

**USA**

**CRIMES AND  
IMPUNITY**

**FULL SENATE COMMITTEE REPORT ON CIA  
SECRET DETENTIONS MUST BE RELEASED,  
AND ACCOUNTABILITY FOR CRIMES UNDER  
INTERNATIONAL LAW ENSURED**

**AMNESTY  
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## FOREWORD: A DEAFENING SILENCE ON ACCOUNTABILITY

*In the end truth will out*

William Shakespeare, Merchant of Venice, Act 2, Scene II

This Amnesty International report responds to a document issued by the US Senate Select Committee on Intelligence on 9 December 2014. That 500-page document is itself the summary of the Committee's report, some 13 times longer, about the programme of secret detention operated by the Central Intelligence Agency (CIA) from 2002 to 2009 under presidential authority granted six days after the crime against humanity committed in the USA on 11 September 2001 (9/11). The full report remains classified Top Secret.

The Committee focussed its attention on whether the programme was effective in gaining information from detainees and whether the CIA accurately represented to other parts of government the programme's operational details and intelligence outputs. However, these questions are being asked to the exclusion of a fundamental one – when will the USA end the impunity and stop blocking redress for the crimes under international law committed in the programme, as well as revealing the full truth about these human rights violations? Over four months after release of the summary, the administration's answer would seem to be “never”.

Returning to the Senate Committee's summary four months on, Amnesty International does not address whether the CIA programme was or was not effective, or whether an agency described by a former Deputy Secretary of Defense as one that “thrives on deception” was economical with the truth. Rather, the organization extracts detail from the summary and sets it into a human rights frame. For the summary is not a human rights report, and makes no pretence to be. It does not assess the CIA's conduct against the USA's international human rights obligations, and its overarching focus on effectiveness and CIA reporting frequently relegates case details to footnotes or directs the reader to Volume III of the full report for “additional information”, which the public cannot see because it is classified.

The Committee fails to mention that most or all those held in the programme were subjected to enforced disappearance, a crime under international law. On another crime under international law, torture, it is left to the Chairperson in her foreword to give her “personal conclusion” that “CIA detainees were tortured”. The Committee's collective findings avoid the word torture, agreeing only that interrogations were “brutal and far worse”, and conditions of confinement “harsher”, than the CIA had “represented to policymakers and others”.

The summary is nonetheless an important document. It contains previously undisclosed details about a covert operation that was incompatible with international human rights law from the outset. Yet it has been met with a deafening silence from the US administration as far as accountability is concerned. President Barack Obama continues to ignore that issue, even though he had acknowledged before the summary was published that “we tortured some folks” in the CIA programme. The Department of Justice, which closed its limited investigations into CIA interrogations in 2012, with no charges levelled against anyone, appears to have no intention to change that state of affairs in the wake of the Committee's findings. Indeed its copy of the full report apparently remains unopened and unread.

All branches of government must ensure their country meets its human rights obligations. Congress should press the Department of Justice to explain why it has not re-opened the investigation it shut down in 2012 and why it has failed to bring to justice individuals suspected of being responsible for crimes under international law. The full Senate Committee report should be declassified and published and any use of secrecy that conceals human rights violations or blocks accountability and redress should be ended. And measures, legislative or otherwise, to strengthen safeguards against torture and enforced disappearance, should be implemented.

## SUMMARY: 'WATCH AMERICA. WATCH HOW WE DEAL WITH THIS'

*Accountability for security force abuses is essential... to the realization of the promise of the Universal Declaration of Human Rights*  
Obama administration, February 2014<sup>1</sup>

On 9 December 2014, the US Senate Select Committee on Intelligence (Senate Intelligence Committee, Senate Committee) published the 500-page Executive Summary of its report on the CIA-operated secret detention programme. Dissenting and additional views were published with it.<sup>2</sup> Senator Angus King, for example, recalled what Secretary of State Colin Powell had said a decade earlier when responding to the photographic evidence of torture and other ill-treatment perpetrated by US personnel in Abu Ghraib prison in Iraq:

"Watch America. Watch how we deal with this. Watch how America will do the right thing. Watch what a nation of values and character, a nation that believes in justice, does to right this kind of wrong."<sup>3</sup>

The world watched then as US officials sought to perpetuate the myth that what happened at Abu Ghraib could be put down to a few "bad apples". Now it is watching how the USA deals with the crimes under international law committed in secret detention facilities operated by the CIA under presidential authority. When will the world see the USA end the festering injustices associated with its programmes of secret rendition, detention and interrogation?

Another question raised by the summary is what President George W. Bush knew about the CIA detention programme being operated under authority he granted in September 2001:

"In April 2006, the CIA briefed the president on the 'current status' of the CIA's Detention and Interrogation Program. According to an internal CIA review, this was the first time the CIA had briefed the president on the CIA's enhanced interrogation techniques."<sup>4</sup>

Of course, even if it is true that this was the first time *the CIA* had briefed the President on interrogation techniques used in a programme conceived in late 2001 and underway in early 2002, it does not mean it was the first time he had been briefed at all, formally or informally, by his National Security Advisor, White House Counsel, Vice President, or other officials.

While some officials are named in the summary, the identities of others have been redacted or disguised.<sup>5</sup> The locations of secret detention facilities or identities of collaborating governments are hidden behind coding or redaction. **Prior to Part 1**, Amnesty International emphasises the need for declassification of the full report, without any redactions that conceal information about human rights violations, including crimes under international law.

**Part 1** outlines some of what the summary adds to what was already in the public realm

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<sup>1</sup> Introduction to the 2013 Report on Human Rights Practices, US Department of State, released 27 February 2014, <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper>

<sup>2</sup> The summary and other materials, including additional and dissenting views of SSCI members are available at <http://www.intelligence.senate.gov/study2014.html>

<sup>3</sup> Senator King, additional views. Secretary of State Colin Powell, Commencement address, Wake Forest University, 17 May 2004, available at <http://www.wfu.edu/wfunews/2004/051704transcript.html>

<sup>4</sup> SSCI Executive Summary, page 158. For footnotes in this report, SSCI is used for Senate Select Committee on Intelligence.

<sup>5</sup> The Committee "replaced the true names of some senior non-undercover CIA officials with pseudonyms. The executive branch then redacted all pseudonyms for CIA personnel, and in some cases the titles of position held by the CIA personnel". SSCI Executive Summary, footnote 6.



about this programme. In addition to detainee case details, the Senate Committee discloses a visit in 2002 by a delegation of the Federal Bureau of Prisons to a secret CIA facility in Afghanistan, provides some details on the consequences of torture and other ill-treatment on detainees, and outlines some minimal disciplinary actions taken against CIA personnel.

**Part 2** looks at two of the locations used for secret detentions – Afghanistan and the US naval base at Guantánamo in Cuba.<sup>6</sup> Many of the CIA detainees spent at least some of their undisclosed detention in Afghanistan, and some new detail can be gleaned about the CIA's activities there. As for Guantánamo, the Senate Intelligence Committee confirms that the base was used as a CIA “black site” in 2003 and 2004, and gives some indications as to who was held there and where they were then sent. The Senate Committee's list of detainees held in CIA custody reveals that about a quarter of them are today held at Guantánamo, where the injustices of their prior treatment are compounded by ongoing indefinite detention without charge, or in a few cases, subjection to a military commission system incompatible with international fair trial standards.

It bears restating that this was not some rogue operation. This was a programme, calculated in its construction and unlawful from day one, in which the go ahead was given to CIA personnel to engage in acts amounting to the crimes under international law of torture and enforced disappearance, and for which impunity was envisaged early on and continues to this day. Whether or not the programme was “effective”, and regardless of who knew what when, the USA has an obligation to reveal the full truth about the human rights violations that occurred, to bring to justice those responsible, and to ensure redress.

There were many involved in setting the programme up and running it, or turning a blind eye to it as evidence of abuses emerged – from senior politicians and intelligence officials, to legislators and lawyers, to doctors and psychologists, to interrogators and guards, in the USA and elsewhere. There is clearly a profound human rights deficit at the heart of government when even senior law officers such as the Attorney General and Solicitor General actively support their country's systematic use of secret detention, as the Committee indicates.

