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Amnesty International calls for transparency on Bagram detentions

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A US federal judge considering whether detainees held by the USA in Bagram airbase in Afghanistan may challenge their detention before courts in the USA has ordered the administration of President Barack Obama to provide him with updated information on the Bagram detainees, by 11 March.

Amnesty International has written to the US administration urging it to inject some much needed transparency into the Bagram detention regime, including by making fully available to the public the information requested by District Court Judge John Bates.

When the Bush administration was asked by Judge Bates in January 2009 to disclose the number of people being held in Bagram, how many of them were taken into custody outside of Afghanistan, and how many of them were Afghan nationals, it responded by classifying as secret the key details and redacted them from the unclassified version of the filing.

Judge Bates has now asked the Obama administration the same questions, noting that the details supplied to him by the government in January may be out of date. Amnesty International has urged the new administration not to repeat its predecessor's use of secrecy to conceal from the public its response to the judge. Transparency, essential to accountability and detainee protection, must be central to US detention policy. As President Obama has himself instructed his administration, "transparency promotes accountability".

Figures released in late February by the International Committee of the Red Cross, the only organization with access to Bagram detainees, indicate that there were then about 550 detainees in the airbase. This was down from the figure of "about 615" provided by US Secretary of Defense Robert Gates to the Senate Armed Services Committee a month earlier.

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 during January and February 2009. It is not known how many, if any, have been or will be transferred to Bagram. The US authorities should provide regular public information on the numbers and nationalities of those held in US custody in Bagram and elsewhere in Afghanistan, and where, when, and in what circumstances they were taken into detention.

The need for transparency was illustrated late last month when the UK government revealed that two individuals it handed over to the USA in Iraq in 2004 had subsequently been transferred to US custody in Afghanistan, where they remain five years later. Amnesty International has asked the US government to confirm whether the two are held in Bagram and to provide further information on their cases. The organization has raised the possibility that the USA's transfer of these individuals to Afghanistan constituted a war crime.

Amnesty International 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. At present, the detainees have no access to lawyers or courts.

On 7 March, President Obama said in an interview with the New York Times that “we ultimately provide anybody that we’re detaining an opportunity through habeas corpus to answer to charges”. However, presidential aides later said that he had not meant to suggest that everybody held in US custody would be able to challenge their detention in court.¹

Two weeks earlier, on 20 February, responding to an invitation from Judge Bates 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. The latter 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. Amnesty International regrets the new administration’s response to Judge Bates and hopes that it represents a very temporary stance taken as the government tackles the detention legacy it has inherited. The USA must swiftly bring all US detentions anywhere into compliance with international law.

The right to challenge the lawfulness of detention before a court is 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 is calling on 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.

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”. In February, Amnesty International sent a briefing on the Bagram detentions to officials overseeing this review.² Last week it sent them an update to this report.³

¹ Obama ponders outreach to elements of the Taliban, The New York Times, 8 March 2009.

² 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>.

³ See USA: Urgent need for transparency on Bagram detentions, 6 March 2009, at <http://www.amnesty.org/en/library/info/AMR51/031/2009/en>.