamo Bay Naval Base and Closure of Detention Facilities***

Although President Bush stated from 2006 that he wished to close the Guantánamo detention facility, in the end this amounted to little more than a public relations exercise as his administration never showed any meaningful inclination to bring this about within its term in office. President Obama has immediately put a deadline on emptying the prison camp of the detainees held there and shutting it down. Amnesty International welcomes this as a clear sign that the new administration is prioritizing this issue.

President Obama's executive order states that "in view of the significant concerns raised by these detentions, both within the United States and internationally, prompt and appropriate disposition of the individuals currently detained at Guantánamo and closure of the facilities in which they are detained would further the national security and foreign policy interests of the United States and the interests of justice".

Amnesty International's aim is to ensure that the measures taken to end the Guantánamo detentions comply with the USA's international obligations as well.

Speedy action and specifics are now of the essence

The executive order states that the Guantánamo detention facility "shall be closed as soon as practicable, and no later than one year from the date of this order". Amnesty International assumes the good faith and intent of the new administration to close this prison camp that was the creation of its predecessor, but is nevertheless concerned that the order leaves open the possibility of detainees being held without charge in the Guantánamo facility for up to another year. This would be unacceptable. The organization trusts that the reference to "as soon as practicable" will be interpreted and applied with all due urgency. Fair trial or release of the more than 200 detainees still held at Guantánamo is already years overdue.

The first planeload of detainees arrived at Guantánamo on 11 January 2002, less than five days after the order was given to build a detention facility. The USA dedicated substantial resources at the beginning of this ill-judged venture as well as during the seven years of its operation. Amnesty International urges the US government to now dedicate the necessary resources and effort to bring it to speedy and lawful closure.

Specifics as well as speedy action are now of the essence. The executive order contains little in terms of specific commitments or criteria for deciding the fate of individual detainees. Amnesty International looks forward to the administration making public further details of its plans as soon as possible, and the organization makes some observations on the executive order and provides some recommendations below.

Releases and transfers

The order requires the US Attorney General to coordinate an "immediate review of all Guantánamo detentions", with the "full cooperation and participation" of other officials, including the Secretary of Defense, the Secretary of State, the Secretary of Homeland Security, the Director of National Intelligence, and the Chairman of the Joint Chiefs of Staff.

According to the order, this "comprehensive interagency review" is made necessary by "the unusual circumstances associated with detentions at Guantánamo", and its purpose is to consolidate all information on the detainees in the possession of the US government relevant to the decision on what should happen to them. Then, "on a rolling basis and as promptly as possible", the review will decide which detainees can be transferred or released from Guantánamo in ways that are "consistent with the national security and foreign policy interests of the United States".

Such consolidated files should already be largely available. Between 2002 and 2008, as it sought to persuade the courts to allow it to keep the Guantánamo detentions from judicial review, the previous administration emphasised the "comprehensive interagency process", the "ongoing processes", the "multiple review processes", and the "comprehensive series of review processes" it was operating to review the status of detainees held at Guantánamo.[1] Following the US Supreme Court's ruling in June 2008 (*Boumediene v. Bush*) that the Guantánamo detainees have the constitutional right to habeas corpus, the Justice Department has been examining and collating the government's information on each detainee to present what the previous administration called its "best case" for detention to the US District Court in habeas corpus proceedings.

The quality and integrity of the detainee files is in dispute, however. It has been reported that the new administration has found a dearth of comprehensive government files on many of the detainees, and "a senior administration official" has been quoted as saying that the information is "scattered throughout the executive branch". A Pentagon spokesperson has nevertheless said that "the individual files on each detainee are comprehensive and

[1] See Appendix 2 of USA: No substitute for habeas corpus: six years without judicial review in Guantánamo, November 2007 http://www.amnesty.org/en/report/info/AMR51/163/2007

sufficiently organized", although adding that the quantity of information "makes a comprehensive assessment a time-consuming endeavour". Members of the previous administration have said that their successors are merely now facing the complexity of the issue.[2] Amnesty International emphasises that whatever the reason may be for the administration not to have appropriate information to justify detention of an individual, no detainee must be made to bear the burden. If the administration does not have readily available information that would establish minimal legal and factual grounds for detaining a person, the international prohibition of arbitrary detention requires that the person be released.

President Obama's executive order notes that the detainees have the constitutional right to challenge the lawfulness of their detention, but does not reveal what the new administration will consider the scope and procedures of such judicial review should be, or how it should interact with the interagency review. More than six months after the *Boumediene* ruling, a majority of the Guantánamo detainees have not yet had a habeas corpus hearing on the merits of their claims as the previous administration used national security and other arguments, as well as its heavy use of classified information, to seek to minimize and delay the impact of the *Boumediene* ruling. Transparent judicial review of the detentions should be expedited, even as the interagency executive review is underway.

The previous administration chose Guantánamo as a location for detentions so as to minimize judicial review of them. In the dying days of that administration, the Justice Department continued to litigate to keep as much executive control over the detainees as it could. By 20 January 2009, except in the case of three detainees, every release or transfer from Guantánamo had been the result of an executive decision (by the time of the presidential inauguration, more than 500 detainees had left the base, leaving about 245 still there). Even a District Court judge's order of 20 November 2008 for the immediate release of five men seized in Bosnia and Herzegovina nearly seven years earlier did not result in the men's prompt release. It was nearly a month before three of the men were freed from the base. Announcing the transfer, the Pentagon said that "following the court's decision, *the government determined* that the detainees should be transferred to their country of citizenship" (emphasis added).[3] The other two detainees who were the subject of this release order remained in Guantánamo by the time of President Obama's inauguration, as did Mohammed el Gharani, a Chadian national taken to Guantánamo seven years earlier when he was reportedly 14 years old, and whose detention was deemed unlawful by the same federal judge on 14 January 2009.[4]

President Obama's executive order notes that "the Department of Defense has determined" that a number of the detainees currently held at Guantánamo are eligible for transfer or release, but made no reference to the fact that there were already a total of 20 detainees whose detention had been judicially determined to be unlawful and whose immediate release had been ordered by federal judges. Silent on whether such cases were excluded from the interagency review, the order would appear to include them in it, as the review was to cover all detainees held at the base.

[2] Guantánamo case files in disarray. Washington Post, 25 January 2009.
[3] Detainee transfer announced. US Department of Defence news release, 16 December 2008.
[4] USA: Judge orders release of detainee held in Guantánamo as child 'enemy combatant', 15 January 2009, http://www.amnesty.org/en/library/info/AMR51/006/2009/en.