**Part 3** considers the involvement of executive officials in the CIA detention programme. On this question, Amnesty International in 2011 set out the obligations upon other countries to investigate former President George W. Bush for his alleged involvement in crimes under international law in the event he travelled to their territory.<sup>7</sup> This report looks at what the summary report adds in this regard, including in relation to President Bush's involvement in approving the rendition of Abu Zubaydah to the CIA's first “black site”.

The Senate Intelligence Committee reveals CIA concern in 2005 about congressional moves at that time towards establishing a commission of inquiry into US detentions, in particular that any such inquiry would uncover videotapes of interrogations. No commission was ever established and, as is well known, the CIA destroyed the videotapes in question. **Part 4** outlines how, as important as it is, this Senate Committee review is insufficient to discharge US obligations to ensure accountability for torture, enforced disappearance and other violations arising from the USA's post-9/11 detention policies and practices. It also asks the question, where was Congress when information came into the public domain as early as 2002 that the USA was using secret detention, let alone torture? Even now, the legislature must do more to bring the USA into line with international law on current detentions and accountability for past violations.

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<sup>6</sup> See also Europe: Breaking the conspiracy of silence: USA's European ‘partners in crime’ must act after Senate torture report, 20 January 2015, <http://www.amnesty.org/en/library/info/EUR01/002/2015/en>

<sup>7</sup> Bringing George W. Bush to justice: International obligations of states to which former US President George W. Bush may travel, 2011 <http://www.amnesty.org/en/library/info/AMR51/097/2011/en>

As the Committee's summary was awaited, President Obama acknowledged that torture had occurred in the CIA programme, but pointed to the fear generated by the 9/11 attacks and appealed for an understanding of the task faced by law enforcement and national security personnel, who "were working hard under enormous pressure and are real patriots."<sup>8</sup> Of course, understanding why human rights violations happen is important in ensuring they do not recur. But in the USA, "understanding" has become part of an official narrative that is interwoven with impunity. As such, it effectively becomes justification.<sup>9</sup>

Under international law, there is no equivocation. Torture and other cruel, inhuman or degrading treatment are never legal. Even in a time of war or threat of war, even in a state of emergency which threatens the life of the nation, there can be no exemption from this prohibition. The same is true of enforced disappearance.

When the summary was published, a familiar note of US exceptionalism was in the air. President Obama greeted the report by saying that "one of the strengths that makes America exceptional is our willingness to openly confront our past, face our imperfections..."<sup>10</sup> Senior administration officials added that "as Americans, we are committed to sending a clear message to the world that we support transparency".<sup>11</sup> Yet, the vast bulk of what the Senate Committee found about how detainees were treated remains buried in secrecy. And the administration had itself withheld nearly ten thousand CIA documents (*documents* not pages). The White House denied the Senate Committee access to 9,400 CIA documents relating to the CIA's secret detention programme, "pending a determination and claim of executive privilege". The Committee had requested these documents over "several years", including on multiple occasions in 2013, but had "received no response from the White House".<sup>12</sup>

In a proclamation against torture two months after the Abu Ghraib photos were published, President Bush said that what they depicted was "inconsistent with our policies and our values as a Nation."<sup>13</sup> Two months after release of the Senate Committee summary, the Obama administration said that "Harsh interrogation techniques highlighted in that Report are not representative of how the United States deals with the threat of terrorism today, and are not consistent with our values."<sup>14</sup> Yet it would seem that for many years and for many officials and others, they were. Moreover it would appear that lack of truth, accountability and redress for crimes under international law is consistent with "national values".

All those suspected of being responsible for the commission of crimes under international law in this programme, regardless of their level of office, must be brought to justice. Those who were subjected to human rights violations must be given genuine access to meaningful remedy. And the full truth about these violations must be disclosed. We are not there yet.

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<sup>8</sup> Press conference by the President, 1 August 2004, <http://www.whitehouse.gov/the-press-office/2014/08/01/press-conference-president>

<sup>9</sup> USA: 'We tortured some folks': The wait for truth, remedy and accountability continues as redaction issue delays release of Senate report on CIA detentions, 2 September 2014, <http://www.amnesty.org/en/library/info/AMR51/046/2014/en>

<sup>10</sup> Statement by the President, 9 December 2014, <http://www.whitehouse.gov/the-press-office/2014/12/09/statement-president-report-senate-select-committee-intelligence>

<sup>11</sup> Background Briefing by Senior Administration Officials on the Senate Select Committee on Intelligence Detention and Interrogation Report, 9 December 2014, <http://www.whitehouse.gov/the-press-office/2014/12/09/background-briefing-senior-administration-officials-senate-select-committee>

<sup>12</sup> SSCI Executive Summary, footnote 2.

<sup>13</sup> Statement on UN International Day in Support of Victims of Torture, 26 June 2004. Within days, Janat Gul (see §3.4a) was rendered to CIA custody where he was subjected to "enhanced" interrogation.

<sup>14</sup> Report of the USA submitted to the UN High Commissioner for Human Rights in conjunction with the Universal Periodic Review, 6 February 2015, para. 96, <http://www.state.gov/j/drl/upr/2015/237250.htm>

## **‘DO NOT OPEN, DO NOT ACCESS’: FULL REPORT STILL BURIED**

*The inner envelope containing the CD remains sealed and the Department has marked the outer envelope ‘Congressional Record – Do Not Open, Do Not Access. Since receiving the CD in the Department, the contents of the disc have never been opened, accessed, or read*  
US Department of State, on its compact disc version of the full Senate Committee report

The full 6,700-page Senate Intelligence Committee report has been provided to the White House, the CIA, the Department of Justice, the Department of Defense, the Department of State, and the Office of the Director of National Intelligence.<sup>15</sup> Its level of classification appears effectively to be burying it. In the case of the Department of Defense (DoD):

“The Report has not been placed within a DoD system of records, it is stored in secure locations, access to it is limited to a small number of persons with proper clearance and a need to know, and access is strictly controlled by the Under Secretary of Defense for Intelligence... DoD has two copies of the full SSCI Report and both are kept in the sensitive compartmented information facilities (SCIFs). One is kept in a safe in the SCIF office of the Under Secretary of Defense for Intelligence. The other copy is on a stand-alone TOP SECRET laptop in the SCIF office of the Under Secretary’s principal legal adviser, the DoD Deputy General Counsel (Intelligence), so that she may address/advise on litigation and other legal related matters, as necessary. Only the Deputy General Counsel has access to that copy. Further, given the highly classified nature of the report, broad dissemination throughout DoD is not possible”.<sup>16</sup>

The Department of State received the full report on a compact disc (CD), after which

“The inner envelope containing the CD was never opened, and the CD was immediately placed into a secure storage facility. It was later transferred to a secured location within the Bureau of Intelligence and Research (INR), which is the focal point for receiving and storing sensitive compartmented classified information. The inner envelope containing the CD remains sealed and the Department has marked the outer envelope ‘Congressional Record – Do Not Open, Do Not Access. Since receiving the CD in the Department, the contents of the disc have never been opened, accessed, or read...”<sup>17</sup>

Two copies of the report were sent to the Office of Legislative Affairs (OLA), Department of Justice (DoJ) – one for the Department and one for the Federal Bureau of Investigation (FBI):

“The package was classified as ‘Top Secret/Sensitive Compartmented Information (TS/SCI) with additional classification markings for the applicable codeword... SCI is sometimes referred to as ‘codeword’ information, and its sensitivity requires that it be protected in a much more controlled environment than other classified information.... The two copies of the Full Report were delivered in a single package containing two discs... [The recipient] rewrapped the copy for the FBI in the original wrapping, the interior of which was marked TS/SCI with the applicable codeword, placed the DoJ copy in another envelope, marked it with the same classification markings, as well as ‘Senate Intel RDI Report’, and immediately placed both copies into OLA’s SCIF... The copies of the Full Report... were not distributed further... and the FBI has neither retrieved nor reviewed its copy of the Full Report, which remains in the OLA SCIF”.<sup>18</sup>

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<sup>15</sup> SSCI Executive Summary, Foreword by Senator Dianne Feinstein.

<sup>16</sup> *ACLU v. CIA*, Declaration of Mark H. Herrington, US District Court for DC, 21 January 2015.

<sup>17</sup> *ACLU v. CIA*, Declaration of Julia E. Frifield, US District Court for DC, 21 January 2015.

