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# amnesty international

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## UNITED STATES OF AMERICA

### Memorandum to the US Government on the report of the UN Committee Against Torture and the question of closing Guantánamo

*The United States must defend liberty and justice because these principles are right and true for all people everywhere. These nonnegotiable demands of human dignity are protected most securely in democracies. The United States Government will work to advance human dignity in word and deed, speaking out for freedom and against violations of human rights and allocating appropriate resources to advance these ideals.*

The National Security Strategy of the USA, March 2006

#### Summary

In recent weeks, members of the United States government have made a number of public comments in relation to various human rights matters, including the conclusions and recommendations of the United Nations Committee against Torture on the USA's compliance with its obligations under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture), and the future of the Guantánamo detention camp.

Some of these remarks have held out the prospect of positive change. Others have suggested continued resistance to such change. In this memorandum, Amnesty International urges the US authorities to overcome any such reluctance and to ensure that the USA's policies and practices fully comply with international human rights and humanitarian law and standards.

The Committee Against Torture commended the USA for its responses in writing and orally to the Committee's questions, and thanked the USA for sending a large and high-level delegation to the hearing in Geneva in early May 2006. The Committee also reiterated its condemnation of the attacks of 11 September 2001 in the USA, and acknowledged that the US government "is engaged in protecting its security and the security and freedom of its citizens in a complex legal and political context". Nevertheless, the Committee was highly critical of the USA's record on torture and ill-treatment, both at home and abroad. In the context of the "war on terror" detentions carried out by the USA, the Committee reminded the

US government that “disappearances”, secret detentions and indefinite detention without charge violate, *per se*, the Convention against Torture. It called for full registration of all detainees in US custody – wherever they are held – and for the detention camp at Guantánamo to be closed. The recent deaths of three detainees in the camp, apparently as a result of suicide, have served to highlight the urgency for this detention facility to be permanently shut down and the detainees brought to fair trial or released with full protections.

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

Amnesty International continues to call for a full independent commission of inquiry into all aspects of the USA’s “war on terror” detention and interrogation policies and practices, including renditions. In this memorandum, the organization draws particular attention to the question of CIA activities in the “war on terror” which remain shrouded in secrecy, secrecy which concerned the Committee Against Torture. In this regard the Committee called on the USA to “investigate and disclose the existence of any [secret detention] facilities and the authority under which they have been established and the manner in which detainees are treated. The [USA] should publicly condemn any policy of secret detention.”

Amnesty International also details the case of Mohamed al-Qahtani, a detainee who remains in Guantánamo after more than four years there. Mohamed al-Qahtani’s case illustrates the lack of accountability for human rights violations committed by the USA in the “war on terror”, the refusal of the USA to apply international legal standards in its treatment of detainees, and the way in which medical personnel have been involved in torture and ill-treatment. Mohamed al-Qahtani was subjected to torture and other cruel, inhuman or degrading treatment or punishment, including under interrogation techniques authorized by Secretary of Defense Donald Rumsfeld. Amnesty International believes that Secretary Rumsfeld has a case to answer, but no investigation has had the independence or scope to reach to his level of office. In this memorandum, Amnesty International also draws attention to the case of a second “high-value” detainee allegedly subjected to torture or other cruel, inhuman or degrading treatment in Guantánamo. Recently released documents suggest that this detainee may be Mohamedou Ould Slahi – subjected to rendition from Mauritania to Guantánamo via Jordan and Afghanistan – whose alleged torture and ill-treatment in Guantánamo occurred during the period (more than a year) that the International Committee of the Red Cross was denied access to him by the USA on the grounds of “military necessity”.

By calling for closure of Guantánamo, the Committee Against Torture joins numerous other international human rights experts and institutions, as well as governments, which have made the same call. President George W. Bush has responded to this mounting international pressure by signalling that he favours the closure of the camp, but has not yet indicated when this will occur. Other officials have also indicated that closure of the detention

facility is a possibility, but have raised questions about how this can be brought about. Amnesty International therefore includes in this memorandum “*A Framework for Closing Guantánamo*”, which details how the USA should take forward this task while complying with international law and standards and not transferring the lawlessness elsewhere.

The initial response of the US administration to the Committee Against Torture’s report was negative, echoing its rejection of a recent report on “renditions” by a committee of the Council of Europe’s Parliamentary Assembly. This is similar to earlier US dismissals of criticisms from international human rights experts. Yet a central goal of US foreign policy, according to the State Department, is the promotion of human rights. It understands, it says, that respect for human rights “helps secure the peace, deter aggression, promote the rule of law, combat crime and corruption, strengthen democracies, and prevent humanitarian crises”. The administration promised to place the “non-negotiable demands of human dignity” at the centre of its “war on terror”. It has failed to live up to its word.

Among the recommendations of the National Commission on Terrorist Attacks Upon the United States (the 9-11 Commission Report) were that the USA must in future “offer an example of moral leadership in the world”, be “committed to treat people humanely”, and “abide by the rule of law”. Amnesty International also recalls President George W. Bush’s statement of 26 June 2005 on the occasion of the UN International Day in Support of Victims of Torture in which he stated that the USA is “committed to building a world where human rights are respected and protected by the rule of law”. Amnesty International further notes the conclusion of the USA’s National Strategy for Combating Terrorism (February 2003) – specifically that a world where such human rights values “are embraced as standards, not exceptions, will be the best antidote to the spread of terrorism.”

Amnesty International submits that closure of Guantánamo, full disclosure and international law compliance in relation to all other detentions, and full implementation of the Committee Against Torture’s recommendations, can only contribute toward this goal.

## **Implementing the Committee Against Torture’s recommendations**

*The United States remains committed to supporting the United Nations’ historic mission to promote and protect the human rights of all the world’s citizens.*

US Secretary of State Condoleezza Rice, 14 April 2006<sup>1</sup>

In early May 2006, the Committee Against Torture considered the second periodic report of the USA. Amnesty International was among the non-governmental organizations which attended the session and provided information to the Committee.<sup>2</sup> The Committee issued its findings and recommendations on the USA on 19 May.<sup>3</sup>

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<sup>1</sup> Letter to the Foreign Ministers of other UN member states. <http://www.state.gov/g/drl/rls/64561.htm>.

<sup>2</sup> See *Amnesty International’s Supplementary Briefing to the UN Committee Against Torture*, AI Index: AMR 51/061/2006, <http://web.amnesty.org/library/index/engamr510612006>.

<sup>3</sup> Available at <http://www.ohchr.org/english/bodies/cat/docs/AdvanceVersions/CAT.C.USA.CO.2.pdf>.

In his opening statement for the US delegation to the Committee in Geneva on 5 May, Assistant Secretary for Democracy, Human Rights and Labor, Barry F. Lowenkron, made some welcome remarks. He stated that the USA is committed to upholding its national and international obligations to eradicate torture and to prevent cruel, inhuman or degrading treatment or punishment. He asserted that the obligation was both legal and moral. He welcomed the input of, among others, non-governmental organizations, and gave assurances that “even when their criticisms are directed against our government, we understand and appreciate that they do so on behalf of an objective which we all share: ending torture forever”. Amnesty International hopes that this memorandum will be received in that spirit. The organization does not criticize for criticism’s sake; its aim is to contribute to positive change in the USA’s approach to detainees and prisoners in its custody. Amnesty International has no doubt that this is the Committee’s aim too.

The Committee’s findings on the USA include issues of a systemic nature in relation to the country’s “war on terror” detention policies and practices. Given this, Amnesty International urges the US administration to reframe its response to the evidence of torture and ill-treatment by US personnel in the “war on terror”. Since the photographic evidence emerged from Abu Ghraib, this issue has consistently been characterized by the administration as a problem involving a few aberrant soldiers rather than anything more widely or deeply rooted. In this vein, John Bellinger, the Department of State Legal Adviser who led the US delegation to the Committee Against Torture, urged the Committee to view the problem as one concerning “relatively few actual cases of abuse and wrongdoing” rather than one that was “systemic”. The Committee was clearly not persuaded by this appeal in the face of the evidence to the contrary.

Notwithstanding the investigative and preventive measures that the US has taken in the wake of the Abu Ghraib revelations in 2004, Amnesty International takes the view that they are inadequate to ensure protection for detainees, transparency of policies and practices, accountability for past abuses, and full adherence to international law and standards. To this end, the organization urges the administration to give serious consideration to the Committee Against Torture’s report with a view to full implementation of its recommendations, on domestic issues as well as the range of concerns over US conduct in the “war on terror”. On domestic issues, Amnesty International regrets that the Committee had to reiterate a number of concerns and recommendations that it expressed after considering the USA’s Initial Report in May 2000. The use of electro-shock weapons, the conditions facing prisoners in super-maximum security prisons, the issue of children held with adults in prisons, the treatment of women in detention, and the failure of the USA to enact a federal crime of torture are among such issues. Amnesty International urges the US administration to do all in its power and influence to bring about substantive change on these issues, whether at federal or state level. While the organization welcomes John Bellinger’s indication that the USA will report back to the Committee Against Torture within one year on certain specific issues as the Committee

has requested, it notes his comment that the USA considers itself already in compliance with its obligations despite the Committee's findings.<sup>4</sup>

At a press conference on 19 May following the release of the Committee's conclusions, John Bellinger said that "the aftermath of Abu Ghraib" had not been "a particularly auspicious time" for the United States to be reporting to the Committee Against Torture.<sup>5</sup> Then, on 25 May President George W. Bush suggested that the USA has for a long time been paying for the "mistake" of abuses by US personnel at Abu Ghraib. While it is true that the torture and other cruel, inhuman or degrading treatment of detainees in Abu Ghraib has caused serious damage to the image and credibility of the United States, the organization would urge the President and members of his administration to consider the bigger picture. For, as the Committee Against Torture's conclusions make clear, abuses are continuing as a matter of policy. Secret detentions in undisclosed locations and indefinite detentions in Guantánamo, Afghanistan and Iraq are in and of themselves human rights violations – these policies continue to cause distress in detainees, their relatives and their communities; they continue to violate international law; and they continue to erode still further the USA's reputation and credibility in relation to human rights.

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

On the question of "disappearances", Amnesty International calls for full disclosure relating to this practice, including Secretary Rumsfeld's authorization of the holding of a so-called "ghost detainee" (detainee "triple-X") in Iraq in 2003. Amnesty International regrets that in September 2005, a federal judge accepted the CIA's refusal to release documents relating to Secretary Rumsfeld's order implementing the CIA's request for authority to keep

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<sup>4</sup> "They've asked us to get back in a year to them with answers on some questions and I'm sure that we will be getting back to them in a year. We do take our obligations seriously under the Convention Against Torture. We think that we are in compliance with our obligations." John Bellinger, Legal Advisor: *On-The-Record Briefing on the Committee Against Torture Report*, 19 May 2006, <http://www.state.gov/s/rls/66519.htm>.

<sup>5</sup> *On-The-Record Briefing*, *op. cit.* In the context of the rest of John Bellinger's remarks at the press conference, which were critical of the Committee's report, this particular comment could be interpreted as suggesting to the assembled media that the USA was being tarred with the Abu Ghraib brush. Mr Bellinger suggested that the Committee had "ignored a good deal of the information" which the USA had provided to it. He went on to say that the Committee's report was "skewed and reaches well beyond the scope and mandate of the Committee". He even suggested that the production of the report "may well involve individuals who have got particular concerns that they want to push", and that they had "clearly gone and picked a number of issues that... are in the headlines and have tried to address them in this report". Amnesty International suggests that John Bellinger's comments amounted to something of a slur upon the Committee, and trusts that the USA's enduring response to the Committee's findings and recommendations will be more constructive.

the detainee off any register.<sup>6</sup> Meanwhile the further investigations into the question of “ghost detainees” that General Paul Kern, who oversaw the Fay inquiry, acknowledged were necessary, have not been forthcoming.<sup>7</sup> Amnesty International reminds the USA that “disappearances” are a crime under international law, and repeats the Committee’s call on the USA to adopt “all necessary measures to prohibit and prevent enforced disappearance in any territory under its jurisdiction, and prosecute and punish perpetrators”.

The Committee Against Torture emphasised that the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment applies at all times, whether in peace, war or armed conflict, and that its provisions apply to, and must fully protect, all those people under the effective control of US authorities, regardless of the agency or department involved or where in the world they are located. It rejected the USA’s assertion that the protections of the Convention, including the *non-refoulement* protections, do not extend to someone detained by the USA outside US territory. The Committee stated that the USA should “apply the *non-refoulement* guarantee to all detainees in its custody” in order to comply with its obligations under the Convention, and added that the USA should “always ensure that suspects have the possibility to challenge decisions of *refoulement*”. The Committee was concerned by the USA’s “rendition of suspects, without any judicial procedure, to States where they face a real risk of torture”. This practice, the Committee stated, should stop.

In a draft report released on 7 June, the Parliamentary Assembly of the Council of Europe’s Committee on Legal Affairs and Human Rights added its voice, concluding that the USA – an observer state of the Council of Europe – has been the “chief architect” of a “reprehensible” system of secret renditions and detentions.<sup>8</sup> Amnesty International regrets the initial reaction of the US administration to the report – for example, the White House spokesman responded that rendition is “certainly going to be practiced, I’m sure, in the future”.<sup>9</sup> This response echoes the USA’s negative reaction to the Committee Against Torture’s conclusions of 19 May in which the administration asserted that the Committee had gone beyond its mandate in the criticisms it made of the USA. Such responses – which follow the administration’s similar rejection of the concerns and recommendations of other

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<sup>6</sup> *ACLU et al., v Department of Defense et al.* Opinion and order granting in part and denying in part motions for partial summary judgment. United States District Court, Southern District of New York, 29 September 2005.