The order notes that "new diplomatic efforts" may result in "an appropriate disposition of a substantial number" of the Guantánamo cases, and requires the Secretary of State to "expeditiously pursue and direct negotiations and diplomatic efforts with foreign governments". Certainly, some other governments have already indicated that they might be prepared to take those released detainees who cannot be returned to their home countries for fear of the human rights violations they could face there. Amnesty International believes that the new US administration must play its part in what it is asking its allies to do – to take such released detainees and offer them a future after Guantánamo. However, the executive order is silent on the question of releasing detainees into the US mainland. Indeed, three days after the order was issued, Vice President Joseph Biden said that "We won't release people inside the United States because all but one, I believe, is not an American citizen, an American national."[5]

Keeping released Guantánamo detainees off the US mainland emerged as one of the policy priorities of the previous administration in its final months, after the *Boumediene* ruling. In line with this strategy, it refused to follow the order handed down in early October 2008 by a District Court judge for 17 Chinese Uighurs to be immediately released into the USA. Despite not considering the Uighurs to be "enemy combatants", the Bush administration instead sought to have the order reversed on the grounds that it represented an "extravagant" remedy and an "expansive view of judicial authority".[6]

A clean break from this approach is needed. The new administration should move to dismiss the appeal against the judicial order and to vacate the stay in the Court of Appeals. It should immediately release the Uighurs into the USA.[7] To do so would be to begin showing other governments, whose assistance the USA has sought and will again seek in resolving the detainee cases, that the USA is prepared to play its part in bringing an end to the Guantánamo detentions in a lawful manner and "as soon as practicable".

While the executive order does not address the issue of releasing detainees into the USA, it does contemplate the transfer of detainees "to facilities within the United States", and instructs the review to include identification and consideration of "legal, logistical, and security issues" relating to any such potential transfers. The officials participating in the review are required to work with US Congress "on any legislation that may be appropriate". At the same time, Section 4(c)(4) of the executive order expressly anticipates that there may be detainees for whom neither transfer/release nor prosecution by the USA will be deemed

[5] CBS Face the Nation, 25 January 2009. Amnesty International is not aware of any US nationals being held in Guantánamo since 5 April 2002 when Yaser Hamdi was transferred from Guantánamo to the US mainland after the US authorities discovered that he had US citizenship.
[6] USA: Indefinite detention by litigation: 'Monstrous absurdity' continues as Uighurs remain in Guantánamo, 12 November 2008, http://www.amnesty.org/en/library/info/AMR51/136/2008/en.
[7] In his ruling on the Uighurs, Judge Ricardo Urbina noted that there were individuals and organizations ready and willing to support the Uighurs upon resettlement in the USA "by providing housing, employment, money, education and other spiritual and social services". Judge Urbina had asked the previous administration what threat the Uighurs would pose if released into the USA, but the government did not provide him with any evidence of such a threat. See Amnesty International Urgent Action, http://www.amnesty.org/en/library/info/AMR51/013/2009/en.

achievable by the review committee. For any such detainee, the interagency review is required to "select lawful means, consistent with the national security and foreign policy interests of the United States and the interests of justice, for the disposition of such individuals". There is no further detail as to what such means could include.

The executive order appears to leave open the possibility of transferring Guantánamo detainees to other US detention facilities outside of the USA. Thus, for example, it does not by its terms prohibit the transfer of detainees from indefinite detention in Guantánamo to the same fate in Bagram air base in Afghanistan, where some 600 detainees are today held without charge, trial or effective access to legal counsel or fair hearings in independent courts. Amnesty International has for years said that the closure of Guantánamo must not result in the transfer of the human rights violations elsewhere. The unlawfulness of the Guantánamo detentions must not be re-created in any other form or under any other name.

In response to the executive order on Guantánamo, a District Court judge considering whether the US Supreme Court's *Boumediene* ruling extends to detainees held in Bagram, gave the new administration until 20 February 2009 to tell him whether it intended to alter the position on the Bagram detentions argued by the previous administration. The latter had asserted that the US courts have no jurisdiction over the detainees held in Bagram, and that the detainees themselves had no constitutional rights to habeas corpus or other protections, and no rights enforceable under international law. Amnesty International will be urging the new administration to adopt a position on the Bagram detentions fully consistent with its international obligations, including ensuring the right of the detainees to judicial review of the lawfulness of their detentions, and to effective access to legal counsel.

Prosecutions

The executive order also required the Secretary of Defense to immediately take the necessary steps to ensure that all military commission proceedings at Guantánamo were halted and that no more charges under the Military Commissions Act (MCA) were sworn against detainees or referred on for trial, during the period of review. In addition, the Secretary of Defense was ordered to ensure that all proceedings pending in the US Court of Military Commission Review were likewise halted. The reason given in the order for this measure was because "it is in the interests of the United States that the executive branch conduct a prompt and thorough review of the circumstances" of the Guantánamo detainees who have been charged under the MCA, "as well as of the military commission process more generally".

In fact, by 22 January 2009, the Secretary of Defense, as ordered by the President, had already directed the Chief Prosecutor of the Office of Military Commissions to seek a suspension in the military commission cases. On 20 January, the prosecution duly filed motions for a 120-day suspension in proceedings in a number of pending cases. On 21 January, two military judges granted the government's motion in the cases before them and stayed proceedings – involving six detainees – until 20 May 2009.[8] On 29 January, however, another military judge denied the prosecution's request to suspend proceedings. This was in

[8] One case was that of Omar Khadr. The other was the joint case of Khalid Sheikh Mohammed, Walid bin Attash, Ramzi bin al-Shibh, 'Ali 'Abd al-'Aziz 'Ali ('Ammar al Baluchi), and Mustafa al Hawsawi.

the case of 'Abd al-Rahim al-Nashiri, a Saudi Arabian national held in secret US custody for nearly four years – during which time he was tortured – before being transferred to Guantánamo in September 2006. The charges against him carry the death penalty under the MCA.[9] The military judge, Colonel James Pohl, ruled that he found the government's reasons for requesting a suspension of proceedings "unpersuasive", that the request to delay the arraignment – scheduled for 9 February 2009 – was "not reasonable", and that granting the request would "not serve the interests of justice".[10]

Amnesty International has welcomed the rapid action taken by President Obama to halt the military commissions, the procedures of which do not meet international fair trial standards.[11] The military judge's decision in 'Abd al-Nashiri's case not to grant the government's motion to stay proceedings demonstrates the need for the administration to take the necessary action to permanently halt these trials. It should withdraw all charges under the MCA. Any detainee who is to be charged should be immediately transferred to the mainland USA and brought before a civilian judicial authority, and promptly charged with specific offences under applicable federal statutes. These detainees should be brought to trial without undue delay in ordinary US federal courts, in trials that meet international standards. Military commissions should be abandoned entirely and permanently. Amnesty International urges the new administration not to seek the death penalty in any case.