<sup>18</sup> *ACLU v. CIA*, Declaration of Peter J. Kadzik, US District Court DC, 21 January 2015. See also FBI chief is not sure where ‘torture report’ is. The Hill, 12 March 2015,

The Senate Intelligence Committee's then Chair, Senator Dianne Feinstein, expressed the hope in her foreword to the summary that distributing the report to these various departments would "prevent future coercive interrogation practices and inform the management of other covert action programmes". In contrast, the new Chairperson, Senator Richard Burr, is reported to have called on the various departmental recipients of the report to return the copies.<sup>19</sup> Senator Burr was one of the Committee members to sign the minority (dissenting) report, which argued that the review amounted to an attack on "the CIA's integrity and credibility in developing and implementing the Program", and created "the false impression that the CIA was actively misleading policy makers" during the programme's lifetime.

On 21 January 2009, the day before he ordered an end to the Guantánamo detentions within a year and for the CIA to "close as expeditiously as possible any detention facilities that it currently operates", President Obama issued a memorandum proclaiming:

"My administration is committed to creating an unprecedented level of openness in Government... Transparency promotes accountability and provides information for citizens about what their Government is doing".<sup>20</sup>

The summary rightly states that the Committee's study – begun in March 2009, completed in December 2012, and updated in 2014 – is "the most comprehensive review ever conducted of the CIA's Detention and Interrogation Program".<sup>21</sup> Although important, the summary reveals only a small part of what the Committee found in relation to the abuse of detainees. The full 6,700 page report provides "substantially more detail" and is "far more extensive".<sup>22</sup>

The full "excruciating" details on "each of the 119 known individuals who were held in CIA custody" are contained in Volume III of the full Senate Committee report, which remains classified Top Secret.<sup>23</sup> The many footnotes stating "see Volume III for additional information" direct the public to information it cannot see.<sup>24</sup> This is secrecy blocking the individual and collective right to truth.

The full report should be declassified, with priority for expedited release given to Volume III. The USA's obligation to disclose all evidence of human rights violations requires that it release the full picture. The locations of all secret detention sites, and where detainees were held at the behest of the USA by other governments, should be made public. While certain names can be kept confidential, this should not be at the expense of accountability.

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<http://thehill.com/policy/defense/235567-fbi-head-i-dont-know-location-of-controversial-spy-doc>

<sup>19</sup> Feinstein response to call for return of Senate torture report, 20 January 2015, <http://www.feinstein.senate.gov/public/index.cfm/press-releases?ID=60c0eed2-df3b-4729-9910-22b9eb9c98fa>. See also Statement of Senator Patrick Leahy, 18 March 2015, <http://www.leahy.senate.gov/press/statement-of-senator-patrick-leahy-d-vt-ranking-member-senate-judiciary-committee-on-torture>

<sup>20</sup> Transparency and open government. Memorandum for the Heads of Executive Departments and Agencies, 21 January 2009. Federal Register, Vol. 74, No. 15, p. 4685.

<sup>21</sup> SSCI Executive Summary, page 9.

<sup>22</sup> SSCI Executive Summary, Foreword by Senator Dianne Feinstein.

<sup>23</sup> *Ibid.*

<sup>24</sup> For example, to rebut the CIA's assertion that any interrogation process would begin not with "enhanced" techniques but with an "open, non-threatening approach" to determine if the detainee would be "cooperative", the summary points to Volume III for "examples of CIA detainees being immediately subjected to the CIA's enhanced interrogation techniques", including the cases of at least six detainees in 2003 who were "stripped and shackled, nude, in the standing stress position for sleep deprivation or subjected to other enhanced interrogation techniques prior to being questioned". SSCI Executive Summary, Footnote 2366. In this regard, the SSCI names Asadullah, Abu Yasir al-Jaza'iri, Suleiman Abdullah, Abu Hudhaifa, Hambali, and Majid Khan.

## BLACK ON BLACK: REDACTIONS AND CLASSIFICATION

*The United States is very pleased to join consensus on this resolution. Respect for the right to truth serves to advance respect for the rule of law, transparency, honesty, accountability, justice and good governance... One of the core tenets guiding our participation as a member of the UN General Assembly is fidelity to the truth. We see the right to truth as closely linked to the right to seek, receive, and impart information under Article 19 of the International Covenant on Civil and Political Rights... In conclusion, we underscore that the right to truth is inextricably intertwined with the promotion of democratic ideals, human rights, and justice*  
Obama administration, November 2010<sup>25</sup>

Two years before the Senate Committee released its summary, the European Court of Human Rights issued a ruling in which four of its judges wrote in a concurring opinion:

“In practice, the search for the truth is the objective purpose of the obligation to carry out an investigation and the *raison d’être* of the related quality requirements (transparency, diligence, independence, access, disclosure of results and scrutiny). For society in general, the desire to ascertain the truth plays a part in strengthening confidence in public institutions and hence the rule of law. For those concerned – the victims’ families and close friends – establishing the true facts and securing an acknowledgment of serious breaches of human rights and humanitarian law constitute forms of redress that are just as important as compensation, and sometimes even more so. Ultimately, the wall of silence and the cloak of secrecy prevent these people from making any sense of what they have experienced and are the greatest obstacles to their recovery.”<sup>26</sup>

The European Court noted that “the concept of ‘State secrets’ has often been invoked to obstruct the search for the truth”, and that it had earlier been asserted in the US courts by the US government in the case now before the Court.<sup>27</sup> That case concerned **Khaled El-Masri**, one of the former detainees whose name now appears in the Senate Committee’s summary. The European Court of Human Rights found that he had been subjected to torture by the CIA at Skopje airport in Macedonia after he was handed over to the agency by Macedonian personnel, and that he had been subjected to enforced disappearance “throughout his captivity” which included four months in secret CIA detention in Afghanistan in 2004.

Today, the CIA describes Khaled El-Masri’s detention as “improper”, and the CIA Inspector General concluded in 2007 that his “prolonged detention” was “unjustified”.<sup>28</sup> The Senate

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<sup>25</sup> Explanation of position by Laurie S. Phipps, Advisor, of the Proclamation of 24 March as the International Day for the Right to the Truth Concerning Gross Human Rights Violations and the Dignity of Victims Resolution, 11 November 2010, <http://usun.state.gov/briefing/statements/2010/151114.htm>

<sup>26</sup> The case of *El-Masri v. Former Yugoslav Republic of Macedonia*, 13 December 2012, Joint concurring opinion of Judges Tulkens, Spielmann, Sicilianos and Keller.

<sup>27</sup> For example, in 2007, the Bush administration invoked “state secrets privilege” in the case of a lawsuit brought by Binyam Mohamed, Abou Elkassim Britel, Ahmed Agiza, Muhammad Faraj Ahmed Bashmilah, and Bisher al-Rawi, who variously alleged that they were “rendered” to secret detention in Morocco, Egypt and Afghanistan and tortured or otherwise ill-treated. The District Court dismissed the lawsuit. In 2009, a three-judge panel of the Ninth Circuit Court of Appeals overturned the ruling, saying that acceptance of the administration’s position would “effectively cordon off all secret government actions from judicial scrutiny, immunizing the CIA and its partners from the demands and limits of the law.” The Obama administration appealed. In 2010, by six votes to five, the full Ninth Circuit upheld the invocation of the “state secrets privilege”. In 2011, the US Supreme Court refused to intervene. Binyam Mohamed, Muhammad Bashmilah and Bisher al-Rawi are listed in the SSCI report as former CIA detainees, while the other two are not, as not deemed individuals whose rendition ended in CIA custody.

<sup>28</sup> The SSCI reveals that two detainees taken into secret CIA custody were in fact CIA sources,

Committee also reveals, however, that then CIA Director Michael Hayden had decided that no action was necessary against those responsible because “mistakes should be expected in a business filled with uncertainty” and the “CIA leadership must stand behind the officers who make them”.<sup>29</sup> He was referring to the CIA’s admission that this was the case of an individual whose abduction, rendition and detention was “not supported by available intelligence”.<sup>30</sup> But even in the case of “terrorists who posed a threat to US interests”, abduction, enforced disappearance, torture and other ill-treatment are always wrong, always unlawful. The “mistake” was the programme itself, yet countless officials supported it.