<sup>7</sup> See page 104, *USA: Human dignity denied: Torture and accountability in the ‘war on terror’*, AMR 51/145/2004, October 2004, [http://web.amnesty.org/library/pdf/AMR511452004ENGLISH/\\$File/AMR5114504.pdf](http://web.amnesty.org/library/pdf/AMR511452004ENGLISH/$File/AMR5114504.pdf).

<sup>8</sup> *Alleged secret detentions and unlawful inter-state transfers involving Council of Europe member states*, draft report – Part II (explanatory memorandum). Council of Europe Parliamentary Assembly Committee on Legal Affairs and Human Rights. Rapporteur: Mr Dick Marty. [http://assembly.coe.int/CommitteeDocs/2006/20060606\\_Ejdoc162006PartII-FINAL.pdf](http://assembly.coe.int/CommitteeDocs/2006/20060606_Ejdoc162006PartII-FINAL.pdf).

<sup>9</sup> Press gaggle by Tony Snow aboard Air Force One, 7 June 2006, <http://www.whitehouse.gov/news/releases/2006/06/20060607-2.html>.

international bodies and experts including various UN Special Rapporteurs<sup>10</sup> and the Inter-American Commission on Human Rights – point to an administration which “does not see itself bound to satisfy anyone’s interpretation of international law but its own”.<sup>11</sup> Amnesty International urges a change of approach. It emphasises that there is a human toll to such unilateral interpretations, as well as a threat to the framework of international human rights and humanitarian law built up over many decades.

State Department spokesman Sean McCormack said that the administration is “certainly disappointed in the tone and the content” of the Council of Europe report, although he acknowledged that officials had not yet “had a chance to thoroughly read through it”.<sup>12</sup> Amnesty International urges that once the administration has read the report, that it give serious consideration to the fundamental human rights concerns that it raises.

Sean McCormack suggested of the report that “there seems to be a lot of allegations, but no real facts behind it”. Yet elsewhere the State Department is prepared to give credence to allegations of rendition violations by referring to such cases in its annual human rights reports on other countries, albeit while not naming the USA as the principal actor in the abuses that have occurred. In its most recent human rights report, for example, the USA notes that the Committee Against Torture had found that Sweden had violated the Convention against Torture in relation to the case of two Egyptians who were handed over to US agents who flew them to Egypt where they were allegedly subjected to torture. The State Department noted that a parliamentary ombudsman investigation in Sweden found that the police had “acted improperly by allowing authorities of another country to take charge of the Egyptian nationals while they were still in the country”. The State Department failed to specify that the USA was this other country.<sup>13</sup> This is not the first time the Department has

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<sup>10</sup> In his initial rejection of the Committee Against Torture’s findings, John Bellinger complained that “they don’t seem to have relied on the information that we gave to them in preparing their report” (press conference, 19 May 2006, op.cit). This line echoed the administration’s response to the report of five UN experts in 2006 on the situation of the Guantánamo detainees. The USA responded to the report by saying that “there is little evidence... that the Special Rapporteurs have considered the information provided by the United States... As a result, we categorically object to most of the Unedited Report’s content and conclusions as largely without merit and not based clearly on the facts”. Letter dated 31 January 2006, addressed to the United Nations High Commissioner for Human Rights, by the Permanent Representative of the United States of America to the United Nations and Other International Organizations in Geneva. (Annex II of the experts’ report, available at <http://daccessdds.un.org/doc/UNDOC/GEN/G06/112/76/PDF/G0611276.pdf?OpenElement>).

<sup>11</sup> *Alleged secret detentions and unlawful inter-state transfers involving Council of Europe member states*. Op. cit., Para. 271.

<sup>12</sup> Daily Press Briefing, 7 June 2006, <http://www.state.gov/r/pa/prs/dpb/2006/67690.htm>.

<sup>13</sup> Entry on Sweden. State Department Country Reports on Human Rights Practices - 2005. Released by the Bureau of Democracy, Human Rights, and Labor, 8 March 2006, <http://www.state.gov/g/drl/rls/hrrpt/2005/61677.htm>.

failed to name the USA as participant in rendition cases that it has cited in its human rights reports.<sup>14</sup>

In any event, there is compelling evidence of internationally unlawful activities in relation to the practice of rendition, despite the US administration's attempts to keep the practice shrouded in secrecy. For example, it is nearly two years since Amnesty International wrote to the CIA and the US administration concerning detailed allegations that Khaled El-Masri had been subjected to CIA rendition from Macedonia to secret detention and ill-treatment in Afghanistan.<sup>15</sup> The organization never received a response. In May 2004, Khaled el-Masri had been freed without ever having been charged with a crime or brought before a court. His release was reported to have been personally ordered by US Secretary of State Condoleezza Rice, allegedly after she learned that he had been mistakenly identified as someone suspected of terrorism.<sup>16</sup> Two years later the US administration is asserting "state secrets privilege" in an attempt to prevent any judicial light from being shone on Khaled El-Masri's case. Even though the administration has so far been successful in this pursuit of unfettered executive power on this issue, it is worth recalling what a US District Judge concluded in the case in May 2006:

"Putting aside all the legal issues, if El-Masri's allegations are true or essentially true, then all fair-minded people, including those who believe that state secrets must be protected, that this lawsuit cannot proceed, and that renditions are a necessary step to take in this war, must also agree that El-Masri has suffered injuries as a result of our country's mistake and deserves a remedy. Yet it is also clear from the result reached here that the only sources of that remedy must be the Executive Branch or the Legislative Branch, not the Judicial Branch".<sup>17</sup>

Amnesty International repeats Assistant Secretary Lowenkron's assertion to the Committee Against Torture on 5 May that the US views its international obligations to eradicate torture and other cruel, inhuman or degrading treatment as both a legal and a moral matter. Its refusal to provide information or remedies in cases such as that of Khaled El-Masri contradicts such assertions.

***Hiding violations behind a policy of "no comment"***

*The [USA] should investigate and disclose the existence of any [secret detention] facilities and the authority under which they have been established and the manner in which detainees are treated. The [USA] should publicly condemn any policy of secret detention.*

Committee Against Torture, 19 May 2006

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<sup>14</sup> See pages 14-27 of *USA: Guantánamo and beyond: the continuing pursuit of unchecked executive power*, May 2005,

[http://web.amnesty.org/library/pdf/AMR510632005ENGLISH/\\$File/AMR5106305.pdf](http://web.amnesty.org/library/pdf/AMR510632005ENGLISH/$File/AMR5106305.pdf).

<sup>15</sup> Letter to John McLaughlin, CIA Acting Director, from Irene Khan, Amnesty International Secretary General, 20 August 2004. Copies sent to President Bush, Secretary Rumsfeld and Secretary Powell.

<sup>16</sup> *Rice ordered release of German sent to Afghan prison in error*, The New York Times, 23 April 2005.

<sup>17</sup> *El-Masri v. Tenet et al.* Order. In the United States District Court for the Eastern District of Virginia, Case no. 1:05cv1417, 12 May 2006.



The Committee Against Torture noted that: “intelligence activities, notwithstanding their author, nature or location, are acts of the State party, fully engaging its international responsibility.” Amnesty International is concerned that the CIA’s past and present activities in the “war on terror” remain largely secret. As the organization has pointed out, documents that have come into the public domain or been referred to in media reports point to a possible attempt within the executive to immunize the CIA from prosecution for torture and war crimes, an alleged conspiracy that may lead up to the office of the President.<sup>18</sup> Litigation in federal court under the Freedom of Information Act (FOIA) has so far failed to shed any further light on this, with the CIA, for example, currently arguing that it must not be compelled either to confirm or deny the existence of two documents that have been reported, namely an “alleged presidential directive authorizing the CIA to establish detention facilities outside the United States and outlining interrogation methods that may be used against detainees”, and a “purported memorandum from the Department of Justice to the CIA specifying interrogation methods that the CIA may use against top al-Qaeda members”.<sup>19</sup> To acknowledge the existence or non-existence of these documents, the CIA argues, would reveal whether the CIA has the authority to maintain detention facilities outside the USA or to conduct interrogations “independently”, or has an interest in such authority. Such a revelation, the agency submits, would be likely to cause serious damage to the national security of the USA.

There is, of course, much information already in the public realm alleging that in the “war on terror” people have been held in CIA custody, interrogated in CIA custody, “disappeared” in CIA custody, secretly transferred between countries in CIA custody, tortured or ill-treated in CIA custody, and even to have died in CIA custody (as well as the apparent extrajudicial execution of individuals by CIA remote-controlled Predator aircraft).<sup>20</sup> Except for a CIA contractor charged in 2004 with assaulting an Afghan detainee who died in a US base in Afghanistan in June 2003, to Amnesty International’s knowledge no other agent working for the CIA has been charged with any crime involving torture or other cruel, inhuman or degrading treatment, secret detention, unlawful transfer or “disappearance”.<sup>21</sup>

In its arguments for secrecy, the CIA has stated that it “has acknowledged that it has the ability to assist other agencies in their capture, detention and interrogation of terrorists. But the CIA has never confirmed or denied whether it has been granted the additional authority to do so independently.” However, other officials have acknowledged that the CIA has operated independently, which suggests that it has been authorized to do so.

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<sup>18</sup> For examples, see pages 128-129 of *USA: Guantánamo and beyond*, *op.cit.*

<sup>19</sup> *ACLU et al. v. CIA et al.*, Brief for Defendant-Appellee: Central Intelligence Agency, Docket No. 06-0205-cv, United States Court of Appeals for the Second Circuit, 1 May 2006.

<sup>20</sup> See, for example, pages 100-116 of *USA: Human Dignity Denied*, *op. cit.*; pages 116-130 of *USA: Guantánamo and beyond*, *op. cit.*, and *USA/Yemen: Secret detention in CIA ‘black sites’*, November 2005, [http://web.amnesty.org/library/pdf/AMR511772005ENGLISH/\\$File/AMR5117705.pdf](http://web.amnesty.org/library/pdf/AMR511772005ENGLISH/$File/AMR5117705.pdf).

<sup>21</sup> David Passaro is the CIA contractor charged in June 2004 with assault of Abdul Wali in a US base near Asadabad in Afghanistan in 2003 (see pages 159-160 of *USA: Human Dignity Denied*, *op. cit.*). As of mid-June 2006, no date had been set for his trial in the US District Court for the Eastern District of North Carolina.

For example, in August 2004, the Schlesinger review into Pentagon detention policies found that: “CIA personnel conducted interrogations in [Department of Defense] detention facilities. In some facilities these interrogations were conducted in conjunction with military personnel, but at Abu Ghraib the CIA was allowed to conduct its interrogations separately.”<sup>22</sup> The Schlesinger Panel revealed that it had not had “full access to information involving the role of the Central Intelligence Agency in detention operations; this is an area the Panel believes needs further investigation and review.” The Panel’s chairman, John Schlesinger, acknowledged at the press conference to release the report on 24 August 2004 that his investigators had only “had partial access to the CIA... We did not have a sharing”.

The following day, the Fay report into Abu Ghraib was released. It reserved particular criticism for the CIA, noting that the agency’s “detention and interrogation practices led to a loss of accountability, abuse, reduced interagency cooperation, and an unhealthy mystique that further poisoned the atmosphere at Abu Ghraib”.<sup>23</sup> It found that the CIA had held a number of “ghost detainees”. At least one of them – Manadel al-Jamadi – had died in custody. It found that CIA personnel had used aliases, and detained people under false names. It found that the CIA officers had generally operated outside the military’s rules and procedures. General Fay told the Senate Armed Services Committee that the CIA had refused to provide the information he requested for his investigation.<sup>24</sup>

A confidential report obtained by the Washington Post revealed that US Army generals in Iraq had been warned a month before the photographs of Abu Ghraib were turned into the authorities that CIA agents working with Special Forces units (combined as Task Force 121) were abusing detainees throughout Iraq. The report stated that “it seems clear that TF 121 needs to be reined in with respect to its treatment of detainees”. The investigation by Colonel Stuart A. Herrington also reported that CIA agents regularly held “ghost detainees”.<sup>25</sup> The Herrington report has still not been made public.

In a leaked interview from 2005, Lieutenant General Randall Schmidt noted that “the CIA also had unfettered access to [Guantánamo detainees] that they wanted to have and they had their own area. They didn’t use our interrogation facilities because they had their own trailer operation”.<sup>26</sup>

Amnesty International regrets that so far the CIA has been successful in persuading the courts not to force it even to reveal the existence or non-existence of the documents in

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<sup>22</sup> Final Report of the Independent Panel to Review DoD Detention Operations. August 2004.

<http://www.defenselink.mil/news/Aug2004/d20040824finalreport.pdf>.

<sup>23</sup> AR 15-6 Investigation of Intelligence Activities at Abu Ghraib (Fay report).

<http://www.defenselink.mil/news/Aug2004/d20040825fay.pdf>.

<sup>24</sup> “I was informed that CIA was doing its own investigation and that... they would not provide me with the information that I requested.” Major General Fay, oral testimony to the Senate Armed Services Committee, 9 September 2004.