Under the executive order, the cases of those detainees who are not approved for release or transfer will be "evaluated to determine whether the Federal Government should seek to prosecute" them. According to a 2008 report by the Inspector General at the US Justice Department, a decision was taken by the Bush administration soon after the Guantánamo detentions began that "not one single [detainee] will see the inside of a courtroom in the United States". Amnesty International welcomes, therefore, signs of a new openness to the possibility of conducting trials of Guantánamo detainees in US civilian federal courts.

As yet, there is no substantive commitment of any kind in this regard, however.[12] The executive order only requires evaluation of "whether it is feasible to prosecute such individuals before a court established pursuant to Article III of the United States Constitution". It neither rules out trials by courts martial under the Uniform Code of Military Justice or military commissions (which are part of the political branches under Articles I and II of the Constitution). Neither does the executive order commit to trials before *existing* federal civilian courts. While the US District Courts – the federal trial-level courts – are Article III tribunals, under Article III, Congress has the power to "ordain and establish" other federal courts. Some academics and others have proposed the creation of a "national security court" composed of Article III judges to conduct review of detentions and/or trials of individuals charged with terrorist crimes.

[9] USA: Capital charges sworn against another Guantánamo detainee tortured in secret CIA custody. 2 July 2008, http://www.amnesty.org/en/library/info/AMR51/071/2008/en.
[10] *USA v. Al-Nashiri*, Ruling on government motion to continue arraignment, 29 January 2009.
[11] USA: Justice delayed *and* justice denied? Trials under the Military Commissions Act, March 2007, http://www.amnesty.org/en/library/info/AMR51/044/2007.
[12] On 25 January 2009, Vice President Biden said of the Guantánamo detainees: "They're either going to be moved and tried in American courts, tried in military courts, or they're going to be sent back to their countries." CBS Face the Nation, *op. cit.*

Amnesty International notes that over recent months much of the discussion around the creation of such special courts has centred on the suggestion that some individuals should be deprived of some of the fundamental protections of fair trial and other rights which the ordinary criminal procedures before existing courts are designed to protect. In so far as one concern is that relevant evidence has been obtained by torture or other unlawful coercion, and therefore would be inadmissible in ordinary courts, changing the rules so as to subject detainees to unfair trials based on torture or other coerced evidence would be fundamentally inconsistent with international law. Amnesty International therefore opposes creation of 'national security courts' as unnecessary and likely only to encourage or entrench further violations of the USA's international obligations. There now needs to be a firm commitment on the part of the US administration not only to abandon trials by military commissions, but also to turn to the existing federal courts for prompt trials of any charged detainees.

As noted above, Section 4(c)(4) of the executive order expressly recognizes that the review process may conclude that there are detainees for whom neither transfer/release nor prosecution by the USA is achievable. Perhaps among those cases the order might be contemplating in this regard are of those individuals whose treatment has jeopardized the prospect of a fair trial, but whose release the USA is reluctant to countenance. Such individuals include, for example, Mohamed al-Qahtani, a Saudi Arabian national subjected to torture and other ill-treatment under interrogation in Guantánamo in 2002 and 2003. In January 2009, the Convening Authority for the military commissions revealed that she had dismissed charges against Mohamed al-Qahtani under the Military Commissions Act because of his torture, and would do so again if he was to be re-charged.[13] If a fair trial has indeed been made unachievable by the US government's treatment of him, the unlawful acts committed against him certainly cannot be invoked as a reason to justify his continued unlawful detention. If there is no prospect of a fair trial, Mohamed al-Qahtani should be immediately released. Pursuant to its obligations under the UN Convention against Torture, the USA is legally bound to investigate and submit the case to its competent authorities for the purpose of prosecution of the perpetrators, and the victims of human rights violations are entitled to an effective remedy.

Other detainees whose cases may be in danger of falling to the as-yet undefined fate of those neither designated for release or transfer nor selected for prosecution, are the detainees previously held in the secret detention program operated largely by the Central Intelligence Agency (CIA). At least 16 "high-value" detainees now in Guantánamo were held for up to four and a half years in the secret detention program prior to being transferred to the US naval base in Cuba in or since early September 2006.[14] Seven of them have been charged under the

[13] USA: Torture acknowledged, question of accountability remains, 14 January 2009, http://www.amnesty.org/en/library/info/AMR51/003/2009/en. Another detainee whose case may be in danger of falling into this bracket is Mohamedou Ould Slahi, a Mauritanian national, who was taken to Jordan before his eventual transfer to Guantánamo. He has never been charged. See USA: Rendition – torture – trial? The case of Guantánamo detainee Mohamedou Ould Slahi, AMR 51/149/2006, September 2006, http://www.amnesty.org/en/report/info/AMR51/149/2006.

[14] The 16 are: 'Ali 'Abd al-'Aziz 'Ali ('Ammar al Baluchi); Ahmed Khalfan Ghailani; Hambali; Mustafa Ahmad al-Hawsawi; Mohammed Nazir bin Lep (Lillie); Majid Khan; 'Abd al-Rahim al-Nashiri; Abu Faraj

Military Commissions Act, six of whom were facing the death penalty. These ex-secret detainees have personal and direct knowledge relating to the human rights violations, including enforced disappearance, torture and other cruel, inhuman or degrading treatment, that have been committed as a part of the program. Some or all of these violations also constitute crimes under international law.

However, these detainees, and others having contact with them such as lawyers, have so far been banned from making public the detail of what they know about the secret detention program, because the operating methods that have been used in it remain classified at the highest level of secrecy. Where these detainees were held prior to their transfer to Guantánamo and how they were treated in secret custody is information that has been classified as TOP SECRET/Sensitive Compartmented Information (TS/SCI), on the asserted grounds that unauthorized public disclosure of such information could "reasonably be expected" to cause "exceptionally grave damage" to national security.[15] This stymies their ability to challenge their detention or to obtain redress, facilitates official impunity, and prevents the public from discovering the details and true extent of human rights violations that have been committed in their name. Amnesty International is concerned that, unless the government declassifies certain details of the CIA's program of secret detention, or at least declassifies statements by detainees about what happened to them, what these detainees know about the program may contribute to a decision to keep them in indefinite detention and away from access to the public and media. Such declassification must take place.