It seems remarkable that even now, a decade on, the USA is still classifying Top Secret the country and facility in which Khaled El-Masri was held.<sup>31</sup> The Senate Intelligence Committee summary explains that the CIA “requested that country names and information directly or indirectly identifying countries be redacted”.<sup>32</sup> The names of the countries which hosted secret detention facilities or held detainees at the behest or involvement of the CIA are therefore reduced to the label of “a foreign government”, or to a letter code, and that letter code is redacted throughout “by the executive branch”.<sup>33</sup> The names of secret detention facilities are colour-coded, as outlined below, and sometimes redacted. Amnesty International considers that this use of redaction is unacceptable as it obscures the truth about where human rights violations happened and serves to block accountability and access to remedy. Essentially the USA continues to hide the location of crime scenes.

Some redactions or pseudonyms in the Senate Committee summary appear to be inconsistent with other materials. For example, the names of two psychologists contracted by the CIA to work on development of the interrogation programme, and who became central to its operation as contract interrogators, have been given the pseudonyms Dr Grayson Swigert and Dr Hammond Dunbar. In 2005, the two men formed a company, which then was contracted by the CIA to provide interrogators and “operational psychologists, debriefers, and security personnel on CIA detention sites”. Also, “on behalf of the CIA”, personnel from this company participated in interrogations of “detainees held in foreign government custody and served as intermediaries between entities of those governments and the CIA”. Its chief operating officer

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individuals “working for a foreign partner government”. It was not until after the CIA had taken them into secret custody and subjected them to the “enhanced interrogation techniques of sleep deprivation and dietary manipulation” that the agency “confirmed that the detainees had been trying to contact the CIA for weeks to inform the CIA of what they believed were pending al Qa’ida terrorist attacks” (footnote 2426). Both detainees were subjected to 24 hours shackled in the standing sleep deprivation position (page 133) Even after the CIA had decided that the two should not be in custody, they were “held for [redacted] additional months before they were released” (footnote 2426). The SSCI also points to the case of “two innocent individuals”, Sayed Habib and Shaistah Habibullah Khan who were taken into CIA custody in April and July 2003 respectively and released in August and February 2004 respectively. The SSCI notes that the CIA’s response to it in June 2013 asserted that the detention of these two men “can only be considered ‘wrongful’ after the fact” (page 83 and footnote 448). See also footnote 31.

<sup>29</sup> SSCI Executive Summary, page 129. General Hayden was Director from May 2006 to February 2009.

<sup>30</sup> SSCI Executive Summary, page 129.

<sup>31</sup> Amnesty International, for example, wrote to the CIA in August 2004, having interviewed Khaled El-Masri, with the information that he had been held in Kabul, Afghanistan. More than a decade later, the SSCI summary states that he was rendered to “a Country [redacted] facility used by the CIA for detention purposes” (page 128). It seems, then, that he was held in an Afghan facility at the behest of the CIA. While this would be consistent with what Khaled El-Masri told Amnesty International in 2004 – he said he believed the prison was in Kabul and that all the guards were Afghan – it has been thought that he might have been held in the “Salt Pit”, to which the SSCI gives the pseudonym “Detention Site Cobalt”. While this is not impossible, if he was in Detention Site Cobalt (where there also were Afghan guards), it is not clear why the SSCI would not specify that, given that it does so for other cases in the report.

<sup>32</sup> SSCI Executive Summary, page 10.

<sup>33</sup> SSCI Executive Summary, footnote 6.

was the former chief of the “division of the CIA supervising the Renditions and Detentions Group”, and the company hired a number of “CIA security protective officers” to work on its contracts with the CIA. From the time of its creation to the final stages of its contract in 2010, the CIA paid the company “more than \$75 million for services in conjunction with the CIA’s Detention and Interrogation Program”.<sup>34</sup> The summary calls the company “Company Y”.

Yet the names of these contractors and their company have been in the public domain for years, indeed were published by the Senate Armed Services Committee in its 2008 report on the treatment of detainees. Dr Grayson Swigert’s real name is Dr James Mitchell and Dr Hammond Dunbar is Dr Bruce Jessen.<sup>35</sup> Company Y is Mitchell Jessen and Associates.<sup>36</sup> Among the cases in which the Senate Committee reports their involvement are the following:

- “On August 3, 2002, CIA Headquarters informed the interrogation team at Detention Site Green that it had formal approval to apply the CIA’s enhanced interrogation techniques, including the waterboard, against Abu Zubaydah. According to CIA records, only the two CIA contractors, Swigert and Dunbar, were to have contact with Abu Zubaydah. Other CIA personnel at Detention Site Green – including CIA medical personnel and other CIA ‘interrogators with whom he is familiar’ – were only to observe”.<sup>37</sup>
- “Between March [redacted], 2003, and March 9, 2003, contractors Swigert and Dunbar, and a CIA interrogator, [redacted], used the CIA’s enhanced interrogation techniques against KSM [Khaled Sheikh Mohammed], including nudity, standing sleep deprivation, the attention grab and insult slap, the facial grab, the abdominal slap, the kneeling stress position, and walling. According to the CIA interrogator, during KSM’s first day at Detention Site Blue, Swigert and Dunbar first began threatening KSM’s children.”<sup>38</sup>
- Dunbar also “assisted” in the interrogation in November 2002 of Gul Rahman at Detention Site Cobalt, an interrogation that included “sleep deprivation, auditory overload, total darkness, isolation, a cold shower and rough treatment”.<sup>39</sup>

The Senate Committee summary is not the only place where the USA’s use of redactions by design or effect facilitates impunity. In 2010, a ruling in a Guantánamo habeas corpus case was mistakenly released prior to redaction.<sup>40</sup> This version was subsequently withdrawn and

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<sup>34</sup> SSCI Executive Summary, pages 168-169. The contract with Company Y was terminated in mid-2009, after which the CIA paid it \$612,000 for “contract close-out costs”. The CIA also informed the SSCI that in addition to the payment to Company Y, “Grayson Swigert and Hammond Dunbar had received \$1.5 million and \$1.1 million, respectively, as individuals”. Under an indemnification contract, “the CIA is obligated to pay Company Y’s legal expenses through 2021”. Footnote 1036 and page 169.

<sup>35</sup> Inquiry into the treatment of detainees in US custody. Report of the Committee on Armed Services, US Senate, 20 November 2008, page 6. See also page 24 and note 170. Also, Man who interrogated Khalid Sheikh Mohammed speaks out, Fox News Insider, 15 December 2014, <http://insider.foxnews.com/2014/12/15/exclusive-james-mitchell-man-who-interrogated-khalid-sheikh-mohammed-speaks-out-kelly>

<sup>36</sup> Ibid. page 24.

<sup>37</sup> SSCI Executive Summary, page 40.

<sup>38</sup> SSCI Executive Summary, pages 84-85.

<sup>39</sup> SSCI Executive Summary, page 54. See also footnote 1013, “CIA contractor Dunbar participated in Muhammad Rahim’s interrogation sessions from August 9, 2007, to August 29, 2007”; and footnote 1016 “During this period, contractor Grayson Swigert recommended two approaches. The first was increasing Rahim’s amenities over 8-14 days ‘before returning to the use of EITs’.” Muhammad Rahim was the last CIA detainee, according to the SSCI (see Part 3).

<sup>40</sup> *Abdah et al. v. Obama et al*, US District Court for the District of Columbia, 24 February 2010.

replaced by another which appeared to seek to sanitize or obscure the role of other countries. For example, the earlier unredacted version stated that Guantánamo detainee **Sanad Yislam Ali al Kazimi** had been “held in the United Arab Emirates” (UAE) prior to being transferred to the “Dark Prison” run by the CIA in Afghanistan. In the UAE, “his interrogators beat him; held him naked and shackled in a dark, cold cell; dropped him into cold water while his hands and legs were bound; and sexually abused him.” In the replacement version, this particular passage stated not that the detainee had been held in the UAE, but that he had been “detained outside the United States”. In fact, he was held in secret detention in the UAE for more than eight months from January to August 2003.