<sup>25</sup> US Generals in Iraq were told of abuse early, inquiry finds. Washington Post, 1 December 2004.

<sup>26</sup> Testimony of Lieutenant General Randall M. Schmidt, Taken 24 August 2005 at Davis Mountain Air Force Base, Arizona; between the hours of 0910 and 1055 by [redacted] and [redacted], Department of the Army Inspector General, Investigations Division, Presidential Towers, Crystal City, Virginia.

question. In September 2005, a US District Court noted the danger of such secrecy, namely that it encourages “an unfortunate tendency of government officials to over-classify information, frequently keeping secret that which the public already know, or that which is more embarrassing than revelatory of intelligence sources or methods”. The judge suggested that:

“historians will evaluate, and legislators debate, how wise it is for a society to give such regard to secrecy. The practice of secrecy, to compartmentalize knowledge to those having a clear need to know, makes it difficult to hold executives accountable and compromises the basics of a free and open democratic society”.<sup>27</sup>

In regard to the specifics of the documents in contention in the case before him, the judge acknowledged that the discussion about the documents in the media raised concern that the purpose of the CIA’s position neither to confirm nor deny the existence of the documents, let alone their contents, was “less to protect intelligence activities, sources or methods than to conceal possible violations of law in the treatment of prisoners, or inefficiency or embarrassment of the CIA”. Nonetheless, the judge said that he had “small scope for judicial evaluation in this area” and accepted the CIA’s position. The case is currently before the US Court of Appeals for the Second Circuit. Amnesty International urges the government to drop its opposition to disclosing whether the documents exist, and if they do, to make them public.

Like the Committee Against Torture, Amnesty International considers that the US government’s policy of “no comment” regarding the existence of secret detention facilities is unacceptable. This policy also flatly contradicts the US administration’s stated commitment to “transparency about our policies and actions”, as promised by Assistant Secretary Lowenkron in his statement to the Committee on 5 May. Amnesty International recalls President Bush’s statement that “notorious human rights abusers, including, among others, Burma, Cuba, North Korea, Iran, and Zimbabwe, have long sought to shield their abuses from the eyes of the world by staging elaborate deceptions and denying access to international human rights monitors”.<sup>28</sup> The organization also recalls President Bush’s recent statement that “where there’s allegations [of abuse], we will investigate... [O]urs is a transparent society where people will see and follow these investigations, and people will be held to account according to our laws.”<sup>29</sup>

### ***Investigations, protections, definitions inadequate***

*The [USA] should promptly, thoroughly, and impartially investigate any responsibility of senior military and civilian officials authorizing, acquiescing or consenting, in any way, to acts of torture committed by their subordinates*

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<sup>27</sup> *ACLU et al., v Department of Defense et al.* Opinion and order granting in part and denying in part motions for partial summary judgment. US District Court, Southern District of New York, 29 September 2005.

<sup>28</sup> Statement by the President on United Nations International Day in Support of Victims of Torture, 26 June 2003, <http://www.whitehouse.gov/news/releases/2003/06/20030626-3.html>.

<sup>29</sup> Press conference, 14 June 2006, <http://www.whitehouse.gov/news/releases/2006/06/20060614.html>.

Committee Against Torture, 19 May 2006.

Investigations conducted by the US authorities to date have not been independent and have not reached up into the higher echelons of government. The investigations have generally not been critical of interrogation techniques and detention conditions that have violated international law and standards. Not a single US agent against whom credible evidence exists of serious abuses in the “war on terror” has been charged with torture or war crimes under US law, such as the War Crimes Act (18 U.S.C. § 2441) and the Torture Statute (18 U.S.C. § 2340). Torture and inhuman treatment, hostage-taking, and unlawful detainee transfers or unlawful confinement are war crimes as well as violations of international human rights law. There is evidence of all of these having been committed by US forces in the “war on terror”.<sup>30</sup> The Committee Against Torture regretted the lack of such prosecutions and expressed its concern that those that have occurred under the Uniform Code of Military Justice have led to lenient sentences. It called on the USA to “investigate, prosecute and punish perpetrators under the federal extraterritorial criminal torture statute”.

Amnesty International recalls that one of the reasons the then White House Counsel and now Attorney General, Alberto Gonzales, gave in a 25 January 2002 memorandum which he drafted advising President Bush to retain his decision not to apply Geneva Convention protections to *al-Qa’ida* and Taleban detainees was that it would “substantially reduce the threat of domestic criminal prosecution under the War Crimes Act”. Other memorandums – including one that formed the basis for Secretary Rumsfeld’s 2 December 2002 approval of interrogation techniques for use at Guantánamo (see further below) – adopted the position that while (narrowly-defined) torture might be unlawful (although suggesting that the President could override the prohibition)<sup>31</sup>, there was a wide range of cruel, inhuman or degrading treatment that remained available.<sup>32</sup> In a 2004 memorandum which came into the public domain in 2006, Alberto J. Mora, General Counsel of the Navy, recalled the following from late 2002: “the Beaver Legal Brief<sup>33</sup>... held, in summary, that torture was prohibited but cruel, inhuman, or degrading treatment could be inflicted on the Guantanamo detainees with near impunity because, at least in that location, no law prohibited such action, no court would be vested with jurisdiction to entertain a complaint on such allegations, and various defenses

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<sup>30</sup> On hostage-taking, see pages 29-30, *USA: Guantánamo and beyond*, op.cit. Also, US Generals in Iraq were told of abuse early, inquiry finds. *Washington Post*, 1 December 2004. (Quoting an internal report by the Center for Army Lessons Learned (May 2004): “It is a practice in some US units to detain family members of anti-coalition suspects in an effort to induce the suspects to turn themselves in, in exchange for the release of their family members”).

<sup>31</sup> For example, in a meeting on 6 February 2003, John Yoo, a senior Justice Department law official at the time and author of several influential memorandums about the detention and treatment of detainees in the “war on terror”, reportedly answered “yes” to the question of whether the President could authorize torture. Memorandum for Inspector General: Statement for the Record: Office of General Counsel involvement in interrogation issues, 7 July 2004. Available at: <http://www.newyorker.com/images/pdfs/moramemo.pdf>.

<sup>32</sup> See pages 57-73 of *USA: Human Dignity Denied*, op. cit.

<sup>33</sup> Memorandum for Commander, Joint Task Force 170, Legal Brief on Proposed Counter-Resistance Strategies, LTC Diane Beaver, 11 October 2002.

(such as good motive or necessity) would shield any U.S. official accused of the unlawful behaviour”.<sup>34</sup>

Amnesty International regrets that the Detainee Treatment Act passed in December 2005 has compounded this problem. Section 1005 of the Act, also known as the Graham-Levin amendment, curtails the right of the Guantánamo detainees to federal *habeas corpus* review and bars them from seeking review by US federal courts of their treatment or conditions of detention. Clearly it is inadequate to leave to the military and the executive – the very authorities that have authorized and condoned internationally illegal conditions of detention and interrogation techniques – the task of reviewing them.

As a matter of central importance, not least in the context of the “war on terror”, Amnesty International stresses the need for the US administration to ensure that when officials speak of the USA’s commitment to humane treatment, what they mean at least meets international law and standards. This has clearly not been the case to date. US officials have authorized and condoned interrogation techniques and detention conditions that violate international norms and yet at the same time have claimed to be committed to treating detainees humanely.

Part of the problem stems from President Bush’s decision not to apply Geneva Convention protections to detainees held in the “war on terror”. For example, Lieutenant General Randall Marc Schmidt of the US Army acknowledged to a Senate hearing in July 2005 that “under the Geneva Convention, sexual humiliation would not be appropriate”, but that the “enemy combatants” captured in the context of the Afghanistan conflict and transferred to Guantánamo were not protected by the Geneva Conventions under this presidential determination.<sup>35</sup> Interrogation techniques involving sexual humiliation were one category that the Committee Against Torture called on the USA to rescind.

In August 2005, Lt. Gen. Schmidt told investigators: “The President said that they’re not entitled to [protection under the Geneva Conventions], but they will be treated humanely and they will be given shelter, security, food, water and medicinal attention... So that became kind of the baseline for what was considered humane treatment. And there is no definition of what is ‘humane treatment’... There is humane treatment and nobody knows what that is, but there is a general fuzzy line.”<sup>36</sup>

The Committee Against Torture pointed to “confusing interrogation rules and techniques defined in vague and general terms” that “have led to serious abuses of detainees”. Amnesty International also draws particular attention to the fact that the Committee, as it did on the occasion of the USA’s initial report to it in 2000, has urged the USA to withdraw the

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<sup>34</sup> Memorandum for Inspector General, Department of the Navy: Statement for the Record: Office of General Counsel involvement in interrogation issues, 7 July 2004, op.cit.

<sup>35</sup> Testimony to hearing of the US Senate Armed Services Committee on the treatment of Guantánamo detainees. 13 July 2005.

<sup>36</sup> Testimony of LTG Randall M. Schmidt, Taken 24 August 2005 at Davis Mountain Air Force Base, Arizona; between the hours of 0910 and 1055 by [redacted] and [redacted], Department of the Army Inspector General, Investigations Division, Presidential Towers, Crystal City, Virginia.

reservations, interpretations and understandings that it lodged on ratification of the Convention against Torture. In this regard, the Committee urged the USA to “ensure that acts of psychological torture, prohibited by the Convention, are not limited to ‘prolonged mental harm’ as set out in the [USA’s] understandings lodged at the time of ratification of the Convention, but constitute a wider category of acts, which cause severe pain or suffering, irrespective of their prolongation or duration”.

The US Senate as well as the executive should recognize the danger inherent in making ratification subject to such conditions, as was illustrated when this conditionality was drawn upon in some of the government memorandums that became public after the Abu Ghraib torture came to light. The Beaver legal brief cited above, for example, noted that the USA ratified both the Convention against Torture and the International Covenant on Civil and Political Rights with a reservation, to Articles 16 and 7 respectively, that the prohibition of cruel, inhuman or degrading treatment or punishment would only mean what it meant under US law.<sup>37</sup> Added to this is the USA’s refusal to apply human rights treaties extraterritorially as the Committee Against Torture and the Human Rights Committee have urged.

The issue of US policies and practices falling short of international minimum standards continues to come to the fore. For example, the instruction for medical personnel involved in detainee operations, issued by the Department of Defense on 6 June 2006, states as a basic principle that any such health care personnel have a duty “to ensure that no individual in the custody or under the physical control of the Department of Defense, regardless of nationality or physical location, shall be subject to cruel, inhuman, or degrading treatment or punishment, in accordance with and *as defined in US law*” (emphasis added).<sup>38</sup> The Detainee Treatment Act suffers from the same limitation.<sup>39</sup> So too does Military Commission Instruction No. 10, issued by the Pentagon on 24 March 2006, that purports to prevent evidence obtained by torture from being admitted in trials by military commission.<sup>40</sup> The Instruction, about which the Committee Against Torture was concerned, portrays the ban as a matter of US policy rather than a binding legal prohibition, defines torture in the narrow way to which the Committee objected (above), and fails to mention cruel, inhuman or degrading treatment at all. Yet the UN Human Rights Committee has stated that under the International Covenant on Civil and Political Rights, which the USA has ratified, states must

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<sup>37</sup> See pages 170-172 of *USA: Human dignity denied*, op.cit.

<sup>38</sup> Department of Defense Instruction Number 2310.08E, 6 June 2006, [http://www.dtic.mil/whs/directives/corres/pdf/231008\\_060606/231008p.pdf](http://www.dtic.mil/whs/directives/corres/pdf/231008_060606/231008p.pdf).

<sup>39</sup> “the term ‘cruel, inhuman, or degrading treatment or punishment’ means the cruel, unusual, and inhumane treatment or punishment prohibited by the Fifth, Eighth, and Fourteenth Amendments to the Constitution of the United States, as defined in the United States Reservations, Declarations and Understandings to the United Nations Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment done at New York, December 10, 1984.” Section 1003(d) of the Detainee Treatment Act.

<sup>40</sup> Instruction No. 10 is available at <http://www.defenselink.mil/news/Mar2006/d20060327MC110.pdf>.

prohibit in law the use in judicial proceedings of statements or confessions obtained through torture or other cruel, inhuman or degrading treatment or punishment.<sup>41</sup>

Amnesty International submits that the Detainee Treatment Act will not necessarily prevent the cruel, inhuman or degrading treatment of detainees.<sup>42</sup> The June 2006 Pentagon instruction for medical personnel will not necessarily prevent the involvement of medical personnel in any future torture or other cruel, inhuman or degrading treatment. Military Commission Instruction No. 10 will not necessarily prevent statements coerced by torture or other cruel, inhuman or degrading treatment from being admitted at military commission trials. To reiterate, the fundamental problem is that US authorities are employing definitions of humane treatment that do not meet international law and standards.