There is only one detainee remaining in Guantánamo who has been convicted by military commission. Yemeni national Ali Hamza al-Bahlul was found guilty in November 2008 of "conspiracy", "solicitation" and "providing material support for terrorism" under the MCA, and sentenced to life imprisonment. His case is not expressly addressed by President Obama's executive order, and determination of his future presumably will fall under the remit of the interagency review. Amnesty International emphasises that Ali al-Bahlul was convicted under a system that does not meet international fair trial standards. The organization considers that, as with the other detainees, he should be tried in an independent court applying fair trial standards or, if insufficient admissible evidence is available to allow such a trial to proceed, released.

Amnesty International also here raises the cases of the two detainees who were charged under the MCA for "war crimes" they are alleged to have committed when they were children. Mohammed Jawad, an Afghan national, and Omar Khadr, a Canadian national, have been in US military custody for more than six years, the majority of this time in Guantánamo. This represents more than a quarter of their lives. Omar Khadr was 15 years old when taken into custody, Mohammed Jawad was 16 or 17 years old. The USA never took account of their age

al-Libi; Abu Zubaydah; Ramzi bin al-Shibh; Mohd Farik bin Amin (Zubair); Walid bin Attash; Khalid Sheikh Mohammed; Gouled Hassan Dourad; Muhammad Rahim al-Afghani; and Abd al-Hadi al-Iraqi.

[15] Anyone who comes into contact with the detainees, including their lawyers, has to obtain TOP SECRET//SCI security approval. The ICRC, which was denied access to the detainees when they were held in secret detention, has access now they are held in Guantánamo because the organization maintains a policy of confidentiality. *Khan v. Gates*, US Court of Appeals for the District of Columbia Circuit, Declaration of Wendy M. Hilton, Associate Information Review Officer, National Clandestine Service, Central Intelligence Agency, 28 March 2008.

in its treatment of them, as it was required to do under international law, including under the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict.[16]

If the USA decides to go forward with their prosecution, it must do so only in ways that fully take into account their age at the time of their alleged crimes. Amnesty International believes, however, that given their years of unlawful treatment by the USA – which has included treatment that has violated the international prohibition of torture and other ill-treatment and a refusal on the part of the US authorities to prioritize measures that placed the best interests of the child first and foremost – serious consideration, on humanitarian and remedial grounds, should be given instead to their repatriation for inclusion in suitable programs geared towards their successful reintegration into society.

Conditions of confinement

The executive order requires the Secretary of Defense to undertake an immediate review of the conditions of detention at Guantánamo to ensure that they comply with "all applicable laws governing the conditions of such confinement, including Common Article 3 of the Geneva Conventions." The review is to be completed within 30 days and "any necessary corrections" implemented immediately thereafter.

It remains to be seen what impact such a non-independent review conducted by the detaining authorities will have on the situation faced by the detainees, including the isolating conditions most of them continue to endure. A Pentagon Directive issued on 5 September 2006 required that all detainees held at Guantánamo be treated humanely "and in accordance with US law, the law of war, and applicable US policy". This included Common Article 3. Amnesty International does not consider that this Directive resulted in conditions of detention that met international standards.[17] On 29 January 2009, the Pentagon spokesperson described the executive order as requiring a "fresh-eyes look" at the detention conditions in Guantánamo, but added that "we have no reason to believe they are not in compliance with Common Article 3".[18]

This part of the executive order also underscores the failure of the order to squarely discard the Bush administration's 'global war on terror' approach to counter-terrorism detainees, in which any relevance of US international human rights obligations, under the International Covenant on Civil and Political Rights (ICCPR) and other treaties as well as customary international law, was wholly denied. Yet these obligations alone apply outside the context of specific geographically-bounded armed conflicts; and even in respect of such armed conflicts, continue to apply alongside international humanitarian law. By referring to 'all applicable laws' without

[16] For further information, see USA: In whose best interests? Omar Khadr, child 'enemy combatant' facing military commission, April 2008, http://www.amnesty.org/en/library/info/AMR51/028/2008/en; and USA: From ill-treatment to unfair trial. The case of Mohammed Jawad, child 'enemy combatant', August 2008, http://www.amnesty.org/en/library/info/AMR51/091/2008/en.
[17] USA: Cruel and inhuman: conditions of isolation for detainees at Guantánamo Bay, April 2007, http://www.amnesty.org/en/library/info/AMR51/051/2007.
[18] US Department of Defence news briefing, 29 January 2009.

expressly including human rights instruments in that term, the new administration has missed an opportunity to truly break with one of the most insidious innovations of its predecessor, the pervasive invocation of the 'war on terror' paradigm in an attempt to justify virtually any violation of human rights.

Also since September 2006, interrogations – and detention conditions linked to interrogations – in Department of Defense facilities (of which Guantánamo is one), must comply with the US Army Field Manual on interrogations. According to the Pentagon, the revised version of the Army Field Manual, issued in September 2006, incorporates 95 per cent of the recommendations of the "12 major investigations" conducted by the Department of Defense between 2004 and 2006.[19] As described below, Amnesty International is nevertheless concerned that aspects of this Manual do not comply with the international prohibition of torture or other ill-treatment.

While the International Committee of the Red Cross (ICRC) continues to have access to the Guantánamo detainees (see also Section 3 below), the ICRC is bound by a general principle of confidentiality from making public its findings. Pending closure of the facility, Amnesty International believes that access must also be granted to independent human rights monitors, including the Special Procedures of the United Nations Human Rights Council. As outlined further below, Amnesty International also believes that the US authorities should ameliorate conditions for detainees in Guantánamo pending closure of the prison camp to bring it into line with the USA's international human rights, as well as humanitarian, obligations.

Amnesty International's recommendations on closing Guantánamo

Amnesty International welcomes President Obama's commitment to end detentions at Guantánamo. The organization makes the following recommendations to the US authorities as measures that should be taken to expedite this goal and to ensure the USA's compliance with international law (see also recommendations in Section 4 below).