Sanad al Kazimi has alleged that he was tortured in CIA custody in the “dark prison” in Afghanistan, where he was held in total darkness, and “hooded, given injections, beaten, hit with electric cables, suspended from above, made to be naked, and subjected to continuous loud music”. The federal judge noted that the evidence of his torture had been unrebutted by the US government. The Senate Committee summary gives no detail on his treatment, either in the UAE or in CIA custody. The only information provided is that he was in CIA custody for between 270 and 279 days (in all the cases listed by the Senate Committee, the precise number of days each detainee was held by the CIA has been redacted, leaving a 10-day range).<sup>41</sup> This tallies with what Amnesty International published in 2008, namely that he was rendered into secret custody at the “dark prison” in Afghanistan in August 2003.<sup>42</sup> Whether the “dark prison” is what the Senate Committee calls Detention Site Cobalt is not clear. As it does make clear, however, the use of darkness was a hallmark of the “Cobalt” facility.

On occasion, the use of redaction in the summary report seems absurd, as the name of the country was already in the public domain. One of those named in the Senate Committee’s list of CIA detainees is Riyadh the Facilitator, whom it notes elsewhere in the summary is also known as **Sharqawi Ali Abdu al-Hajj**.<sup>43</sup> It says that he was “captured on February 7, 2002”, and then transferred to the custody of “a foreign government” later that month.<sup>44</sup> While the Committee does not identify the “foreign government” to which he was then rendered from Pakistan, it was already public knowledge that it was Jordan.

In 2008, Amnesty International published a fellow detainee’s account that Sharqawi al-Hajj had been “sent to Jordan by the Americans” and was “there for two years” and “horribly tortured”.<sup>45</sup> In 2010, a federal judge cited his case in the context of habeas corpus litigation in relation to another detainee. His ruling stated that Sharqawi Abdu Ali Al-Hajj had been held in Jordan, where he was “regularly beaten and threatened with electrocution and molestation”, prior to being transferred “to a secret CIA-run prison in Kabul, Afghanistan” where he “was reportedly kept ‘in complete darkness and was subject to continuous loud music’.”<sup>46</sup> A 2008 Guantánamo Detainee Assessment document also names Jordan.<sup>47</sup>

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<sup>41</sup> Since publication of the summary report on 9 December 2014, the SSCI has issued a notice of errata, stating that a “technical error” had “resulted in miscalculations in the number of detainees spent in CIA custody. In this case the SSCI originally put the total at 260-269 days.

<sup>42</sup> Who are the Guantánamo detainees? Case Sheet 25, 1 May 2008, <http://www.amnesty.org/en/library/info/AMR51/033/2008/en>.

<sup>43</sup> SSCI Executive Summary, footnote 2185.

<sup>44</sup> SSCI Executive Summary, page 382 and footnote 2185. A 2008 JTF-GTMO Detainee Assessment states: “Pakistan’s Inter-Service Intelligence Directorate (ISID), working in conjunction with US officials, arrested detainee and sixteen others on 7 February 2002...in Karachi.”

<sup>45</sup> USA: A case to answer – From Abu Ghraib to secret CIA custody: The case of Khaled al-Maqtari, March 2008, <http://www.amnesty.org/en/library/info/AMR51/013/2008/en>.

<sup>46</sup> *Abdah et al. v. Obama et al.*, US District Court for the District of Columbia, 24 February 2010.

<sup>47</sup> Hassan bin Attash said he was held in Jordan for two years with “Abdu Ali al-Haji Sharqawi”



## A DE FACTO AMNESTY FOR CRIMES UNDER INTERNATIONAL LAW

*As with failure to investigate, failure to bring to justice perpetrators of such violations could in and of itself give rise to a separate breach of the Covenant. These obligations arise notably in respect of those violations recognized as criminal under either domestic or international law, such as torture and similar cruel, inhuman and degrading treatment... and enforced disappearance*

UN Human Rights Committee on obligations under the ICCPR<sup>48</sup>

In July 2002, Abu Zubaydah was in his fourth month of what would become four and a half years of enforced disappearance in CIA custody. The CIA was preparing to subject him to an “aggressive” phase of interrogation. This would be the phase in which, among other things, he was subjected to more than 80 applications of the torture technique known as “waterboarding”, effectively mock execution by interrupted drowning. The Office of Legal Counsel (OLC) at the US Department of Justice gave legal approval for this and nine other “enhanced” techniques, and policy approval was given by administration officials.<sup>49</sup>

On or around 8 July 2002, a member of the CIA’s Counterterrorism Center’s Legal office (CTC Legal) drafted a letter to Attorney General John Ashcroft asking for

“a formal declination of prosecution, in advance, for any employees of the United States, as well as any other personnel acting on behalf of the United States, who may employ methods in the interrogation of Abu Zubaydah that otherwise might subject those individuals to prosecution”.<sup>50</sup>

The letter recognized that the “aggressive methods” being proposed would otherwise be prohibited by the USA’s anti-torture law, except for possible “reliance upon the doctrines of necessity or self-defense”. The Senate Committee noted that the letter was circulated internally at the CIA, but the Committee was not in possession of records indicating that the Attorney General had received it. While it has been reported elsewhere that the Department of Justice was unwilling to provide an express declination of prosecution, the fact that it was being discussed shows that those involved were aware that what the USA was embarking upon was potentially criminal and were seeking to build in immunity from prosecution.<sup>51</sup>

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<http://media.miamiherald.com/static/images/escenic-images/gitmopdfs/pk9sa-001456dp.pdf>

<sup>48</sup> UN Doc.: CCPR/C/21/Rev. 1/Add. 13, 26 May 2004, para. 18. Human Rights Committee. General Comment No. 31. The Nature of the General Legal Obligation imposed on State Parties to the Covenant.

<sup>49</sup> Memorandum for John Rizzo, Acting General Counsel, Central Intelligence Agency, from Jay S. Bybee, Assistant Attorney General, Office of Legal Counsel, Re: Interrogation of al Qaeda Operative (1 August 2002), <http://www.justice.gov/sites/default/files/olc/legacy/2010/08/05/memo-bybee2002.pdf>. The 10 techniques authorized in this memorandum were: “attention grasp”, “walling”, “facial hold”, “facial slap (insult slap)”, “cramped confinement”, “wall standing”, “stress positions”, “sleep deprivation”, “insects placed in a confinement box”, and “the waterboard”. See SSCI Executive Summary, page 409. See also USA: Torture in black and white, but impunity continues: Department of Justice releases interrogation memorandums, 17 April 2009, <http://www.amnesty.org/en/library/info/AMR51/055/2009/en>. On policy approval, for example, see SSCI Executive Summary, pages 36-37 (reference to Attorney General John Ashcroft’s verbal approval of 11 techniques, including waterboarding, on 24 and 26 July 2002).

<sup>50</sup> SSCI Executive Summary, page 33.

<sup>51</sup> Investigation into the Office of Legal Counsel (OLC)’s Memoranda concerning issues relating to the Central Intelligence Agency’s use of ‘enhanced interrogation techniques’ on suspected terrorists. Office of Professional Responsibility (OPR), US Department of Justice (DoJ), 29 July 2009. (Hereinafter OPR Report). Former NSC Legal Advisor Bellinger told the OPR in December 2008 that the CIA wanted a guarantee of immunity from criminal liability, including on the question of torture. Bellinger said that he arranged a meeting between the CIA and Deputy Assistant Attorney General John Yoo and Assistant Attorney General at the DoJ’s Criminal Division, Michael Chertoff, and recalled that the CIA attorneys

The Bush administration also linked its decision in May 2002 to “unsign” the Rome Statute of the International Criminal Court to interrogations.<sup>52</sup> Secretary of Defense Donald Rumsfeld asserted that the ICC’s “flaws” were “particularly troubling in the midst of a difficult, dangerous war on terrorism. There is the risk that the ICC could attempt to assert jurisdiction over US service members, as well as civilians, involved in counter-terrorist and other military operations – something we cannot allow”.<sup>53</sup> Then on, 1 August 2002, three days before Abu Zubaydah was brought out of 47 days of isolation to face the “aggressive” phase of his interrogation, the Department of Justice advised the White House that the USA’s withdrawal of its signature to the ICC meant that US interrogators could not be subject to criminal investigation and prosecution in relation to the “interrogations of al Qaeda operatives”.<sup>54</sup>