### **A case to answer: the torture of Mohamed al-Qahtani**

*Whatever the ultimate historical judgment, it is established fact that documents justifying and authorizing the abusive treatment of detainees during interrogation were approved and distributed. These authorizations rested on three beliefs: that no law prohibited the application of cruelty; that no law should be adopted that would do so; and that our government could choose to apply the cruelty – or not – as a matter of policy depending on the dictates of perceived military necessity... We should care because the issues raised by a policy of cruelty are too fundamental to be left unaddressed, unanswered or ambiguous... And we should care because each of us knows that this issue has not gone away.*

Alberto J. Mora, Navy General Counsel (retired), May 2006<sup>43</sup>

Narrow or vague interpretations of what constitutes humane treatment, the co-option of medical personnel into participating in detention conditions or interrogations that violate the international prohibition on torture or other cruel, inhuman or degrading treatment, and a lack of accountability, are illustrated in the case of Mohamed al-Qahtani, detainee number 63 in Guantánamo, suspected by the US authorities of having been involved in the 9/11 conspiracy (and yet still not brought to trial after more than four years in custody).<sup>44</sup> It should be noted that the details of Mohamed al-Qahtani's treatment that are known would probably not have

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<sup>41</sup> CCPR General Comment 20, para. 12, 10 March. The Committee has said that the prohibition on torture or other cruel, inhuman or degrading treatment is a peremptory norm of international law, non-derogable and binding on all states. General Comment 29, UN Doc. CCPR/C/21/Rev.1/Add.11, 31 August 2001. See also, pages 161-164, *USA: Human Dignity Denied*, op. cit.

<sup>42</sup> What is more, the Act expressly allows evidence obtained under coercion, and thereby possibly torture, provided it has "probative value", to be considered by the Combatant Status Review Tribunals (CSRTs) at Guantánamo. The Committee Against Torture expressed its concerns about proceedings before the CSRTs and the Administrative Review Boards in this regard, and called on the USA to ensure that its obligations in this area were fulfilled "in all circumstances".

<sup>43</sup> *An affront to American values*. By Alberto J. Mora, Washington Post, 27 May 2006.

<sup>44</sup> According to the military, he was detained in December 2001 on the Afghanistan/Pakistan border and transferred to Afghanistan in February 2002.

been revealed had it not been for litigation under the Freedom of Information Act (FOIA) and leaks, including of an interrogation log.<sup>45</sup>

In late 2002 interrogators requested authorization of additional interrogation techniques, ostensibly to use against detainees such as Mohamed al-Qahtani who were allegedly proving resistant to standard interrogation procedures. On 2 December 2002, Secretary Rumsfeld approved, “as a matter of policy”, a number of techniques for use in interrogating detainees at Guantánamo, at the discretion of the Commander of US Southern Command. The techniques included stress positions, sensory deprivation, isolation, the use of 20-hour interrogations, hooding during transportation and interrogation, stripping, forcible shaving, and “using detainees individual phobias (such as fear of dogs) to induce stress”. Secretary Rumsfeld’s authorization alone shows that the central presidential directive that “as a matter of policy, the United States Armed Forces shall continue to treat detainees humanely and, to the extent appropriate and consistent with military necessity, in a manner consistent with the principles of [the] Geneva [Conventions]” should be withdrawn or amended, as called for below. The recently released (and heavily redacted) version of the Formica report into special forces operations in Iraq (where the USA applied the Geneva Conventions) unwittingly illustrates this point. The report states that sensory deprivation and the use of nudity – two of the techniques authorized by Secretary Rumsfeld – are “inconsistent with the principles of dignity and respect contained in the Geneva Conventions” and violate the “minimum standard of humane treatment”.<sup>46</sup> Clearly, the presidential phrase “consistent with” has been interpreted as giving US officials and agents wide latitude to violate international law in the wider “war on terror”, including in Afghanistan and Guantánamo.

Indeed, the same sort of techniques authorized by Secretary Rumsfeld for use in Guantánamo were being used in Afghanistan where, for example, interrogators were “removing clothing, isolating people for long periods of time, using stress positions, exploiting fear of dogs and implementing sleep and light deprivation.”<sup>47</sup> In October 2005, General James T. Hill, former Combatant Commander of US Southern Command said that he would not be surprised if the techniques were “migrating” between theatres of operation given the rotation of interrogators.<sup>48</sup> In his memorandum recalling his opposition to the authorization of techniques he viewed as unlawful, General Counsel of the Navy Alberto J. Mora raised the danger of “force drift”, the tendency for the use of force to escalate once legal barriers against aggressive techniques had been lifted. In the case of Mohamed al-Qahtani,

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<sup>45</sup> The log, obtained by Time magazine, is available at <http://www.time.com/time/2006/log/log.pdf>.

<sup>46</sup> Article 15-6 Investigation of CJSOTF-AP and 5<sup>th</sup> SF Group detention operations. BG Richard P. Formica, Investigating Officer. 8 November 2004, Declassified, 7 June 2006, available at <http://action.aclu.org/torturefoia/released/061906/FormicaReport.pdf>.

<sup>47</sup> Page 64, AR 15-6 Investigation of Intelligence Activities at Abu Ghraib. Conducted by Major General George R. Fay and Lieutenant General Anthony R. Jones. <http://www.defenselink.mil/news/Aug2004/d20040825fay.pdf>.

<sup>48</sup> Testimony of General James T. Hill. Taken 7 October 2005 at Coral Gables, Florida, between the hours of 0905 and 1015 by [redacted], Department of the Army Inspector General, Investigations Division, Presidential Towers, Crystal City, Virginia.



apparently interrogators in Guantánamo “felt like well we got a green light to do this to whatever level we want to as long as we don’t torture this individual”.<sup>49</sup>

Secretary Rumsfeld has stated that the techniques he authorized “were not torture”, although the USA does characterize such methods as torture if carried out by other countries.<sup>50</sup> Secretary Rumsfeld failed to reveal whether he thought that the techniques he authorized, if not amounting to torture, would, individually or in combination, constitute cruel, inhuman or degrading treatment and therefore equally prohibited under international law.<sup>51</sup> The General Counsel of the Navy, for one, believed that the authorized techniques were “unlawful and contrary to the President’s directive to treat the detainees ‘humanely’”.<sup>52</sup> The details that are known about Mohamed al-Qahtani’s interrogation should dispel any doubts that Secretary Rumsfeld, for one, has a case to answer.

An FBI memorandum dated 14 July 2004 recalled the following about Mohamed al-Qahtani’s treatment: “In September or October of 2002 FBI agents observed that a canine was used in an aggressive manner to intimidate detainee #63 and, in November 2002, FBI agents observed Detainee #63 after he had been subject to intense isolation for over three months. During that time period, #63 was totally isolated (with the exception of occasional interrogations) in a cell that was always flooded with light. By late November, the detainee was evidencing behavior consistent with extreme psychological trauma (talking to non-existent people, reporting hearing voices, crouching in a cell covered with a sheet for hours).”<sup>53</sup> After such FBI observations and allegations came into the public realm, a military investigation was initiated. An unclassified portion of the resulting Schmidt/Furlow Report was released in mid-2005.<sup>54</sup>

The use of dogs to induce fear was one of the interrogation techniques the Committee Against Torture called on the USA to rescind in “all places of detention under its *de facto* effective control” as the technique violates the Convention against Torture. Indeed, when

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<sup>49</sup> Testimony of LTG Randall M. Schmidt, Taken 24 August 2005, *op. cit.*

<sup>50</sup> For example, the following extract is from the US State Department’s most recent human rights report on Iran: “Some prison facilities... were notorious for the cruel and prolonged torture of political opponents of the government. Additionally, in recent years authorities have severely abused and tortured prisoners in a series of ‘unofficial’ secret prisons and detention centers... Common methods included prolonged solitary confinement with sensory deprivation... The Committee against Torture has found that sensory deprivation amounts to torture.” The State Department report also noted sleep deprivation as a torture technique. <http://www.state.gov/g/drl/rls/hrrpt/2005/61688.htm>. In the Egypt entry, it described stripping and blindfolding as torture techniques employed there. <http://www.state.gov/g/drl/rls/hrrpt/2005/61687.htm>.

<sup>51</sup> Secretary Rumsfeld, Speech at the National Press Club, 10 September 2004.

<sup>52</sup> Office of General Counsel Involvement in Interrogation Issues, 7 July 2004, *op. cit.*

<sup>53</sup> Re: suspected mistreatment of detainees. To Major General Donald J. Ryder, Department of the Army, from T.J. Harrington, Deputy Assistant Director, Counterterrorism Division, US Department of Justice, Federal Bureau of Investigation. 14 July 2004.

<sup>54</sup> Army Regulation 15-6: Final Report: Investigation into FBI Allegations of Detainee Abuse at Guantanamo Bay, Cuba Detention Facility, 1 April 2005 (amended 9 June 2005) (Schmidt/Furlow Report), <http://www.defenselink.mil/news/Jul2005/d20050714report.pdf>.

dogs are used to threaten detainees in the custody of other governments, the USA has described it as torture.<sup>55</sup> Yet dogs have been used by the USA in Iraq, Afghanistan and Guantánamo. Tellingly, the newly released 2004 Jacoby report into US detainee operations in Afghanistan characterized the use of dogs to “intimidate or humiliate” as only culturally inappropriate rather than a violation of international law and standards.<sup>56</sup>

The Schmidt/Furlow investigation found that on two occasions – both prior to and after Secretary Rumsfeld’s authorization – dogs had been used to terrorize Mohamed al-Qahtani. On each occasion, a dog was “brought into the interrogation room and directed to growl, bark, and show his teeth” at the detainee. In an interview he gave at the Department of Army Inspector General after the release of the report, subsequently leaked, the chief investigator, Lieutenant General Randall M. Schmidt, recalled it somewhat less dispassionately: “[H]ere’s this guy manacled, chained down, dogs brought in, put his face [sic]<sup>57</sup>, told to growl, show teeth, and that kind of stuff. And you can imagine the fear kind of thing. You know at what point... if you had a camera and snapped that picture, you’d be back to Abu Ghraib”.<sup>58</sup>

Also reminiscent of Abu Ghraib was the fact that Mohamed al-Qahtani was variously forced to wear a woman’s bra and had a thong placed on his head; was tied by a leash and led around the room while being forced to perform a number dog tricks; was forced to dance with a male interrogator while forced to wear a towel on his head “like a burka”; was subjected to forced standing, forcible shaving of his head and beard during interrogation (and photographing immediately after this), stripping and strip-searching in the presence of women<sup>59</sup>, sexual humiliation, culturally inappropriate use of female interrogators, and to sexual insults about his female relatives; had water repeatedly poured over his head; had

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<sup>55</sup> See, for example, entry on Libya in the State Department’s latest human rights reports, March 2006: “The reported methods of torture included... threats of dog attacks...”

<http://www.state.gov/g/drl/rls/hrrpt/2005/61694.htm>.

<sup>56</sup> “Most units, while having received basic cultural training before deployment, were not truly attuned to the cultural sensitivities they encountered... For example, situations where men are unnecessarily detained in front of their families, or caused to be seen naked when not required, or where dogs have been used in the past to intimidate and humiliate. These situations ran afoul of Afghan culture and create unwarranted misperceptions about our actual intent to provide security and stability for the people of Afghanistan.” Page 949 of CFC-A AO Detainee Operations, Report of Inspection, 26 June 2004 (the Jacoby Report) Declassified 7 June 2006, available at:

<http://action.aclu.org/torturefoia/released/061906/JacobyReport.pdf>.

<sup>57</sup> Later in the interview, the following dialogue took place – Schmidt: ... Then you’re putting a dog in their face. Question: Sir, can you elaborate “in their face”, that’s something I hadn’t seen before? Schmidt: Brought into the detention room. Brought up close in the interrogation rooms. These are small rooms. Have you seen the rooms?... And they’re brought in and they’re told to growl and show teeth, at the detainee. And this guy is restrained. That’s sort of a fear factor thing.... No, I disagree with the use of that.

<sup>58</sup> Testimony of LTG Randall M. Schmidt, Taken 24 August 2005, *op. cit.*

<sup>59</sup> Mohamed al-Qahtani has alleged that he was subjected to cavity searches during this strip searches conducted during interrogation in the presence of women.

pictures of “swimsuit models” hung round his neck; was subjected to hooding, loud music<sup>60</sup>, white noise, and to extremes of heat and cold through manipulation of air conditioning. Other forms of humiliation included being forced to urinate in his clothing when interrogators refused to allow him to go to the toilet. From 23 November 2002 to 16 January 2003, Mohamed al-Qahtani was interrogated for 18-20 hours per day for 48 of the 54 days. According to Lt. Gen. Schmidt, in the four hours that he was not under interrogation, “he was taken to a white room... with all the lights and stuff going on and everything...”<sup>61</sup> Thus sleep deprivation is added to the list of torture or other cruel, inhuman or degrading treatment to which this detainee was subjected.