Transfer, release or trial of all detainees

In assessing the lawfulness and appropriate disposition of each detainee, in *habeas corpus* proceedings and in the review announced by President Obama on 22 January 2009, each detainee should be recognized as belonging already to one of the following groups:

a) Detainees in respect of whom there is sufficient evidence, admissible in ordinary criminal proceedings, to prosecute for specific crimes under the jurisdiction of the USA, consistent with international law.

   1) Each such detainee should be immediately transferred to the mainland USA and brought before a civilian judicial authority, and promptly charged with specific offences under applicable federal statutes.

[19] Department of Defense news briefing, 6 September 2006. On investigations see, for example, pages 49-54 of USA: Human dignity denied: Torture and accountability in the 'war on terror', October 2004, http://www.amnesty.org/en/library/info/AMR51/145/2004.

2) These detainees should be brought to trial without undue delay in ordinary US federal courts, in trials that meet international standards.

3) Pre-trial release of each detainee should be determined as it would in any similar proceeding against a US citizen. The presumption should be in favour of release. Where the prosecution demonstrates to the court that detention is necessary to prevent the suspect from fleeing, interfering with witnesses or that the suspect poses a clear and serious risk to others which cannot be contained by less restrictive means, the detainee should be held in a civilian detention facility in conditions that meet international standards.

4) All standard evidentiary rules should be employed; in no case should evidence gained through torture or other coercion be admissible at trial except that a statement made under such abuse may be invoked against the accused perpetrator of such abuse as evidence that the statement was made.

5) Confidential access to counsel of choice, disclosure of and access to all relevant evidence held by the government, adequate time and facilities for the preparation of defence, the right to a speedy trial, and all other rights associated with the right to fair trial must be fully respected.

6) The government must ensure the defendant and his counsel have access to evidence or witnesses required for a fair trial. Where such information is classified, or where the government would otherwise wish to invoke grounds of national security, access must still be provided (allowing for such protections as are consistent with international law). The Classified Information Procedures Act (CIPA) provides an already-existing procedural framework. Trials may not continue where the government is unwilling to release the information necessary to mount an effective defence.

7) There should be no recourse to the death penalty.

b) Detainees in respect of whom there is not sufficient admissible evidence for prosecution for crimes under the jurisdiction of the USA, but in respect of whom their home or third countries seek extradition for prosecution abroad.

1) Any such extradition request should follow ordinary judicial due process, in accordance with international law.[20]

2) Detainees may not lawfully be extradited to countries where they would face a real risk of torture or other ill-treatment, or flagrant denial of justice, the possibility of the death penalty, or other serious human rights violations (including through subsequent transfer to a third country), in accordance with international law.[21]

[20] Extradition proceedings should take place under existing laws and in the courts ordinarily empowered to hear such proceedings. If it is considered necessary to move detainees to the mainland USA in order to bring them within the jurisdiction of such courts and proceedings, then this should be done.

[21] Recommendations of international expert bodies on steps to bring US law, procedure, and practice in this regard into line with international obligations should be implemented (not just for Guantánamo

3) Detainees must have an opportunity to raise these possible bars to extradition in the judicial procedures concerned, and must not be transferred before any appeals on those issues are exhausted.

c) Detainees against whom there is no or insufficient admissible evidence to prosecute for crimes under the jurisdiction of the USA, and no request for extradition.

1) If the detainee wishes to be transferred to a particular country, and that country is willing to accept him, he should be immediately transferred to that country for release.

2) Otherwise, if the detainee can be repatriated to his home country for release, without facing a real risk of torture or other ill-treatment, flagrant denial of justice, or other serious human rights violation, he should be immediately transferred to that country for release.

3) If neither of the above is possible, but another state has offered to provide international protection to the detainee, without real risk of torture or other ill-treatment, flagrant denial of justice, or other serious human rights violations, the detainee should be transferred to that state.

4) If none of the above is already possible at this time, without delay the detainee should be offered the opportunity to live in the USA until such time as the risks he faces in his country of origin are eliminated or he can be transferred to safety in another country, and released accordingly.

5) In all of the above cases, the detainee transfer and/or release must not be made subject to the imposition of prohibitive conditions on the detainees' liberty or freedom of movement that would themselves be inconsistent with the individual's human rights. At minimum, any such conditions must be subject to fair procedure, including substantive judicial review and supervision. Any restrictions that would amount to essentially criminal sanctions, such as house arrest, must not be imposed without a full and fair criminal trial.

6) In all cases the USA should ensure the detainee is provided with the necessary support to successfully integrate into the community, including adequate medical and psychological care.

7) Detainees and their legal counsel must be provided with sufficient notice of any intended transfer and an opportunity to raise in judicial proceedings any objections to the transfer, including on grounds of real risk of torture etc. No detainee may be transferred before appeals have been exhausted.

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detainees but for all individuals). See, e.g., Human Rights Committee, Concluding Observations and Recommendations on the 2nd and 3rd periodic reports of the USA under the International Covenant, CCPR/C/USA/CO/3, 15 September 2006, para. 16, regarding extension of non-refoulement protection to individuals at risk of cruel, inhumane or degrading treatment or punishment other than torture, to individuals detained outside its ordinary territory, and the too-demanding "more likely than not" standard used.

Diplomatic assurances against torture or other ill-treatment or other similar human rights violations, which are inherently neither enforceable nor reliable, should not be used to justify transfers of individuals to countries where they would face a real risk of such violations.

Improved conditions of detention pending closure

Amnesty International notes that President Obama has ordered the Secretary of Defense to conduct an immediate review of detention conditions at Guantánamo to ensure that detainees are being treated in conformity with "all applicable laws". Pending closure of the detention facility, the USA should ensure that all detainees are treated in accordance with international law and standards, including the International Covenant on Civil and Political Rights, the UN Convention against Torture, and other international instruments relevant to the treatment of persons deprived of their liberty. In particular, the US authorities should take immediate steps to:

- Ensure that no detainee is subjected to prolonged solitary confinement, or cellular confinement in conditions of sensory deprivation. No detainee should be held for a prolonged period in a cell with no window to the outside or without access to natural light or fresh air.
- Improve the living conditions for detainees to allow them more association, meaningful activities and recreation. All detainees should have access to regular, daily exercise in the fresh air, during daylight hours.
- Refrain from using non-consensual feeding or other non-consensual medical treatment of detainees that is inconsistent with international legal and ethical standards.
- Provide access to independent medical examination to those detainees requesting it.
- Improve access to and by legal counsel for detainees.
- Allow contact with detainees' families through regular, and where possible uncensored mail, with adequate opportunities for telephone calls and visits.
- Provide access to the Special Procedures experts of the United Nations, as well as independent human rights organizations, and provide them unrestricted access to speak privately with detainees of their choosing.
- Adopt a litigation stance that does not oppose on jurisdictional or other procedural grounds 'conditions of detention' challenges brought by Guantánamo detainees in US District Court.