Eight days into the “aggressive” phase of Abu Zubaydah’s interrogation – by which time he had been repeatedly slammed into walls, forced into stress positions, placed in a coffin-shaped box for hours, and waterboarded<sup>55</sup> – the head of the CTC, José Rodriguez, responded to a cable from personnel in the secret facility. They had suggested that the enhanced interrogation was “approaching the legal limit”. Rodriguez wrote in an email:

“Strongly urge that any speculative language as to the legality of given activities or, more precisely, judgment calls as to their legality vis-à-vis operational guidelines for this activity agreed upon and vetted at the most senior levels of the agency, be refrained from in written traffic (email or cable traffic). Such language is not helpful”.<sup>56</sup>

Four years and countless acts of torture and other ill-treatment later, President Bush publicly confirmed for the first time the existence of the secret detention programme. He did so in order to seek legislation allowing it to continue following an adverse US Supreme Court decision, and to prevent the “unacceptable” outcome that individuals involved could face prosecution under the USA’s War Crimes Act.<sup>57</sup> It was of little surprise, then, when the Bush

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brought a draft “criminal declination” memorandum with them to the meeting. At a meeting on 13 July 2002, Rizzo asked whether the DoJ could issue an “advance declination of prosecution” of any CIA employee involved in the interrogation program. Chertoff said that the Department would not grant such immunity. Later that month, a letter to CIA Acting General Counsel John Rizzo from Deputy AAG Yoo, drafted at the request of AAG Chertoff, was reviewed and approved by the OLC and the DoJ’s Criminal Division. The letter included: “You have inquired as to whether the Department of Justice issues letters declining to prosecute future activity that might violate federal law... It is our understanding, ... after consultation with the Criminal Division, that the Department does not issue letters of declination for future conduct that might violate federal law”. The OPR found no record of the letter having been sent. John Rizzo told the OPR that he did not remember receiving it. The OPR concluded that “Yoo does not appear to have signed or transmitted the letter”.

<sup>52</sup> On 6 May 2002, less than a month after the 60<sup>th</sup> ratification of the Rome Statute, which meant that the treaty would shortly come into force, the Bush administration informed the UN Secretary General that the USA would not ratify the treaty, and therefore considered that it had “no legal obligations” arising from having signed the Treaty on 31 December 2000. (Under article 18 of the Vienna Convention on the Law of Treaties, a State is “obliged to refrain from acts which would defeat the object and purpose of a treaty” when it has signed the treaty and “until it shall have made its intention clear not to become a party to the treaty”). The ICC came into force on 1 July 2002 exactly one month before the OLC memo giving legal approval for 10 “enhanced” techniques against Abu Zubaydah was signed.

<sup>53</sup> Secretary Rumsfeld statement on the ICC Treaty. US Department of Defense news release, 6 May 2002, <http://www.defense.gov/releases/release.aspx?releaseid=3337>

<sup>54</sup> Letter to Alberto Gonzales, Counsel to the President, from John C. Yoo, Deputy Assistant Attorney General, Office of Legal Counsel, US Department of Justice, 1 August 2002.

<sup>55</sup> SSCI Executive Summary, pages 41-43.

<sup>56</sup> SSCI Executive Summary, page 43.

<sup>57</sup> Remarks on the war on terror. President George W. Bush, 6 September 2006. As the SSCI has outlined, the Bush administration was concerned by the US Supreme Court’s *Hamdan v. Rumsfeld* ruling in June 2006 which, among other things found that Article 3 common to the four Geneva Conventions

administration left office in January 2009 having not prosecuted anyone for the crimes under international law committed in the CIA secret detention programme.

Over six years later, we are in the same place. Impunity and the absence of full truth and access to remedy remains the order of the day in relation to this now terminated programme, with the result that the USA remains in serious violation of its international human rights obligations. The Obama administration took up where its predecessor left off, differentiating between “unauthorized” and “authorized” interrogation techniques while failing to recognize that techniques from both categories were unlawful and conducted against individuals who had been or were being subjected to conditions of transfer or detention also incompatible with the prohibition of torture or other ill-treatment and of enforced disappearance.

In his fourth month in office, President Barack Obama wrote to CIA employees to assure them that anyone who followed Department of Justice (DOJ) advice in using “enhanced” interrogation techniques would not face prosecution:

“The men and women of the CIA have assurances from both myself, and from Attorney General Holder, that we will protect all who acted reasonably and relied upon legal advice from the Department of Justice that their actions were lawful. The Attorney General has assured me that these individuals will not be prosecuted and that the Government will stand by them.”<sup>58</sup>

“Nothing will be gained”, he wrote, “by spending our time and energy laying blame for the past”. Four months later, Attorney General Eric Holder expanded the mandate of US Attorney John Durham, who was at that point investigating the CIA’s 2005 destruction of videotapes of Abu Zubaydah’s and Abd al-Nashiri’s interrogations in 2002 in “Detention Site Green”, to include a “preliminary review” into whether federal laws were violated in connection with the interrogation of “specific detainees at overseas locations”. The Attorney General emphasised that “neither the opening of a preliminary review nor, if evidence warrants it, the commencement of a full investigation, means that charges will necessarily follow.”<sup>59</sup>

A little under two years later, Attorney General Holder announced that he agreed with John Durham that apart from two deaths in custody, there was no need for a full criminal investigation into any cases. The Attorney General added that he was confident that the Durham review had “thoroughly examine[d] the detainee treatment issue.”<sup>60</sup> Amnesty International does not share his confidence, as outlined below. Moreover, even as he had announced the “preliminary review” in 2009, the Attorney General had given assurances reflecting those given earlier by the President, namely that:

“the Department of Justice will not prosecute anyone who acted in good faith and within

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was applicable in the context under review. President Bush stated: “the Court determined that a provision of the Geneva Conventions known as Common Article Three applies to our war with Al Qaida. This article includes provisions that prohibit ‘outrages upon personal dignity’ and ‘humiliating and degrading treatment.’ The problem is that these and other provisions of Common Article Three are vague and undefined, and each could be interpreted in different ways by American or foreign judges. And some believe our military and intelligence personnel involved in capturing and questioning terrorists could now be at risk of prosecution under the War Crimes Act, simply for doing their jobs... This is unacceptable.”

<sup>58</sup> Letter, dated 16 April 2009, available at <https://www.cia.gov/news-information/press-releases-statements/release-of-doj-opinions.html>

<sup>59</sup> Attorney General Eric Holder regarding a preliminary review into the interrogation of certain detainees, 24 August 2009, <http://www.justice.gov/opa/speech/attorney-general-eric-holder-regarding-preliminary-review-interrogation-certain-detainees>

<sup>60</sup> Statement of the Attorney General regarding investigation into the interrogation of certain detainees, 30 June 2011, <http://www.justice.gov/opa/pr/statement-attorney-general-regarding-investigation-interrogation-certain-detainees>

the scope of the legal guidance given by the Office of Legal Counsel regarding the interrogation of detainees. I want to reiterate that point today, and to underscore the fact that this preliminary review will not focus on those individuals. I share the President's conviction that as a nation, we must, to the extent possible, look forward and not backward when it comes to issues such as these."<sup>61</sup>

In Amnesty International's view, this amounts to a de facto amnesty for crimes under international law. It also constitutes an executive encroachment on judicial power, in contravention of basic principles guaranteeing independence of the judiciary.<sup>62</sup> This arrogation of judicial function by the Obama administration can be seen as a continuation of the Bush administration's deliberate and calculated removal of the judiciary from any oversight over the secret detentions in question, during the course of which multiple crimes under international law were committed, crimes which the Obama administration is now effectively insulating from judicial determination of individual criminal responsibility.

Granting immunity for crimes under international law, or any other measure that prevents the emergence of truth, a final judicial determination of guilt or innocence before an ordinary civilian court and full reparation for victims, by design or effect, by legislation or by executive policy, violates international law.<sup>63</sup> An amnesty for torture would violate express provisions of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment<sup>64</sup> and an amnesty for enforced disappearances would be incompatible with that treaty and others such as the International Covenant on Civil and Political Rights.