Shockingly, the Schmidt/Furlow Report concluded that Mohamed al-Qahtani’s treatment, while cumulatively “degrading and abusive”, “did not rise to the level of prohibited inhumane treatment” (indeed the report as a whole “found no evidence of torture or inhumane treatment at [Guantánamo]”).<sup>62</sup> Again, this illustrates the failure of the USA to comply with international law – the Geneva Conventions, the Convention Against Torture, the International Covenant on Civil and Political Rights, and customary international law all prohibit degrading treatment. Perhaps the report’s conclusion in this regard was predictable in light of Lt. Gen. Schmidt’s subsequent comment – echoing remarks repeatedly made by President Bush and other members of the administration – that Mohamed al-Qahtani “was a bad guy”. Lt. Gen. Schmidt continued: “This was a guy who had information that we needed” which justified coercive techniques that “dropped down to the line just above...torture” while still being “humane treatment”.<sup>63</sup>

The Schmidt/Furlow Report found that although several of the techniques – including the use of dogs, sleep disruption, use of extreme temperatures, and prolonged isolation – had been used *before* they were authorized, Secretary Rumsfeld’s “subsequent approval of each of the techniques clearly establishes the ultimate legitimacy of that technique and thus additional corrective action is not necessary”. The Schmidt/Furlow report recommended that Major General Geoffrey Miller, the then commander of the detention facility should be “held accountable” for failing to supervise the interrogation of Mohamed al-Qahtani, in which Miller was said to be closely involved. However, General Brantz Craddock, the Commander

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<sup>60</sup> The interrogation log reveals that loud music was variously used to keep the detainee awake (sleep deprivation), and as part of the “futility” technique (to make the detainee believe that resistance is futile). This could take the form of playing loud music when the detainee wanted to talk but the interrogator was not allowing him to. According to the Schmidt/Furlow report, “futility” music included Metallica, Britney Spears, and rap music. Other detainees were subjected to strobe lightning. It is not clear from the Schmidt/Furlow report if al-Qahtani was subjected to this. Other detainees were also subjected to what was dubbed the “frequent flyer program”, whereby detainees were moved every few hours to a different cell to disrupt their sleep. This was being used in 2003 and 2004.

<sup>61</sup> Testimony of LTG Randall M. Schmidt, Taken 24 August 2005, *op. cit.*

<sup>62</sup> In a subsequent interview, Lt. Gen. Schmidt said that while he did not believe that the treatment of Mohamed al-Qahtani violated the Torture Statute and “didn’t violate the general premises of humane treatment”, “was it abusive and degrading? Find me somebody that will argue that it wasn’t”. Testimony of LTG Randall M. Schmidt, Taken 24 August 2005, *op. cit.*

<sup>63</sup> *Ibid.*

of US Southern Command dismissed this recommendation on the grounds that no law or policy had been violated in the interrogation. In a subsequent leaked interview, Lt. Gen. Schmidt described the Secretary of Defense as having been “personally involved” in the interrogation of Mohamed al-Qahtani.<sup>64</sup> Yet no investigation has had the independence or scope to reach to that level of office.

The Schmidt/Furlow report recommended a review that particularly focussed on the “definitions of humane treatment, military necessity, and proper employment of interrogation techniques (e.g. boundaries or extremes)”. It also said that a framework for evaluating the cumulative impact of interrogation techniques should be established. Nevertheless, the Pentagon characterized Mohamed al-Qahtani’s interrogation as falling under “the unequivocal standard of humane treatment” to which the Department is committed.<sup>65</sup> Indeed, the problem of what the USA defines as humane treatment is further illustrated by the fact other techniques – including “the use of scenarios designed to convince the detainee that death or severely painful consequences are imminent for him and/or his family”, “exposure to cold weather or water (with appropriate medical monitoring)”; and the “use of a wet towel and dripping water to induce the misperception of suffocation” have been or are considered “legally available” by the Pentagon’s General Counsel.<sup>66</sup> Yet the USA describes such techniques as torture when used in other countries.<sup>67</sup>

The Schmidt/Furlow investigation also looked into the case of a second “high-value” detainee allegedly tortured during his interrogation in July to September 2003. The US government has not made public the identity of this detainee. However, recent heavily redacted information released under FOIA litigation indicates that the detainee is Mohamedou Ould Slahi, a Mauritanian national who handed himself into the Mauritanian authorities in late 2001.<sup>68</sup> He was subsequently transferred to Jordan for interrogation – he describes it as

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<sup>64</sup> Testimony of LTG Randall M. Schmidt, Taken 24 August 2005, *op. cit.*

<sup>65</sup> *Guantanamo provides valuable intelligence information*, Department of Defense News Release, 12 June 2005, <http://www.defenselink.mil/releases/2005/nr20050612-3661.html>.

<sup>66</sup> Action Memo: Counter-resistance techniques, 27 November 2002, General Counsel of the Department of Defense. In his oral statements to the Committee Against Torture on 8 May 2006, State Department Legal Adviser John Bellinger stated: “First, waterboarding is not listed in the current Army Field Manual and therefore is not permitted for detainees under DoD control. Second, waterboarding is specifically prohibited in the revised Army Field Manual”. However, John Bellinger had made it clear in his opening remarks of 5 May that the US delegation was “not in a position to comment publicly on alleged intelligence activities”. A military memorandum from Guantánamo in 2002 that requested the use of “use of a wet towel and dripping water to induce the misperception of suffocation” as an interrogation technique noted that such techniques were used by “other government agencies” (e.g. the CIA). See *USA: Human Dignity Denied*, *op. cit.*, pages 114-115. The former head of the CIA said that the technique of waterboarding was a technique that fell under “an area of what I will call professional interrogation techniques”. See *USA: Guantánamo and beyond*, *op. cit.*, page 128.

<sup>67</sup> For example, the USA (rightly) considers near-drowning to be torture. For example, see Sri Lanka entry of the latest State Department’s Human Rights Reports, <http://www.state.gov/g/drl/rls/hrrpt/2005/61711.htm>

<sup>68</sup> See pages 770 – 778 of the documents available at [http://action.aclu.org/torturefoia/released/061906/Schmidt\\_FurlowEnclosures.pdf](http://action.aclu.org/torturefoia/released/061906/Schmidt_FurlowEnclosures.pdf).

having been “kidnapped” – and was held there for eight months. He has stated that during this time in Jordan he falsely confessed under “so much pressure and bad treatment” to being part of the so-called millennium plot, an alleged conspiracy to bomb Los Angeles airport and sites in the Middle East on 31 December 1999.<sup>69</sup> After eight months in Jordan, he was transferred in July 2002 to US custody in Afghanistan and was subsequently flown to Guantánamo, where he is still held.

For more than a year in Guantánamo, the military authorities refused the International Committee of the Red Cross (ICRC) access to Mohamedou Ould Slahi on the grounds of “military necessity”.<sup>70</sup> This period of incommunicado detention encompassed the alleged torture and ill-treatment of the second “high-value” detainee investigated by Schmidt/Furlow. The investigation found that this detainee was subjected to “environmental manipulation”, in other words to extremes of heat and cold using the air-conditioning. The detainee had alleged that he was repeatedly subjected to placement in a room referred to as the “freezer”, a room “built of steel from floor to ceiling with a very cold temperature setting on the air conditioner”.<sup>71</sup> The Schmidt/Furlow report concluded that no disciplinary action was required as “environmental manipulation” was an interrogation technique that had been approved by Secretary Rumsfeld. The investigation was unable to corroborate the detainee’s allegations that he had been subjected to sexual humiliation by female military interrogators, or that he had been beaten by guards and an interrogator. The recently released FOIA documents also contain references such as “every morning the detainee was scared...”, “the detainee stated that he refused to eat food when he was humiliated”, and “the detainee was awoken [sic] every hour or two and only [sic] and forced to drink one liter of water.” However, further details have been censored out.

The Schmidt/Furlow investigation found that this detainee had been threatened with death and “disappearance” during his interrogation in July to September 2003. The detainee was also told that his family was in US custody and in danger, and that he should cooperate in order to help them. Not in the unclassified Schmidt/Furlow report, but revealed in the leaked

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<sup>69</sup> Combatant Status Review Tribunal (CSRT) unclassified returns. In another part of the CSRT transcript, he said that he confessed “to the Americans”, but it is not entirely clear from the transcript if that was during his time in Jordan or later. Asked by the CSRT to elaborate about the pressure that coerced his confession, he replied that he did not wish to talk about it. Specifically asked if US authorities had abused him, he again replied that he was “not willing to answer this question: I don’t have to, if you don’t force me to”. In documents recently released under FOIA litigation, any references to the circumstances of his time in Jordan are censored out.

<sup>70</sup> See *USA: Human Dignity Denied*, pages 15-16. According to the leaked military documents referred to in AI’s report, it now seems that the detainee who was longest denied access to the ICRC was detainee number 760 who is Mohamedou Ould Slahi (not Moroccan national Ahmad Abdullah Tabarak as previously reported – the ICRC was denied access to the latter, but eventual access to him was granted before Mohamedou Ould Slahi). The recently released FOIA documents note the allegation that the ICRC “had no contact with the detainee for more than a year”. The ICRC was also denied access under “military necessity” to UK detainee Moazzam Begg and Abdurhaman Khadr, a Canadian national. Both were later transferred to their home countries and released without charge.

<sup>71</sup> See FOIA documents, *op.cit.*

subsequent interview of Lt. Gen. Schmidt was that “the last part of the ruse” was where the detainee was taken off from Guantánamo in a boat “where he thought this is where he goes away” (i.e. to be killed or “disappeared”).<sup>72</sup> This echoes what has been alleged in the case of Mohamed al-Qahtani. During the period of his interrogation, the latter was allegedly subjected to a fake rendition, during which he was injected with tranquilizers, made to wear blackened goggles, and taken out of Guantánamo in a plane.<sup>73</sup>

The Schmidt/Furlow report concluded that the threats against the second “high-value” detainee did “not rise to the level of torture as defined under US law” (in comparison, for example, the most recent State Department report entry on human rights in Egypt notes that torture techniques employed there included threats against detainees and their families).<sup>74</sup> The Schmidt/Furlow report did conclude that the threats against this detainee violated the Uniform Code of Military Justice and recommended that the chief interrogator be disciplined. However, General Brantz Craddock amended this recommendation and requested further (military) investigation, justifying this on the grounds that “evidence in mitigation and extenuation” could be discovered to help the interrogator’s case.<sup>75</sup> Under international law, however, there can be no impunity for torture or other cruel, inhuman or degrading treatment. Those who commit such violations and those who authorize such conduct must be brought to account, and may not invoke any justification (such as “necessity”, “self-defence” or “superior orders”) in their defence.

General Craddock also determined on the basis of the Schmidt/Furlow report that the interrogation of Mohamed al-Qahtani “did not result in any violation of US law or policy”, even if it had been “creative, aggressive and persistent”.<sup>76</sup> According to the Pentagon, an illustration of the “strict standard” of humane treatment to which Mohamed al-Qahtani was subjected is the existence of the above-cited interrogation log and the fact that the interrogation was “conducted by trained professionals in a controlled environment, with active supervision and oversight”.<sup>77</sup> In similar vein, Lt. Gen. Schmidt referred back to President Bush’s central policy memorandum, telling Senators that in deciding that Mohamed al-Qahtani’s treatment did not cross “the threshold of being inhumane”:

“I considered the President’s mandate to treat the detainees humanely and the requirement to ensure detainees had adequate food, drinking water, clothing, shelter and medical treatment. In this case, the treatment was not determined by me to be inhumane because the interrogators not only ensured that [Mohamed al-Qahtani] had adequate food, water, clothing and shelter, but also that his interrogation and the

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<sup>72</sup> Testimony of LTG Randall M. Schmidt, Taken 24 August 2005, *op. cit.*

<sup>73</sup> See *The Experiment*, by Jane Mayer. The New Yorker, 11 July 2005.

<sup>74</sup> <http://www.state.gov/g/drl/rls/hrrpt/2005/61687.htm>.

<sup>75</sup> Testimony to hearing of the US Senate Armed Services Committee on the treatment of Guantánamo detainees. 13 July 2005.

<sup>76</sup> Testimony to hearing of the US Senate Armed Services Committee on the treatment of Guantánamo detainees. 13 July 2005.

<sup>77</sup> *Guantanamo provides valuable intelligence information*, Department of Defense News Release, 12 June 2005, <http://www.defenselink.mil/releases/2005/nr20050612-3661.html>.

techniques used were done in a highly controlled interrogation environment with medical personnel continuously monitoring his health and well-being [see below].”<sup>78</sup>

It should be noted that for periods of his interrogation, Mohamed al-Qahtani was refusing food and water, and he was forcibly hydrated intravenously from time to time. An example of the medical treatment that he received – an illustration in the US military’s terms of the “humane” way in which he was treated – is revealed in the interrogation log. From 7 December 2002, Mohamed al-Qahtani was given a 24-hour “recuperation” period from interrogation. This was to involve being subjected the whole time to loud music “to prevent detainee from sleeping”. Ten hours into this alleged recuperation period, he was found to be suffering from bradycardia (a heart rate that is too slow – the resulting lack of oxygen can cause dizziness, extreme tiredness, shortness of breath, or fainting). He was subsequently hospitalized for a CT scan and put under observation overnight. On 9 December, he was medically cleared for further interrogation, hooded, shackled and “restrained in a litter” for transport back to interrogation.

References to checks by medical personnel during the many days of interrogations litter the leaked interrogation log, despite long-standing prohibitions in medical ethics against such conduct.<sup>79</sup> For example, at 8.30 pm on 6 December 2002, “the Medical Representative checked the detainee’s blood pressure and weight. She cleared the detainee for further interrogation.” Yet the involvement of medical personnel in this “degrading and abusive” interrogation was accepted without question by the Schmidt/Furlow report which noted, for example, that in relation to the use of temperature manipulation as an interrogation technique, no action was needed because “there are no medical entries indicating [Mohamed al-Qahtani] ever experienced medical problems related to low body temperature.”