2. The case of Ali al-Marri, 'enemy combatant' in USA

- **Memorandum from the President, 22 January 2009: *Review of the detention of Ali Saleh Kahlah al-Marri***

On 22 January 2009, President Obama also signed a memorandum on the case of Ali Saleh Kahlah al-Marri, a Qatari national and legal US resident arrested in Illinois who has been held in indefinite military custody without charge or trial on the US mainland since June 2003 when he was removed from the ordinary criminal justice system and designated by President

Bush as an "enemy combatant". Ali al-Marri is the only person being held within the USA as an "enemy combatant".

President Obama's memorandum notes that Ali al-Marri is not covered by the executive order on Guantánamo, but that it is "equally in the interests of the United States that the executive branch undertake a prompt and thorough review of the factual and legal basis for al-Marri's detention, and identify and thoroughly evaluate alternative dispositions". Amnesty International welcomes the fact that President Obama has signaled a possible end to Ali al-Marri's unlawful treatment.

The memorandum directs the Attorney General to coordinate a review of al-Marri's case, with the cooperation and participation of the Secretary of Defense, the Secretary of State, the Secretary of Homeland Security, the Director of National Intelligence, and the Chairman of the Joint Chiefs of Staff, as well as any other relevant officials. The review is required to "expeditiously" determine what the options are in relation to Ali al-Marri, as in the Guantánamo review, to include release, transfer, trial or another "lawful" outcome.

In 2008 a sharply divided US Court of Appeals for the Fourth Circuit ruled on Ali al-Marri's case.[22] On 15 July 2008, by five votes to four, the court held that "if the Government's allegations about al-Marri are true, Congress has empowered the President to detain him as an enemy combatant". This referred to the Authorization for Use of Military Force (AUMF), a resolution passed by US Congress in the immediate aftermath of the attacks of 11 September 2001 authorizing the President to "use all necessary and appropriate force" against anyone involved in the attacks "in order to prevent any future acts of international terrorism against the United States". Amnesty International considers that the AUMF was hastily passed, is open to dangerously expansive interpretation, and was exploited by the previous administration which did not consider it needed congressional approval for its actions anyway. Since 2006, the organization has been calling for revocation of the AUMF. It urges the new administration to clarify that it will not interpret the AUMF as representing any intent on the part of Congress to authorize violations of international human rights or humanitarian law, to extend permissions for detention under international humanitarian law to individuals to whom they would not otherwise apply, or as otherwise providing authority for such violations.

The US Supreme Court has agreed to hear Ali al-Marri's appeal against the Fourth Circuit's ruling, and on 23 January 2009, it granted the new administration's request to delay filing its brief in the case until 23 March 2009 in order to consider its position. The brief had originally been due on 20 February. Oral arguments will now not be heard until the Supreme Court session that begins on 20 April 2009, that is, unless the new administration takes action on the case that pre-empts that hearing. In the absence of such action, by the time of a Supreme Court ruling on the case, Ali al-Marri would have been in indefinite military custody without charge or trial for some six years.

Amnesty International has campaigned since Ali al-Marri was designated as an "enemy combatant" for him to be immediately released from military custody and either brought promptly to fair trial in an ordinary federal court, or released. It will continue to do so.

[22] See USA: Many words, no justice: Federal court divided on Ali al-Marri, mainland 'enemy combatant', August 2008, http://www.amnesty.org/en/library/info/AMR51/087/2008/en.

3. Towards ending CIA torture and secret detention

- **Executive order, 22 January 2009: *Ensuring lawful interrogations***

Torture and enforced disappearance – crimes under international law – were among the human rights violations committed in the secret detention and interrogation program authorized by the previous administration and operated on foreign soil, largely by the CIA. In another executive order signed by President Obama on 22 January 2009, the first substantial steps were taken to bring an end to this unlawful program and to prohibit the CIA from using its harshest interrogation techniques.

Secret detention

President Obama revoked the executive order signed by President George W. Bush on 20 July 2007 which had authorized the CIA to continue the secret detention program – begun in 2001 or 2002.[23] Any other executive directives, orders and regulations issued between 11 September 2001 and 20 January 2009 which were inconsistent with President Obama's order were also revoked to the extent of their inconsistency with the new order.

The revoked documents presumably include, for example, at least parts of the 12-page memorandum to the CIA Director signed by President Bush on 17 September 2001 that "pertains to the CIA's authorization to set up detention facilities outside the United States", and "contains specific information relating to the intelligence sources and methods by which the CIA was to implement the clandestine intelligence activity".[24] This memorandum remains classified on the asserted grounds that disclosure could result in "extremely grave damage to the national security" and could undermine "the cooperative relationships that the United States has developed with its critical partners in the global war on terrorism".[25]

President Obama's move to revoke provisions of such documents, whether classified or unclassified, is to be applauded. However, Amnesty International stresses that the US government should declassify all government documents providing authorization or legal clearance or discussion of secret detention, rendition, and enhanced interrogation by the CIA or other agencies. This is an important aspect of ensuring accountability.

President Obama ordered the CIA to "close as expeditiously as possible any detention facilities that it currently operates" and prohibited it from operating "any such detention facility in the future". However, whether this order will prevent the CIA from operating secret detentions altogether is unclear, as it does not cover facilities "used only to hold people on a short-term, transitory basis". By its wording, it also does not appear to prevent the CIA from using foreign-controlled secret detention facilities to conduct detentions or interrogations of individuals held there.

[23] USA: Law and executive disorder: President gives green light to secret detention program, AI Index: AMR 51/135/2007, August 2007, http://web.amnesty.org/library/Index/ENGAMR511352007.
[24] *ACLU et al v. Department of Defense et al*. Sixth Declaration of Marilyn A. Dorn, Information Review Officer, Central Intelligence Agency, US District Court, Southern District of New York, 5 January 2007. In US law, the President has the authority to direct the CIA to conduct covert operations.
[25] *Ibid*.