"[T]he State Parties concerned may not relieve perpetrators from personal responsibility, as has occurred with certain amnesties and prior legal immunities and indemnities. Furthermore, no official status justifies persons who may be accused of responsibility for such violations being held immune from legal responsibility. Other impediments to the establishment of legal responsibility should also be removed, such as the defence of obedience to superior orders".<sup>65</sup>

"States must refrain from granting or acquiescing in impunity at the national level through amnesties. Amnesties for gross and serious violations of human rights and humanitarian law may also violate customary international law..."<sup>66</sup>

"[T]he establishment of measures designed to eliminate responsibility are inadmissible, because they are intended to prevent the investigation and punishment of those responsible for serious human rights violations such as torture... and forced disappearance, all of them prohibited because they violate non-derogable rights recognized by international human rights law. To comply with this obligation, the State must also remove all de facto and legal mechanisms and obstacles that maintain

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<sup>61</sup> Statement of Attorney General Eric Holder regarding a preliminary review, *op. cit.*

<sup>62</sup> UN Basic Principles on the Independence of the Judiciary, 1985, principle 3 ("The judiciary shall have jurisdiction over all issues of a judicial nature and shall have exclusive authority to decide whether an issue submitted for its decision is within its competence as defined by law").

<sup>63</sup> See, e.g., Opening Statement, Item 2, UN High Commissioner for Human Rights' Annual Report, 5 March 2015, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15642&LangID=E> ("Under international law, the [SSCI] report's recommendations must be followed through with real accountability...and torture cannot be amnestied.")

<sup>64</sup> Articles 2, 4, 6, 7, 8, 9.

<sup>65</sup> UN Doc.: CCPR/C/21/Rev. 1/Add. 13, 26 May 2004, para. 18. Human Rights Committee. General Comment No. 31. The Nature of the General Legal Obligation imposed on State Parties to the Covenant.

<sup>66</sup> UN Doc.: A/HRC/13/36, para. 34. Report of the United Nations Commissioner for Human Rights on the protection of human rights and fundamental freedoms while countering terrorism. 22 January 2010.

impunity”.<sup>67</sup>

Sure enough, no one has been charged for the crimes under international law committed in the CIA programme.<sup>68</sup> The Durham initiative, which in the end resulted in “full criminal investigation” into *only two* cases,<sup>69</sup> was closed down in 2012 with no charges referred against anyone.<sup>70</sup> Likewise no-one was charged in relation to the destruction of the videotapes, which contained evidence of crimes under international law.<sup>71</sup>

In November 2014, the UN Committee against Torture expressed concern that in its reporting under the UN Convention against Torture, the USA had failed to describe

“the investigative methods employed by Mr Durham or the identities of any witnesses his team may have interviewed. Thus, the Committee remains concerned about information before it that some former CIA detainees, who had been held in United States custody abroad, were never interviewed during the investigations, which casts doubts as to whether that high profile inquiry was properly conducted.”<sup>72</sup>

The administration has not revealed which, if any, officials, former officials, detainees or former detainees, officials of other governments, or non-government sources, international or national, were interviewed for the Durham “preliminary review”.<sup>73</sup> In any event, this initial review was into “the interrogation of *specific* detainees” while *most if not all* of the detainees held in the CIA programme were subjected to unlawful conditions of confinement including the crime under international law of enforced disappearance, regardless of any interrogation techniques they faced.<sup>74</sup> Moreover, the Durham preliminary review had as its starting point

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<sup>67</sup> Case of Myrna Mack Chang v. Guatemala, Judgment of 25 November 2003, Inter-American Court of Human Rights, paras. 276-277.

<sup>68</sup> See below, case of CIA contractor David Passaro which the CIA and the administration has tried to use to persuade the SSCI and the UN Human Rights Committee that there is accountability. There is not.

<sup>69</sup> “Mr Durham has advised me of the results of his investigation, and I have accepted his recommendation to conduct a full criminal investigation regarding the death in custody of two individuals... The Department has determined that an expanded criminal investigation of the remaining matters is not warranted. Statement of the Attorney General Regarding Investigation into the Interrogation of Certain Detainees, 30 June 2011, *op. cit.*

<sup>70</sup> Statement of Attorney General Eric Holder on Closure of Investigation into the Interrogation of Certain Detainees, 30 August 2012, <http://www.justice.gov/opa/pr/statement-attorney-general-eric-holder-closure-investigation-interrogation-certain-detainees>

<sup>71</sup> Department of Justice Statement on the Investigation into the Destruction of Videotapes by CIA Personnel, 9 November 2010, <http://www.justice.gov/opa/pr/department-justice-statement-investigation-destruction-videotapes-cia-personnel>

<sup>72</sup> UN Doc.: CAT/C/USA/CO/3-5, para. 12.

<sup>73</sup> According to the Attorney General, Durham “identified the matters to include within his review by examining various sources including the Office of Professional Responsibility’s report regarding the Office of Legal Counsel memoranda related to enhanced interrogation techniques, the 2004 CIA Inspector General’s report on enhanced interrogations, additional matters investigated by the CIA Office of Inspector General, the February 2007 International Committee of the Red Cross Report on the Treatment of Fourteen “High Value Detainees” in CIA Custody, and public source information.” Statement of the Attorney General Regarding Investigation into the Interrogation of Certain Detainees, 30 June 2011, *op. cit.*

<sup>74</sup> “In the ICRC’s view, the fourteen were placed outside the protection of the law during the time they spent in CIA custody. Indeed, one of the main effects of the transfers was to place the fourteen in secret detention facilities in unspecified locations in a number of different countries, outside the reach of any judicial or administrative system. As such, they were, for instance, apparently both precluded from knowing the reasons for their detention and denied access to any mechanism capable of independently reviewing the lawfulness of their detention. They were also denied contact with their families, including any information to the families of their detention. The totality of the circumstances in which the fourteen were held effectively amounted to an arbitrary deprivation of liberty and enforced disappearance, in

101 detainees, some of whom were put aside as not having been in CIA custody. The Senate Committee has determined that there were at least 119 detainees in CIA custody. In other words, the cases of at least 20 detainees were not even considered by the review.

Even since release of the summary report, the Obama administration – not the judiciary – has continued to assert that the Durham investigation was adequate. In its February 2015 report for the UN Universal Periodic Review process, the administration asserted:

“Regarding civilian prosecutions for potential abuses committed in armed conflict since September 11, 2001, DOJ conducted an extensive review led by Assistant US Attorney John Durham of the treatment of 101 persons alleged to have been mistreated while in US custody since the 9/11 attacks. That review generated two criminal investigations, but after examining a broad universe of allegations from multiple sources, the prosecutor concluded that the admissible evidence would not have been sufficient to obtain and sustain convictions beyond a reasonable doubt...”<sup>75</sup>

From this injustice, the US administration turns back to the notion that it is enough that the sort of activities that went on in the CIA secret detention are not “representative” of how the USA “deals with the threat of terrorism today”, and “are not consistent with our values”:

“In December 2014, the US Senate Select Committee on Intelligence released a declassified Executive Summary of its Report on the CIA’s former detention and interrogation program. Harsh interrogation techniques highlighted in that Report are not representative of how the United States deals with the threat of terrorism today, and are not consistent with our values. The United States supports transparency and has taken steps to ensure that it never resorts to the use of those techniques again.”<sup>76</sup>

The UN Human Rights Committee has pointed out that “the problem of impunity” for violations such as torture and enforced disappearance is “a matter of sustained concern” and that it “may well be an important contributing element in the recurrence of the violations.”<sup>77</sup>

Twenty years before President George W. Bush approved the start of what would become four and a half years of enforced disappearance for Abu Zubaydah (see Part 3 below), the UN General Assembly adopted, without a vote, the Declaration on the Protection of all Persons from Enforced Disappearance. The General Assembly agreed that “enforced disappearance undermines the deepest values of any society committed to respect for the rule of law, human rights and fundamental freedoms”.<sup>78</sup>

“America is a nation of law”, President Bush asserted in his 6 September 2006 speech confirming publicly for the first time that the CIA had been operating a secret detention programme. As long as the USA fails to ensure accountability and remedy for the crimes under international law committed in this covert programme, whether those acts were “authorized” or “unauthorized”, or whether they were committed in “good faith” or not, it could legitimately be branded as a “nation of law unto itself”.