The administration continues to resist putting any further information into the public realm. No details of Mohamed al-Qahtani’s Combatant Status Review Tribunal or Administrative Review Board proceedings have been released despite FOIA requests and litigation (lawyers at the Center for Constitutional Rights in New York are representing him). Mohamed al-Qahtani remains in Guantánamo Bay where he has been since February 2002. Amnesty International understands that he is held in Camp 5, a block modelled on US supermaximum security prisons, where he is kept in isolation in his cell for 23 to 24 hours a day. He is believed to have been held there for at least nine months. He has recanted statements he made under torture and ill-treatment. According to his lawyer, he has “painfully described how he could not endure the months of isolation, torture and abuse, during which

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<sup>78</sup> Testimony to hearing of the US Senate Armed Services Committee on the treatment of Guantánamo detainees. 13 July 2005.

<sup>79</sup> As recently as May 2006, the World Medical Association revised its Declaration of Tokyo against medical participation in torture. In addition to stating that the physician should not “countenance, condone or participate in the practice of torture or other forms of cruel, inhuman or degrading procedures” it now states that physicians should not use “medical knowledge or skills, or health information specific to individuals, to facilitate or otherwise aid any interrogation, legal or illegal, of those individuals.”

he was nearly killed, before making false statements to please his interrogators”.<sup>80</sup> She has told Amnesty International that his physical and psychological health remain poor. She has said that because of the involvement of medical personnel in his torture and ill-treatment, he is afraid to seek medical attention.<sup>81</sup>

## Closing loopholes, ensuring accountability, ending abuses

*We must call countries to account when they retreat from their international human rights commitments*

US Secretary of State Condoleeza Rice, 2006<sup>82</sup>

Amnesty International reiterates its call for a full independent, impartial and non-partisan commission of inquiry into all aspects of the USA’s “war on terror” detention and interrogation policies and practices, including renditions.<sup>83</sup> Such a commission should consist of credible independent experts, have international expert input, and have subpoena powers and access to all levels of government, all agencies, and all documents. In addition, Amnesty International continues to call for the appointment of an independent Special Counsel to carry out a criminal investigation into the conduct of any administration officials against whom there is evidence of involvement in crimes in the “war on terror”. As the Committee Against Torture stated, all allegations of torture and ill-treatment must be *thoroughly* investigated and *all* those responsible *appropriately punished*.

Criminal liability is not limited to soldiers – any “superior” is responsible for international crimes committed during activities that were within his or her “effective responsibility and control”. Nor does international law accept any limits as to how high the rank of civilian superiors who may be prosecuted is.<sup>84</sup>

Where torture and other cruel, inhuman or degrading treatment are concerned, there can be no room for loopholes. In this regard, Amnesty International urges President Bush to withdraw or substantially amend his Memorandum of 7 February 2002 – *Humane treatment of al Qaeda and Taliban detainees* – which does not expressly apply to the CIA, sees “humane treatment” as only a “matter of policy” rather than an absolute legal obligation under international human rights and humanitarian law, and suggests that there are people “who are not legally entitled to humane treatment”. The organization also urges the President to withdraw his signing statement to the Detainee Treatment Act, which carries the risk of being used to undermine the protections against cruel, inhuman or degrading treatment contained in that legislation. If this is not its purpose, as the Committee was told, then Amnesty International can see no reason not to withdraw it. In view of the administration’s opposition to the McCain Amendment prior to its passage through Congress as part of the

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<sup>80</sup> ‘20<sup>th</sup> hijacker’ claims that torture made him lie. Time magazine, 3 March 2006.

<sup>81</sup> *Ibid.*

<sup>82</sup> Preface to the State Department’s Human Rights Country Reports, published 8 March 2006, <http://www.state.gov/g/drl/rls/hrrpt/2005/61552.htm>.

<sup>83</sup> See pages 49-54 of *USA: Human Dignity Denied*, op.cit.

<sup>84</sup> See pages 41-46 of *USA: Human Dignity Denied*, op. cit.



Detainee Treatment Act, the need for the administration to prove its commitment to the international prohibition on torture and other cruel, inhuman or degrading treatment remains pressing.

In listing “positive aspects” of the USA’s policies and practices, the Committee Against Torture included the administration’s stated intention to adopt a new Army Field Manual for intelligence interrogation to ensure that interrogation techniques fully comply with the Convention against Torture. In this regard, some recent media reports are cause for optimism and others for concern. On the one hand, it is reported that the Pentagon may be backing away from including a classified set of interrogation techniques in the new manual, and also that it may drop its plan to differentiate in the manual between interrogation methods that can be used in the cases of prisoners of war and those that can be used against so-called “enemy combatants” such as those held in Guantánamo Bay and Afghanistan.<sup>85</sup> On the other hand, it has been reported that in the face of State Department opposition, the Department of Defense has decided to omit from the manual the prohibition on “humiliating and degrading treatment” contained in Common Article 3 of the Geneva Conventions.<sup>86</sup> Amnesty International reminds the administration that the International Court of Justice has determined that the rules in common Article 3 “constitute a minimum yardstick, in addition to the more elaborate rules which are also to apply to international conflicts; and they are rules which, in the Court’s opinion, reflect what the Court in 1949 called ‘elementary considerations of humanity’”.<sup>87</sup> The bi-partisan 9-11 Commission noted in its August 2004 report that common Article 3’s “minimum standards are generally accepted throughout the world as customary international law.”<sup>88</sup> Amnesty International also recalls President Bush’s assertion that the USA “remains steadfastly committed to upholding the Geneva Conventions”.<sup>89</sup>

Yet President Bush’s memorandum of 7 February 2002 includes the presidential determination that common Article 3 would not apply to either *al-Qa’ida* or Taleban detainees. Amnesty International believes that the humiliation and degradation of detainees in US custody in the “war on terror” has been systemic.<sup>90</sup> In addition to withdrawal or amendment of this presidential memorandum, Amnesty International urges that the protections of the Geneva Conventions, the Convention against Torture, and the International Covenant on Civil and Political Rights be fully reflected in the new Army Field Manual, including that the latter two treaties apply extraterritorially as the Committee Against Torture and the Human Rights Committee have emphasised.<sup>91</sup> Anything less can only facilitate

<sup>85</sup> Pentagon rethinking manual with interrogation methods. New York Times, 14 June 2006.

<sup>86</sup> *Army manual to skip Geneva detainee rule*. Los Angeles Times, 5 June 2006.

<sup>87</sup> See pages 42-43 of *USA: Human dignity denied*, op.cit.

<sup>88</sup> Chapter 12 of the Final Report of the National Commission on Terrorist Attacks Upon the United States. <http://www.9-11commission.gov/report/index.htm>.

<sup>89</sup> President’s statement on the UN International Day in Support of Victims of Torture, 26 June 2004, <http://www.whitehouse.gov/news/releases/2004/06/20040626-19.html>.

<sup>90</sup> See, for example, *USA: Human Dignity Denied*, and *USA: Guantánamo and beyond*, op. cit.

<sup>91</sup> On the latter see, for example, General Comment 31 of the Human Rights Committee, the body established by the International Covenant on Civil and Political Rights to oversee implementation of that treaty: “States Parties are required... to respect and to ensure the Covenant rights to all persons

further abuses and fuel the widespread belief that the USA's stated commitment to meet its international legal obligations, and to the humane and lawful treatment of detainees in the "war on terror", has all too often amounted to empty rhetoric.

President Bush, as President and Commander-in-Chief, has the power immediately to initiate speedy resolution of these matters. In this regard, Amnesty International urges the President to order all agencies of the US government to fully register all detainees in their custody or under their effective control, to disclose where they are held, and to register any transfer to another detention facility. Any previous executive order that contradicts this, including any "exceptional authorities" relating to detention of foreign nationals that the President may have granted to the CIA or any other agency after 11 September 2001, should be revoked with immediate effect. In this regard, Amnesty International urges President Bush to publicly condemn any policy or practice of secret detention, including those cases which amount to "disappearance". Amnesty International notes that the President of the ICRC on 12 May deplored the lack of progress on the question of US secret detentions, following talks with senior officials in the US administration. Jakob Kellenberger stressed that "there exists no right to conceal a person's whereabouts or to deny that he or she is being detained".<sup>92</sup> Amnesty International urges that all detainees be given full and continuing access to the ICRC, as well as to independent medical care, legal counsel and relatives, and to the courts. The Combatant Status Review Tribunals and Administrative Review Boards that have operated in Guantánamo Bay are no substitute for judicial review.<sup>93</sup> In Bagram air base in Afghanistan, where there are now more detainees held in US military custody than in Guantánamo Bay, detainees do not even get this minimal process.<sup>94</sup>

The Committee expressed concern that that the Detainee Treatment Act aims to limit Guantánamo detainees' access to US federal courts, and that detainees in Department of Defense custody in Afghanistan and Iraq are limited to an administrative review of their detentions by the same Department that holds them. The Committee concluded that the USA should ensure that "independent, prompt and thorough procedures to review the

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who may be within their territory and to all persons subject to their jurisdiction. This means that a State party must respect and ensure the rights laid down in the Covenant to anyone within the power or effective control of that State Party, even if not situated within the territory of the State Party." CCPR/C/21/Rev.1/Add.13, 26 May 2004, paragraph 10.

<sup>92</sup> *ICRC President deplores lack of progress on secret detention*. ICRC press release, 12 May 2006, <http://www.icrc.org/Web/eng/siteeng0.nsf/iwpList578/43EFDEF901E1FD10C125716B007CC272>.

<sup>93</sup> See pp 54-66 of *USA: Guantánamo and beyond: the continuing pursuit of unchecked executive power*, May 2005, [http://web.amnesty.org/library/pdf/AMR510632005ENGLISH/\\$File/AMR5106305.pdf](http://web.amnesty.org/library/pdf/AMR510632005ENGLISH/$File/AMR5106305.pdf).

<sup>94</sup> See, *US detentions in Afghanistan: an aide-mémoire for continued action*, 7 June 2005, [http://web.amnesty.org/library/pdf/AMR510932005ENGLISH/\\$File/AMR5109305.pdf](http://web.amnesty.org/library/pdf/AMR510932005ENGLISH/$File/AMR5109305.pdf). At the time of writing, there were "approximately 460" detainees in Guantánamo Bay detention facility (Department of Defense, news release 18 May 2006). As of May 2006, the ICRC was visiting approximately 560 detainees in Bagram air base. An unknown number of detainees are held, supposedly for short periods prior to transfer to Bagram or release, in various US Forward Operating Bases in Afghanistan.

circumstances of detention and the status of detainees are available to all detainees as required by Article 13 of the Convention”.

Despite the recent announcement of Iraqi Prime Minister Nouri al-Maliki of the imminent release of some 2,000 detainees in US- and Iraqi-run prisons, with the first approximately 600 released on 7 June, thousands of detainees in Multi National Force custody remain held arbitrarily without charge or trial or any meaningful opportunity to challenge the lawfulness of their detention before an independent body. Amnesty International reiterates its call to the US authorities to take urgent, concrete steps to ensure that the fundamental human rights of all detainees in its custody in Iraq are respected, including ensuring that they are able effectively to challenge their detention before a court, a fundamental safeguard against arbitrary detention and ill-treatment.<sup>95</sup>

Amnesty International recalls President Bush’s recently restated wish for a United Nations “that’s effective [and] willing to advance human rights and human dignity”.<sup>96</sup> To this end, the USA should fully implement the recommendations of the UN Committee Against Torture.

In addition, Amnesty International reiterates its call for the USA to ratify the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. This came into force on 22 June 2006 following the 20th ratification. At least a further 31 states have signed the Optional Protocol, which establishes a new international visiting body and requires states that are party to the Protocol to put in place “national preventive mechanisms” meeting strict requirements. This international visiting body and the national mechanisms will conduct regular unrestricted visits to all places of detention; states that ratify the Optional Protocol must accept visits by these bodies to all places of detention without the need for prior consent and must work with them to implement their recommendations. If the USA is serious about preventing torture and other cruel, inhuman or degrading treatment, ratifying the Optional Protocol would be an excellent way to demonstrate this commitment.

## Ending Guantánamo Bay detentions

*When I hear US officials describe the suicides of three Muslim prisoners at Guantánamo Bay last Saturday as ‘asymmetric warfare’ and ‘a good PR move’, I know it’s time to close that camp – not just because of what it’s doing to the prisoners but because of how it is dehumanizing the American captors.*

David Ignatius, Washington Post, 14 June 2006<sup>97</sup>

The continuing indefinite detention of some 460 people in Guantánamo remains a violation of international law, a distressing fact in their and their families’ lives, a stain upon the United

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<sup>95</sup> See, *Beyond Abu Ghraib: detention and torture in Iraq*, 6 March 2006

<http://web.amnesty.org/library/Index/ENGMDE140012006>.

<sup>96</sup> White House, 25 May 2006, <http://www.whitehouse.gov/news/releases/2006/05/20060525-12.html>.

<sup>97</sup> *A prison we need to escape*. David Ignatius, Washington Post 14 June 2006.

States, and a contradiction of the US administration's National Security Strategy, which takes the position that respect for the "non-negotiable demands of human dignity" is the route to security not an obstacle to it.