The previous administration had refused the ICRC access to those held in the secret program, as well as denying it access for prolonged periods to certain individuals held at Guantánamo or elsewhere. It is therefore to be welcomed that President Obama's executive order requires all departments and agencies of the US government to notify the ICRC of, and provide "timely" access to, any individual detained in an armed conflict and held in US custody. This is qualified with the phrase "consistent with Department of Defense regulations and policies". Under a Pentagon directive issued in September 2006, the ICRC "shall be allowed to offer its services during an armed conflict, however characterized, to which the United States is a party".[26] Under the provisions of the September 2006 US Army Field Manual, the ICRC is to be allowed access to detainees held by the Department of Defense, including those held in "separation" (see below).

Interrogations

On the question of interrogations, the executive order prohibits the use of any interrogation technique not authorized by and listed in the US Army Field Manual against any individual detained "in any armed conflict" in the custody or effective control of any US government agency. In addition, "from this day forward", no US personnel may rely upon any interpretation of the law governing interrogation issued by the US Department of Justice between 11 September 2001 and 20 January 2009. Again, this effective revocation of any number of documents justifying torture or other cruel, inhuman or degrading treatment is a substantial step forward that should be applauded. Amnesty International is concerned, however, that the reference to "from this day forward" may contribute to protecting from criminal liability or disciplinary sanction individuals who relied upon such advice when carrying out human rights violations, including the international crimes of enforced disappearance and torture for which there can be no justification under any circumstances. However, the possibility that the right to remedy may be preserved is provided by inclusion of the line in the executive order that "nothing in this order shall be construed to diminish any rights that any individual may have under these or other laws and treaties".

As Amnesty International has previously stated, the organization has concerns that some provisions of the Army Field Manual are incompatible with the international prohibition of torture and other ill-treatment. In particular, it is concerned about the Manual's Appendix M, which permits interrogation techniques such as indefinitely prolonged 'separation' (e.g. isolation) and cumulative sleep deprivation of detainees. The manual also permits the exploitation of detainee fears, including instilling fear, under the technique "fear up", which could be used in ways that violate international law.

The executive order, like the other directives issued by President Obama on 22 January 2009, makes no mention of the ICCPR or other human rights standards, except for the UN Convention Against Torture. The latter is a treaty that bridges human rights, international criminal law, and international humanitarian law, and in some respects is less (though in others more) protective than the ICCPR, which the USA has previously erroneously claimed does not apply in situations of armed conflict. Indeed, the executive order would appear only to apply to the treatment and interrogation of individuals detained in armed conflict.

[26] Department of Defense Directive Number 2310.01E, 5 September 2006.

It would therefore seem either that the executive order could be interpreted as applying only to detainees who were captured in the armed conflicts in Afghanistan or Iraq, or that it preserves the broad "armed conflict against al Qaeda" paradigm developed by the previous administration, in which terrorism-suspect detainees designated as "enemy combatants" have been stripped of international human rights ordinarily accorded detainees unconnected to a true 'armed conflict', no matter when, where or how they came into US custody. Amnesty International rejects this misconceived legal theory of the Bush administration, which has resulted in innumerable violations by the USA of its international human rights obligations. It urges the new administration to do likewise, by expressly limiting use of the term 'armed conflict' to make it consistent with international law, and by making clear that it is international human rights law alone, without any operative role for any lower standards or wider grounds for detention obtaining under the laws of armed conflict, that applies to all other detainees.

Review of interrogation and transfer policies

Section 5 of this executive order establishes a Special Interagency Task Force on Interrogation and Transfer Policies. This will be chaired by the Attorney General or his designee, and co-chaired by the Director of National Intelligence and the Secretary of Defense, or their designees. The other members will include the following officials or their designees: the Secretary of State, the Secretary of Homeland Security, the Director of the CIA, and the Chairman of the Joint Chiefs of Staff, as well as other officials as appropriate.

The mandate of this Special Task Force will be to "study and evaluate" whether the interrogation practices and techniques in the Army Field Manual, when employed by government agencies outside the military, "provide an appropriate means of acquiring the intelligence necessary to protect the Nation". If the Task Force deems it necessary, it shall recommend "additional or different guidance" for these other agencies. Amnesty International is concerned to ensure that this will not constitute a loophole for the future use of techniques incompatible with international law.

Secondly, the Special Task Force is required to study and evaluate "the practices of transferring individuals to other nations in order to ensure that such practices comply with the domestic laws, international obligations, and policies of the United States and do not result in the transfer of individuals to other nations to face torture or otherwise for the purpose, or with the effect, of undermining or circumventing the commitments or obligations of the United States to ensure the humane treatment of individuals in its custody or control". The Task Force is to report back to President Obama within 180 days of 22 January 2009, unless the Attorney General determines that an extension is necessary.

Amnesty International welcomes the recognition implicit in the above that the USA has failed to comply with its international obligations in relation to detainee transfers. The practice of "rendition", secret transfers of detainees without independent oversight, and invocation of 'diplomatic assurances' in the face of real risk of human rights violations, have resulted in an unknown number of individuals being transferred to secret US custody at unknown locations or to the custody of other governments where they have faced human rights violations.

Amnesty International recommendations on secret detention

Amnesty International welcomes the executive order on interrogations signed by President Barack Obama on 22 January 2009 which takes substantial steps towards ending the USA's use of secret detention and interrogation techniques which constitute torture. The organization makes the following additional recommendations:

- Expressly reject and prohibit all use of secret detention by any agency of the USA;
- Refrain from putting pressure on other governments to hold detainees in arbitrary detention;
- Ensure that all allegations of enforced disappearance, torture and other ill-treatment carried out in the context of the CIA program are fully and independently investigated, and the findings made public. Anyone responsible for such human rights violations must be brought to justice;
- Make public the precise number of detainees who have been held in secret detention by the USA since 11 September 2001; where and when they were arrested and where and for what period they were held in US custody; the date of their release or transfer out of secret custody if applicable, and provide a full list of the names of all such detainees, at least to the ICRC and to others with a legitimate interest in this information;
- Declassify all government documents providing authorization or legal clearance or discussion of secret detention, rendition, and enhanced interrogation by the CIA or other agencies;
- Ensure that all those who have been subjected to enforced disappearance, secret detention, torture or other cruel, inhuman or degrading treatment are provided access to effective remedy, including compensation;
- Withdraw all requests or demands to foreign governments for the continued detention of persons transferred from US custody, including the CIA program.

