
amnesty international

USA: Obama administration must take new approach on Bagram detentions

19 February 2009

AI Index: AMR 51/024/2009

Amnesty International is urging President Barack Obama and his administration to continue its break from the USA's unlawful detention policies of recent years by ensuring that detainees held in the US airbase in Bagram in Afghanistan have access to the US courts to challenge their detentions.

The call comes in an Amnesty International briefing paper – “*USA: Out of sight, out of mind, out of court? The right of Bagram detainees to judicial review*” – which the organization has sent to the US administration. The Justice Department is due to respond by 20 February to a federal judge in litigation concerning the Bagram detentions. The judge has invited the new administration to tell him whether it will be taking “a different approach” than its predecessor on the question of whether the Bagram detainees have the right to challenge their detention in the US courts.

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. Before leaving office, the Bush administration had argued that the detainees could not challenge the lawfulness or conditions of their detention.

The previous administration argued that Bagram detainees have no right to challenge the lawfulness of their detention in US courts, unlike detainees at Guantánamo Bay, whose right to do so the US Supreme Court recognised as constitutionally protected in its June 2008 ruling in *Boumediene v. Bush*.

In the *Boumediene* ruling, the Supreme Court rejected the Bush administration's arguments that the detainees held at Guantánamo, as non-US nationals captured and held outside the sovereign territory of the USA, were beyond the reach of this fundamental legal protection.

The Guantánamo detainees were in a legal black hole until the US Supreme Court intervened. It is long overdue for light to be shone on the Bagram detentions, including via effective judicial oversight and meaningful access to legal counsel for the detainees.

Judicial review is a basic safeguard against executive abuse and a protection 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.

While the new US administration has committed itself to resolving within a year the cases of the approximately 240 detainees still held in Guantánamo, it has not yet said what its intentions are for US detentions in Afghanistan. Some 600 detainees – the majority of them Afghan nationals, but also individuals of other nationalities – are being held in US custody in the Bagram detention facility without access to the courts or legal counsel. Some have been held for years. The US authorities must now ensure that all US detentions in Afghanistan comply with international law.

The four habeas corpus petitions currently pending in US District Court involve nationals of Yemen, Tunisia, and Afghanistan reportedly taken into custody in Pakistan, Thailand, United Arab Emirates and Afghanistan. The USA may have subjected at least two of them to enforced disappearance – a crime under international law – before transferring them to Bagram.

It took more than six years for the detainees held at Guantánamo to be recognized as having the right to challenge the lawfulness of their detentions. It is past time for the detainees in Bagram to have the basic protection provided by independent judicial review.

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”. Amnesty International is presuming that the Bagram detentions will fall under this review. The organization is calling on the new administration to ensure that the USA adopts laws and policies on detentions fully consistent with its international obligations. It has made a number of recommendations to this end, which it has sent to the new administration.¹

Amnesty International’s briefing has been sent to officials in the US administration responsible for this interagency review. 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>

INTERNATIONAL SECRETARIAT, 1 EASTON STREET, LONDON WC1X 0DW, UNITED KINGDOM

¹ 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>.