Amnesty International deeply regrets that it took four years and required court action before the USA named the detainees held in Department of Defense custody in the base. The organization notes, however, that the numbers do not add up. The authorities released a list of 759 names of people held in Department of Defense custody at the base between January 2002 and 15 May 2006. However, three days later it stated that 287 detainees have been released or transferred from the base and "approximately 460" remain there, making a total of 747.<sup>98</sup> Amnesty International requests clarification as to why there is a difference of 12 detainees.<sup>99</sup>

Indeed, many questions surrounding the Guantánamo detentions remain unanswered. For example:

- Were there ever people held at the base who were not in Department of Defense custody, who have not shown up on the Pentagon's list? For example, as already noted, the Central Intelligence Agency (CIA) operated its own area at the Guantánamo facility. Did the CIA only ever interrogate those in Defense Department custody? Were there any detainees held in exclusive CIA custody, or perhaps later transferred from the CIA to the Department of Defense? The 2005 Schmidt/Furlow report into FBI allegations of abuse in Guantánamo said that it found no evidence of "ghost detainees" having been held at the base, but there is no indication that the CIA was included within the scope of the investigation.<sup>100</sup> In the earlier Church report, the CIA did not provide any information on its activities in Guantánamo, Afghanistan or at undisclosed locations.<sup>101</sup>
- In addition to the inadequacy of investigations into alleged abuses by US personnel, to Amnesty International's knowledge, none of the military investigations conducted to date has looked into allegations that detainees have been ill-treated by or with the

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<sup>98</sup> *Detainee Transfer Announced*. Department of Defense News Release, 18 May 2006, <http://www.defenselink.mil/releases/2006/nr20060518-13076.html>.

<sup>99</sup> Amnesty International has previously raised concern that the lack of precision over detainee numbers raised the possibility that individual detainees could be moved to and from their places of detention, or between different US agencies, without any public knowledge of such transfers. See page 101-102, *USA: Human dignity denied, op.cit.*

<sup>100</sup> Army Regulation 15-6: Final Report. Investigation into FBI Allegations of Detainee Abuse at Guantanamo Bay, Cuba Detention Facility. Unclassified executive summary. (Schmidt/Furlow Report), 1 April 2005 (amended 9 June 2005), <http://www.defenselink.mil/news/Jul2005/d20050714report.pdf>.

<sup>101</sup> "(The CIA cooperated with our investigation, but provided information only on activities in Iraq.) It is important to highlight that it was beyond the scope of our tasking to investigate the existence, location or policies governing detention facilities that may be exclusively operated by OGAs, rather than by DoD." *Unclassified executive summary of Church Report*, <http://www.defenselink.mil/news/Mar2005/d20050310exe.pdf>. (OGA = other government agencies, eg. CIA); DoD = Department of Defense.)

involvement of agents of other countries while held in Guantánamo.<sup>102</sup> The US administration has never refuted allegations first raised by Amnesty International in May 2004 that agents of the Chinese government visited Guantánamo in September 2002 and participated in interrogations of ethnic Uighur detainees held there.<sup>103</sup> This allegation was again raised in federal court in 2005 and again the government did not refute it.<sup>104</sup> It is alleged that during the agents' visit, the detainees were subjected to intimidation and threats<sup>105</sup>, and to interrogation techniques such as environmental (temperature) manipulation, forced sitting for many hours, and sleep deprivation, some of which was on the instruction of the Chinese delegation. Similarly Omar Deghayes has claimed that he was twice interrogated by Libyan agents in Guantánamo, on 9 and 11 September 2004. He alleged that the US military authorities took him to an interrogation room with the air-conditioning on maximum and left him there for several hours, shackled and freezing cold. Eventually, at around midnight on 9 September 2004, four Libyan agents and three US personnel in civilian clothes entered the room. He said he was interrogated for around three hours by the Libyan agents, and again two days later. The agents allegedly made veiled threats of violence and death against him if he should ever be returned to Libya, and showed him pictures of severely beaten Libyan dissidents. Amnesty International has flight records showing that a Gulfstream V jet, registration N8068V (previously registered as N379P), flew direct from Tripoli in Libya to Guantánamo Bay the day before Omar Deghayes says he was first interrogated by the Libyan agents.<sup>106</sup> In another case, Ala Abdel Maqsd Muhammad Salim, an Egyptian national, has alleged that he was interrogated on a number of occasions in late 2004 by a delegation from Egypt. These Egyptian agents threatened him that he would be "disappeared" or subjected to

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<sup>102</sup> Amnesty International notes that the Pentagon's *Working Group Report on Detainee Interrogations in the Global War on Terrorism: Assessment of Legal, Historical, Policy, and Operational Considerations*, 4 April 2003, recommended an interrogation technique known as "false flag" which consisted of "convincing the detainee that individuals from a country other than the United States are interrogating him", and another known as "threat of transfer" characterized by "threatening to transfer to a 3<sup>rd</sup> country that subject is likely to fear would subject him to torture and death". The detainees in the cases cited here believe that the interrogators who threatened them were agents of their home countries. It is for the USA to investigate these allegations and to publish the findings in full.

<sup>103</sup> Amnesty International Urgent Action. Further information on UA 356/03. AI Index: AMR 51/090/2004, 25 May 2004. <http://web.amnesty.org/library/Index/ENGAMR510902004>.

<sup>104</sup> Declaration of Sabin Willett, 16 July 2005. *Abu Bakker Qassim and A'Del Abdu Al-Hakkim v. George W. Bush et al.*, Memorandum in support of petitioners' emergency motion to vacate stay order and issue writ directing immediate release of petitioners. Civil Action No. 05 CV 0497 in the United States District Court for the District of Columbia, 21 July 2005.

<sup>105</sup> According to the above affidavit, A'Del Abdu al-Hakim was told by the Chinese agents that "he was lucky the Pakistanis had turned him over to the Americans, rather than them, as if he thought this [i.e., Guantánamo Bay] was a prison, just wait until we [i.e., the Chinese] get you".

<sup>106</sup> See pages 22-23, USA: *Guantánamo and beyond*, op. cit. This Gulfstream V jet was operated by Premier Executive Transport, a CIA front company, and has been identified with a number of known renditions. (see 2.2 in USA: *Below the Radar – Secret flights to torture and 'disappearance'*, April 2006, [http://web.amnesty.org/library/pdf/AMR510512006ENGLISH/\\$File/AMR5105106.pdf](http://web.amnesty.org/library/pdf/AMR510512006ENGLISH/$File/AMR5105106.pdf)).

other harm after he was returned to Egypt.<sup>107</sup> During these interrogations he alleges that he was subjected to cruel use of shackles and chains and to environmental (temperature) manipulation via the air conditioning.

- The USA has not answered the question of how many children it has held in Afghanistan and Guantánamo. The authorities have apparently limited their definition of child to someone who is under 16, contradicting most international legal standards which hold that children are those who are under 18 years old and subject to particular protections.<sup>108</sup> Research suggests that there may have been at least 17 detainees who were taken to Guantánamo when they were under 18 years old.<sup>109</sup>

The latest questions to be raised in relation to the Guantánamo detainees surround the apparent suicides of three of them, Saudi nationals Mane'i bin Shaman bin Turki al-Habardi al-'Otaybi and Yassar Talal 'Abdullah Yahia al-Zahrani, who was reportedly 17 when he was taken into custody, and Yemeni national Salah 'Ali 'Abdullah Ahmed al-Salami. All three had previously participated in hunger-strikes and subjected to force feeding. All were held in a maximum security section of the detention camp. There are no records publicly available of the men's Combatant Status Review Tribunals. Amnesty International is disturbed by the Guantánamo Commander's description of the deaths as acts of "asymmetric warfare", by which he was tending to prejudge the outcome of the Naval Criminal Investigation Service investigation into the deaths.<sup>110</sup> Amnesty International believes that the military and the executive, as the authorities that have instigated and maintained a detention regime that has caused serious psychological suffering, and as they continue to rely on the war paradigm that they have used to justify rejection of fundamental human rights law and standards, will be unable to conduct the necessary investigation into the deaths and be seen by the outside world to have done so. Amnesty International reiterates its call for a full independent and impartial investigation into these deaths.<sup>111</sup>

Amnesty International urges the President to rescind his 13 November 2001 Military Order establishing military commissions and authorizing detention without charge or trial. The organization notes that in its responses to the Committee Against Torture, the USA asserted that individuals detained by the Department of Defense in Afghanistan and at Guantánamo are now held pursuant to this Military Order. However, this is entirely contrary to what the administration argued in federal District Court in *Rasul v. Bush*, when the

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<sup>107</sup> See *Sherif el-Mashad, et al. v. George W. Bush, et al*, Petitioner's supplemental memorandum opposing his rendition. Case no. 05-CV-270, United States District Court for the District of Columbia, 17 January 2006.

<sup>108</sup> See pages 21-22 of *USA: The threat of a bad example – undermining international standards as 'war on terror' detentions continue*, August 2003, [http://web.amnesty.org/library/pdf/AMR511142003ENGLISH/\\$File/AMR5111403.pdf](http://web.amnesty.org/library/pdf/AMR511142003ENGLISH/$File/AMR5111403.pdf).

<sup>109</sup> Information provided from research project of Reprieve, London, UK.

<sup>110</sup> Three Guantánamo Bay detainees die of apparent suicide. American Forces Information Service, News Article, [http://www.defenselink.mil/news/Jun2006/20060610\\_5379.html](http://www.defenselink.mil/news/Jun2006/20060610_5379.html).

<sup>111</sup> *USA: Independent investigation must be held into deaths of three Guantánamo detainees*, 12 June 2006, <http://web.amnesty.org/library/index/engamr510912006>.

government categorically denied that any detainee was held under the Order, and asserted instead that they were held more generally under the President's Commander-in-Chief powers. Amnesty International calls for precise clarification as to when the detainees, apart from the 15 who have been made eligible for trial by military commission (including 10 charged for trial), were made subject to the Military Order. Clearly, a government's vague or shifting description of the legal basis for detentions is a cause for serious concern in relation to the need to protect detainees from arbitrary arrest and ill-treatment.

## A framework for closing Guantánamo

*I'd like to end Guantánamo. I'd like it to be over with. One of the things we will do is we'll send people back to their home countries.... There are some who need to be tried in U.S. courts. They're cold-blooded killers.... And yet, we believe there's a – there ought to be a way forward in a court of law, and I'm waiting for the Supreme Court of the United States to determine the proper venue in which these people can be tried.*

President George W. Bush, 21 June 2006<sup>112</sup>

In its 19 May 2006 conclusions, the Committee against Torture called for the closure of the Guantánamo detention camp. Following the reported suicides of the three detainees on 10 June 2006, five UN human rights experts reiterated their call for urgent closure of the facility.<sup>113</sup> It is these calls for closure of Guantánamo which have drawn a series of comments from President Bush and a number of officials in the US administration.

Amnesty International was among the first to call for the closure of Guantánamo over a year ago and welcomes President Bush's statement of 8 May 2006 in which he said that he would "very much like to end Guantánamo", and "to get people to a court".<sup>114</sup> The President noted that the US administration was waiting for the Supreme Court to rule in *Hamdan v. Rumsfeld* on the question of trials. Amnesty International stresses, however, that the President does not have to wait for the Supreme Court to rule. He can announce now that the

<sup>112</sup> President Bush Participates in Press Availability at 2006 U.S.-EU Summit, 21 June 2006, <http://www.whitehouse.gov/news/releases/2006/06/20060621-6.html>. A few days earlier, President Bush had said that "I'd like to close Guantanamo, but I also recognize that we're holding some people that are darn dangerous, and that we better have a plan to deal with them in our courts. And the best way to handle – in my judgment, handle these types of people is through our military courts. And that's why we're waiting on the Supreme Court to make a decision. Press conference, <http://www.whitehouse.gov/news/releases/2006/06/20060614.html>. Prior to that, the President had said: "we would like to end the Guantánamo. We'd like it to be empty", and of the detainees: "I believe they ought to be tried in courts here in the United States. We will file such court claims once the Supreme Court makes its decision as to whether or not – as to the proper venue for these trials. And we're waiting on our Supreme Court to act." President Bush and Prime Minister Rasmussen of Denmark Participate in Joint Press Availability, Camp David, <http://www.whitehouse.gov/news/releases/2006/06/20060609-2.html>.

<sup>113</sup> *United Nations human rights experts request urgent closure of Guantánamo detention center.* <http://www.unhcr.ch/hurricane/hurricane.nsf/view01/D916F2EB424D1588C1257188004EDB76?opendocument>.

<sup>114</sup> See <http://www.whitehouse.gov/news/releases/2006/05/20060519.html>.

Guantánamo detention facility will close and that all the detainees will either be charged and tried without further delay in a US court or released with full non-*refoulement* guarantees.

While the possibility of Guantánamo's closure is now publicly being entertained within the US administration, various officials have questioned how this end can be brought about, raising legitimate questions about public security on the one hand and the safety of the detainees on the other. Amnesty International notes that several officials have indicated that the administration is open to suggestions as to how to resolve the Guantánamo situation. On 4 May, for example, John Bellinger said that the USA would "welcome the assistance of the international community" on this issue.<sup>115</sup> Earlier, Secretary of Defense Rumsfeld said of the continuing detentions at Guantánamo, that "if someone has a better idea, I'd like to hear it".<sup>116</sup> In similar vein, on 4 May, Attorney General Gonzales said that "I hear some critics say we should close down Guantánamo and yet no one is willing to offer the United States an alternative."<sup>117</sup>

On 21 May 2006, US Secretary of State Condoleezza Rice said that "We will be delighted when we can close down Guantánamo. Everybody wants to close down Guantánamo".<sup>118</sup> However, she asked those who have called for the closing of the detention camp – who include the United Nations Secretary General, the UN Committee Against Torture, the European Parliament and various European leaders and officials – to consider the security and human rights implications of releasing the detainees. Amnesty International does not claim that the closure of the Guantánamo detention facility is without its challenges. Yet the US government has the responsibility to meet this challenge.