4. Looking to the future: Detention policy review

- **Executive order, 22 January 2009: *Review of detention policy options***

In his third executive order signed on 22 January 2009, President Obama ordered the setting up of a Special Interagency Task Force on Detainee Disposition. Its mandate will be to "conduct a comprehensive review of the lawful options available to the Federal Government with respect to the apprehension, detention, trial, transfer, release, or other disposition of individuals captured or apprehended in connection with armed conflicts and counterterrorism operations, and to identify such options as are consistent with the national security and foreign policy interests of the United States and the interests of justice". The Special Task Force will provide a report to President Obama within 180 days of 22 January 2009, with periodic reporting in the meantime, unless an extension is deemed necessary.

The Special Task Force will be co-chaired by the Attorney General and the Secretary of Defense or their designees, and its members will include the following officials or their

designees: the Secretary of State, the Secretary of Homeland Security, the Director of National Intelligence, the Director of the CIA and the Chairman of the Joint Chiefs of Staff.

Amnesty International will look to provide input to the Special Task Force, to the extent that it is open to receiving information from non-governmental organizations and others. In the meantime, the organization makes the following initial observations and recommendations to the Special Task Force and to the US government more generally:

Global war framework

- The theory that the USA is entitled to detain any individual anywhere in the world at anytime, and hold them in detention indefinitely, on the premise that it is involved in an all-pervasive global and perpetual armed conflict against non-state actors, is inconsistent with international law and should be expressly disavowed and rejected by the administration, Congress, and the courts.
- The new administration should clarify that it will not interpret the Authorization for Use of Military Force (AUMF) as representing any intent on the part of Congress to authorize violations of international human rights or humanitarian law, to extend the application of international humanitarian law as a legal basis for detentions outside of situations of international armed conflict, or as otherwise providing authority for such violations.
- In this regard, the new administration should adopt a different approach in the habeas corpus proceedings currently underway in the US District Courts, to make it clear that it will rely on ordinary criminal offences and procedures alone to justify detention of individuals who are unconnected to any ongoing international armed conflict and are accused of essentially criminal conduct. The concept of "enemy combatant" as grounds for detention must be reserved in its application to situations recognized by international humanitarian law as constituting international armed conflicts. In respect of non-international armed conflicts, legal grounds for detaining individuals must be clearly set out in national laws of the territory in question, laws that themselves comply with the state's international human rights obligations, and those laws must be the basis for review of the lawfulness of such detentions. Amnesty International notes that, in an order issued on 22 January 2009, District Court Judge John Bates recognized that the new administration "may wish to review the Government's position regarding the appropriate definition of 'enemy combatant' to be used in these and other habeas cases involving Guantánamo Bay detainees", and has invited the administration to inform the Court by 9 February 2009 of any such change to the definition proposed by the previous administration.

International human rights law

- The USA must recognize the extraterritorial application of international human rights law to actions by US personnel vis-à-vis those territories and individuals over which they exercise effective control, and the application of this body of law at all times, including during armed conflict. It must ensure that the treatment of detainees and disposition of their cases is fully consistent with the USA's international obligations in this regard.

- The USA must renew its relationship with international law and standards. The new administration and Congress should embark upon a program of ratification, to include the Optional Protocols to the Convention Against Torture and the International Covenant on Civil and Political Rights; the International Convention for the Protection of All Persons from Enforced Disappearances; the American Convention on Human Rights; the Rome Statute of the International Criminal Court; and the 1977 Additional Protocols to the Geneva Conventions. It should withdraw all limiting conditions, declarations, and reservations attached to its existing ratifications of human rights treaties, including the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the International Covenant on Civil and Political Rights. It should comply with recommendations of international treaty monitoring bodies. Finally, it should ensure that all its laws, policies and practices conform to these international instruments and are enforceable in the courts.

Information obtained under torture or other ill-treatment

- The previous administration, since late 2005 with the endorsement of Congress in the Detainee Treatment Act and the Military Commissions Act, set up administrative review schemes and military commission procedures which could rely on information obtained under coercive methods prohibited by international law. The new administration and Congress, and the courts, must ensure a full rejection of this approach. Under no circumstances should information obtained through the use of torture or other cruel, inhuman or degrading treatment, enforced disappearance, or other forms of coercion, be used in any proceedings except against those alleged responsible for the unlawful conduct as evidence that the conduct occurred.

Classified information

- Amend Executive Order 13292 on Classified National Security Information, itself an amendment to Executive Order 12958, to make it clear that information cannot be classified or remain classified if, by design or effect, to do so would conceal past, current, or prospective violations of international human rights or humanitarian law, such as the prohibition of torture and other ill-treatment, secret detention and enforced disappearance.
- All statements made by detainees alleging or describing treatment that violates international law, including the use of enforced disappearance, secret detention, secret transfers, and torture or cruel, inhuman or degrading treatment, should be declassified;

Death penalty

- By the time it left office, the previous administration was seeking the death penalty against six Guantánamo detainees it had charged for trial by military commission.[27] The executive order on Guantánamo was silent on the question of the death penalty. Amnesty International opposes this punishment unconditionally and in all cases and will continue to oppose any resort to it, whether in the context of armed conflict,

[27] Khalid Sheikh Mohammed, Walid bin Attash, Ramzi bin al-Shibh, 'Ali 'Abd al-'Aziz 'Ali ('Ammar al Baluchi), Mustafa al Hawsawi, and Abd al-Rahim al-Nashiri.

counter-terrorism, or the domestic criminal justice system more generally. It urges the new administration and Congress to do the same.

Children in custody

- The USA must ensure that all children taken into custody in the context of armed conflict or counter-terrorism operations are treated in full accordance with international law and standards, and that the best interests of the child is the primary focus of government actions in all such cases.

Accountability and remedy

- The new administration and Congress should take the necessary measures to ensure accountability and remedy for human rights violations committed by or at the instigation of the USA, including by, among other things:
  - Setting up an independent commission of inquiry into all aspects of the USA's detention and interrogation policies and practices since 11 September 2001.
  - Ensuring that all allegations of particular violations of individuals' rights under international human rights or humanitarian law are thoroughly and effectively investigated.
  - Ensuring 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.
- Amnesty International's recommendations in this regard are set out in *USA: Investigation, prosecution, remedy: Accountability for human rights violations in the 'war on terror'*, AI Index: AMR 51/151/2008, issued in December 2008, and available at http://www.amnesty.org/en/library/info/AMR51/151/2008/en.

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