Amnesty International here details its recommendations for an alternative to continued detentions at Guantánamo. In brief, those held in the base should be released unless they are to be charged and tried in accordance with international standards of fair trial. No detainees who are released should be forcibly sent to their country of origin or other countries where they may face serious human rights abuses. Indeed, it is crucial that emptying and closing down the Guantánamo camp not result in a transfer of the human rights violations elsewhere. In more detail, the organization recommends the following framework for determining what should happen to the detainees who are still held there.

### *General*

1. Any detention facility which is used to hold persons beyond the protection of international human rights and humanitarian law should be closed. The detention camp at Guantánamo Bay Naval Base falls into this category, and in more than four years of

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<sup>115</sup> Transcript of Legal Advisor Bellinger's Media Roundtable in Brussels, 4 May 2006, [http://useu.usmission.gov/Dossiers/Detainee\\_Issues/May0406\\_Bellinger\\_CIA\\_Flights.asp](http://useu.usmission.gov/Dossiers/Detainee_Issues/May0406_Bellinger_CIA_Flights.asp).

<sup>116</sup> Secretary Rumsfeld remarks at Council on Foreign Relations, 17 February 2006, <http://www.defenselink.mil/transcripts/2006/tr20060217-12538.html>.

<sup>117</sup> *US attorney general defends Guantanamo*, Agence France Presse, 4 May 2006.

<sup>118</sup> Interview on Fox News Sunday, <http://www.state.gov/secretary/rm/2006/66536.htm>.



detention operations there, the US administration has failed to bring the facility into compliance with international law and standards.

2. Closing Guantánamo must not result in the transfer of the human rights violations elsewhere. All detainees in US custody must be treated in accordance with international human rights standards, and, where relevant, international humanitarian law. All US detention centres must be open to appropriate external scrutiny, in particular that of the International Committee of the Red Cross (ICRC).
3. The responsibility for finding a solution for the detainees held in Guantánamo rests first and foremost with the USA. The US administration created the system of detention Guantánamo in which detainees – many of whom were transferred to the facility unlawfully – have been held without charge or trial, outside the framework of international law and without the possibility of full recourse to US courts. It is therefore the US administration's responsibility to redress this situation in full compliance with international human rights standards.
4. All US officials in the administration should desist from further undermining the presumption of innocence in relation to the Guantánamo detainees. The continued commentary on their presumed guilt applies a dangerous label to them – dangerous to the prospect for a fair trial and dangerous to the safety of any detainee who is released. This can only make the USA's task of resolving the Guantánamo issue more difficult.
5. Those currently held in Guantánamo should be released unless they are to be charged and tried in accordance with international standards of fair trial.
6. No detainees who are released should be forcibly sent to their country of origin or other countries where they may face serious human rights abuses.

#### ***Fair trials***

7. Those to be charged and tried must be charged with a recognizable crime under law and tried before an independent and impartial tribunal, such as a US federal court, in full accordance with international standards of fair trial. There should be no recourse to the death penalty.
8. Any evidence obtained under torture or other cruel, inhuman or degrading treatment or punishment should not be admissible. In light of the years of legal, physical and mental abuse to which detainees held in Guantánamo have been subjected, any trials must scrupulously respect international standards of fairness and any sentencing take into account the length and conditions of detention in Guantánamo or elsewhere prior to be transported to Guantánamo.
9. President George W. Bush should rescind his 13 November 2001 Military Order establishing military commissions and authorizing detention without charge or trial. The military commissions do not afford proper safeguards for a fair trial. They are not independent, the procedures before them do not secure a fair process (eg statements extracted under cruel, inhuman or degrading treatment may be used as evidence), the defendant may be excluded from hearing all of the evidence against him and, under the

Detainee Treatment Act, there is only a limited right of appeal against their sentences to a court of law.

*Solutions for those to be released*

10. There must be a fair and transparent process to assess the cases of each of the detainees who is to be released, in order to establish whether they can return safely to their country of origin or whether another solution ought to be found. In all cases detainees must be individually assessed, be properly represented by their lawyers and given a full opportunity to express their views. Relevant international agencies, such as the Office of the United Nations High Commissioner for Refugees (UNHCR), could be invited to assist in this task, in line with their respective mandates. The options before the US Administration to deal in a manner which fully respects the rights of detainees who are not to be tried and who therefore ought to be released without further delay include the following:

- (a) **Return.** The US authorities should return released detainees to their country of origin or habitual residence unless they are at risk of grave human rights violations, including prolonged arbitrary detention, enforced disappearances, unfair trial, torture or other ill-treatment, extrajudicial executions, or the death penalty. Among those to be returned are all those who according to the laws of war (Geneva Conventions and their Additional Protocols) should have been recognized after their capture as prisoners of war, and then released at the end of the international armed conflict in Afghanistan, unless they are to be tried for war crimes or other serious human rights abuses.
- (b) **Asylum in the USA.** The US authorities should provide released detainees with the opportunity to apply for asylum in the USA if they so wish, and recognize them as refugees if they meet the requirements of the 1951 UN Convention on Refugees (well-founded fear of persecution on certain grounds if returned to their country of origin). The US authorities must ensure that any asylum applicants have access to proper legal advice and to fair and effective procedures that are in compliance with international refugee law and standards, including the opportunity to contact UNHCR. Asylum applicants should not be detained except in the most exceptional circumstances.
- (c) **Other forms of protection in the USA.** Persons who do not meet the criteria of the 1951 UN Convention on Refugees, but are at risk of grave human rights abuses in the prospective country of return and wish to remain in the USA must receive other forms of protection and should be allowed to stay in the USA. They should not be detained, unless it is established that their detention is lawful, necessary and proportionate to the objective to be achieved, in accordance with international human rights law and standards.
- (d) **Transfer to third countries.** The US authorities may seek durable solutions in third countries for those who cannot be returned to their countries of origin

or habitual residence, because they would be at risk of grave human rights abuses, and who do not wish to remain in the USA. Any such solution should address the protection needs of the individuals, respect their human rights and take into account their views. All transfers to third countries should be with the informed consent of the individuals concerned. UNHCR should be allowed to assist in such a process, in accordance with its mandate and policies. Released detainees should not be subjected to any pressures and restrictions that may compel them to choose to resettle in a third country. Other countries should consider accepting released detainees voluntarily seeking resettlement there, especially countries of former habitual residence or countries where released detainees had close family or other ties.

### **Reparation**

11. The USA has an obligation under international law to provide prompt and adequate reparation, including restitution, rehabilitation and fair and adequate financial compensation to released detainees for the period spent unlawfully detained and other violations that they may have suffered, such as torture or other ill-treatment.<sup>119</sup> The right of victims to seek reparations in the US courts must not be limited.

### **Transparency pending closure**

12. The US authorities should invite the five UN experts – four Special Rapporteurs and the Chairperson of the Working Group on Arbitrary Detention – to visit Guantánamo without the restrictions that led them to turn down the USA’s previous invitation. There should be no restrictions on the experts’ ability to talk privately with detainees.

### **Conclusion**

*I’m going to make decisions not based upon politics, but based upon what’s best for the United States of America.*

President George W. Bush, 14 June 2006<sup>120</sup>

A central goal of US foreign policy, according to the State Department, is the promotion of human rights. It understands, it says, that respect for human rights “helps secure the peace, deter aggression, promote the rule of law, combat crime and corruption, strengthen democracies, and prevent humanitarian crises”. The administration promised to place the

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<sup>119</sup> Article 14 of the UN Convention against Torture states: “Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation.” Those who have been subjected to arbitrary arrest also have a right to compensation. Article 9.5 of the International Covenant on Civil and Political Rights, which the USA ratified in 1992, states: “Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation”. See *USA: Human Dignity Denied*, *op.cit.* pages 167-169.

<sup>120</sup> Press conference, <http://www.whitehouse.gov/news/releases/2006/06/20060614.html>.

“non-negotiable demands of human dignity” at the centre of its “war on terror”. It has failed to do live up to its word.

Because the promotion of human rights is “an important national interest”, the United States says that it will seek, *inter alia*, to:

- Hold governments accountable to their obligations under universal human rights norms and international human rights instruments;
- Promote greater respect for human rights, including freedom from torture...;
- Promote the rule of law, seek accountability, and change cultures of impunity.<sup>121</sup>

Amnesty International urges the USA to apply these principles to its policies and practices. The organization recalls the remarks of Secretary of State Condoleezza Rice on 14 March 2005 when announcing the nomination of Karen Hughes as Under Secretary of State for Public Diplomacy and Public Affairs. Secretary Rice stressed the importance of public diplomacy for the USA and suggested that too few people around the world know of the value that the United States places on international institutions and the rule of law. Amnesty International pointed out that Under Secretary Hughes would face an uphill task in persuading the world of the USA’s commitment to such values and institutions in the absence of substantive change in its “war on terror” detention policies and practices.<sup>122</sup>

On 10 May 2006, Under Secretary Hughes said that “People around the world need to know that America proudly stands for not only our own rights but also for human rights, human freedom, human dignity, the value of every person everywhere.”<sup>123</sup> With this in mind, Amnesty International reiterates that the international community is unlikely to be persuaded of this until the Guantánamo detention camp is consigned to the history books, all US detentions are opened up to scrutiny and subject to full application of international law and standards, and all detainees in US custody are afforded the full range of protections against torture and ill-treatment as the Committee Against Torture has recommended.

## Recommendations

Amnesty International has made numerous recommendations in previous reports on the USA’s detention policies and practices in the “war on terror”, including more than 60 recommendations based upon its 12-Point Programme for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by Agents of the State.<sup>124</sup> The recommendations in this present memorandum include for President George W. Bush or the wider US government to:

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<sup>121</sup> State Department, see <http://www.state.gov/g/drl/hr/>.

<sup>122</sup> See pages 26-27 of *USA: Guantánamo and beyond*, *op.cit.*

<sup>123</sup> *Remarks at the Council on Foreign Relations*, <http://www.state.gov/r/us/66098.htm>.

<sup>124</sup> For example, see pages 154-160 of *USA: Guantánamo and beyond: the continuing pursuit of unchecked executive power*, May 2005, [http://web.amnesty.org/library/pdf/AMR510632005ENGLISH/\\$File/AMR5106305.pdf](http://web.amnesty.org/library/pdf/AMR510632005ENGLISH/$File/AMR5106305.pdf).

- Implement the recommendations of the Committee Against Torture contained in its conclusions on the USA released on 19 May 2006;
- Close the Guantánamo detention facility, and bring all the detainees held there to fair trial or release them with full *non-refoulement* guarantees, as outlined in Amnesty International's *Framework for Closing Guantánamo*;
- Establish a full independent, impartial and non-partisan commission of inquiry into all aspects of the USA's "war on terror" detention and interrogation policies and practices, including renditions;
- Appoint an independent Special Counsel to carry out a criminal investigation into the conduct of any administration officials against whom there is evidence of involvement in crimes in the "war on terror".
- Issue a presidential order to all agencies of the US government to fully register all detainees in their custody or under their effective control, to disclose where they are held, and to register any transfer to another detention facility. Any previous executive order that contradicts this, including any "exceptional authorities" relating to detention of foreign nationals that the President may have granted to the CIA or any other agency after 11 September 2001, should be revoked with immediate effect;
- Cease the policy of "no comment" with regard to the existence of secret detention facilities, and to end US government opposition, as expressed in *ACLU v. CIA*, to the CIA or any other agency disclosing whether documents relating to such detentions exist. All such documents should be made public;
- Withdraw or amend the central presidential directive of 7 February 2002 – *Humane treatment of al Qaeda and Taliban detainees* – and replace it with a version that fully reflects international human rights and humanitarian law and standards;
- Revoke the Military Order of 13 November 2001 establishing military commissions and authorizing detention without charge or trial. Clarify the USA's statement to the Committee Against Torture that all those held in Guantánamo and Afghanistan are now held pursuant to this Order, explaining when this apparent switch in policy was made (see page 30);
- Explain the discrepancy between the figure that the Pentagon gave for the total number of detainees it has held in Guantánamo since detention operations began, and the number of detainees now held in the base added to the number released or transferred from it (see page 27);
- Withdraw the Presidential signing statement to the Detainee Treatment Act;
- Ensure that the revised Army Field Manual fully reflects international human rights and humanitarian law and standards, and is fully unclassified;
- Establish a civilian-led independent investigation into the recent reported suicides in Guantánamo, and pending closure of the facility ensure that conditions and treatment

of the detainees minimizes their mental and physical suffering. All detainees should have full and continuing access to legal counsel and independent medical care;

- Clarify precisely how many children – defined as under 18 years old at the point of being taken into detention – the USA has held in Guantánamo;
- Initiate an independent investigation into allegations that detainees in Guantánamo have been subjected to torture or other ill-treatment by or at the instigation of agents of other countries while held in the base, including China, Libya and Egypt. The findings of these investigations should be made public;
- Demonstrate its commitment to eradicating torture and ill-treatment by ratifying the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.