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contravention of international law.” ICRC Report on the treatment of fourteen ‘high value detainees’ in CIA custody. February 2007, <http://assets.nybooks.com/media/doc/2010/04/22/icrc-report.pdf>

<sup>75</sup> Report of the USA submitted to the UN High Commissioner for Human Rights in conjunction with the Universal Periodic Review, 6 February 2015, para. 95, <http://www.state.gov/j/drl/upr/2015/237250.htm>

<sup>76</sup> *Ibid*, para. 96.

<sup>77</sup> UN Doc.: CCPR/C/21/Rev. 1/Add. 13, 26 May 2004, para. 18. Human Rights Committee. General Comment No. 31. The Nature of the General Legal Obligation imposed on State Parties to the Covenant.

<sup>78</sup> Declaration on the Protection of all Persons from Enforced Disappearance. Adopted by General Assembly resolution 47/133 of 18 December 1992. Also in 1992, the USA ratified the International Covenant on Civil and Political Rights. It ratified the UN Convention against Torture two years later.

## RECOMMENDATIONS

Amnesty International provides the following recommendations. There are many others that remain outstanding from the past decade, made by Amnesty International, other organisations, and UN treaty monitoring bodies and UN Charter-based mechanisms.<sup>79</sup>

### ACCOUNTABILITY

- The US Department of Justice (DoJ) must without further delay reopen and expand its investigation into CIA secret detention, rendition and interrogation programmes and practices, ensure that its scope and conduct meet international law and standards, and bring to justice in fair trials all the persons, regardless of their level of office or former level of office, suspected of being involved in the commission of crimes under international law, such as torture and enforced disappearance.
- The DoJ should look into the exact role and involvement in these programmes and practices of the US government personnel mentioned in the Senate Select Committee on Intelligence report and in other materials, proceed to a prompt and impartial investigation wherever sufficient grounds exist and prosecute those who are suspected of being involved in crimes under international law.
- The DoJ Office of Inspector General (OIG) should conduct an inquiry into the 'preliminary review' into CIA interrogations ended in 2011, disclose the scope, methodology and findings of that review, and do the same with the criminal investigation into two death in custody cases closed in 2012 without any charges being referred, and assess these investigations against international law and standards. The OIG should examine the DoJ's response to the full Senate Committee report, including its apparent failure even to have any DoJ officials read it.
- The US government should respond truthfully and in full to all formal requests for mutual legal assistance (MLAT) from foreign governments seeking information about the CIA's secret detention and interrogation programmes for use in ongoing criminal investigations or to commence such investigations.

### TRUTH AND TRANSPARENCY

- In accordance with its obligations under international human rights law and taking into consideration the Global Principles on National Security and the Right to Information (Tshwane Principles)<sup>80</sup>, the White House should revise its classification guidance and ensure that all information of which there is an overriding public interest in disclosure is disclosed without further delay. This includes information related to crimes under international law and other violations of international human rights law committed as part of the CIA Rendition, Detention and Interrogation programmes and contained in, among other materials, the Senate Committee report;
- Among other information, the White House and agencies should disclose:
  - The names, locations, and precise dates of operation of all secret detention sites operated by the CIA between 2001 and 2009, and disclose which detainees were held, where and when, in such sites and at the behest of the USA during this period in secret detention by other governments.
  - Information on the DoJ preliminary review into CIA interrogations, and the investigation into CIA videotape destruction, including whether the mandate included examining the role of high-level officials in the authorization and implementation of measures related to the treatment of detainees in violation of the international prohibition of enforced disappearance, torture and other cruel, inhuman or degrading treatment.

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<sup>79</sup> For example, Amnesty International first called in 2004 for a full independent commission of inquiry into all the USA's detention, rendition and interrogation policies and practices adopted after 9/11.

<sup>80</sup> <http://www.opensocietyfoundations.org/publications/global-principles-national-security-and-freedom-information-tshwane-principles>

- Information on the DoJ's review and assessment of the full Senate Intelligence Committee report and the reasons for not reopening and expanding investigations into torture, enforced disappearances and other human rights violations committed in the course of the CIA secret detention programme.
- The Senate Intelligence Committee should submit for declassification its full report on the CIA programme, with priority for expedited release given to Volume III, to ensure respect for the right to truth, remedy and justice, which necessarily include disclosure of the facts about human rights violations committed against the detainees held in the programme.
- Publish any other documents that provide information about human rights violations authorized and committed in the CIA secret detention programme or other detention operations. It should also publish in full the Memorandum of Notification signed by President George W. Bush for the CIA on 17 September 2001.

#### **REMEDY**

- The US administration should end any invocation of the state secrets privilege or other measures that, by design or effect, serve to block access to genuine remedy by victims of human rights violations and their families.
- Congress should pass legislation enabling effective judicial scrutiny of state secrets claims, and ensure that access to remedy is fully available in all circumstances.

#### **STRENGTHENING PROTECTIONS AGAINST TORTURE AND OTHER ILL-TREATMENT**

- Taking into account President Obama's 22 January 2009 Executive Order No. 13491, Congress should pass legislation ensuring effective protection against and remedies for crimes under international law and other violations of the US international human rights obligations.
- All necessary measures should be taken to ensure that independent external detention monitoring bodies, such as the International Committee of the Red Cross (ICRC), get timely access to all detainees.
- Congress should adopt the necessary measures to ensure
  - revision of the Army Field Manual to comply with the US international obligations, including by prohibiting prolonged isolation, prolonged incommunicado detention, and sleep deprivation.
  - effective prohibition of all secret detention, prolonged incommunicado detention, enforced disappearance, prolonged detention without charge or trial and other forms of arbitrary detention, as well as of conditions of and treatment in detention, including interrogation techniques, which violate the prohibition of torture and other cruel, inhuman or degrading treatment or punishment. Such measures shall apply whether detention and treatment is conducted by the US government or at its behest;
  - application of international human rights law at all times.
- The executive branch of government, including the White House and the Departments of State and Justice, should act on the recommendations of the Senate Committee submitted by its then chairperson Senator Feinstein on 30 December 2014. In particular, it should implement and expand upon the recommendations that would strengthen oversight and accountability for human rights abuses.
- The DoJ should remove the national security exception to its May 2014 policy on electronic recording of interrogations.<sup>81</sup>

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<sup>81</sup> See Memo from Deputy Attorney General James Cole, Policy Concerning Electronic Recording of Statements, May 2014; <http://www.nytimes.com/interactive/2014/05/23/us/23record-doc.html>



## **DETENTIONS AND TRIALS**

In addition to the right to justice for those who were in the CIA programme but are no longer in US custody, there are many individuals still detained by the USA, who were previously subjected to enforced disappearance, torture or other cruel, inhuman or degrading treatment, and whose detention remains unlawful today.

- As a matter of urgency, resolve the detentions at Guantánamo Bay in a manner that is fully compliant with international human rights law.
- End military commission trials, and ensure that any prosecutions of detainees currently held at Guantánamo are conducted in ordinary civilian criminal court.
- Ensure declassification of all allegations of enforced disappearance, torture or other ill-treatment made by any of these detainees, including so such information can be put before, and published by, the judicial body in the cases of those detainees being prosecuted or who are challenging the lawfulness of their detention.
- End the pursuit of the death penalty, regardless of the trial forum chosen.
- The theory that the USA is entitled to detain any individual anywhere in the world at any time, and hold them in detention indefinitely, on the premise that it is involved in an all-pervasive global and perpetual armed conflict against non-state actors, is inconsistent with international law and should be expressly disavowed and rejected by the administration, Congress, and the courts.

## **INTERNATIONAL INSTRUMENTS**

- The USA should withdraw as a matter of priority the reservations, understandings and declarations it made upon ratification of various treaties that had the intent or effect of limiting protections of such treaties upon those in US custody or control. In particular, this includes the reservation lodged to article 7 of the International Covenant on Civil and Political Rights, and to article 16 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
- The USA should ratify and fully implement in domestic law the Optional Protocol to the UN Convention Against Torture, the International Convention for the Protection of all Persons from Enforced Disappearance, and the Rome Statute of the International Criminal Court.
- The USA should implement the many outstanding recommendations made by UN treaty monitoring bodies, including the UN Committee Against Torture and the UN Human Rights Committee in 2006 and 2014.

## **OTHER COUNTRIES**

All other governments who were involved in the CIA's illegal rendition, secret detention and interrogation operations should reveal that involvement, and:

- Conduct an effective, broad-based investigation into their involvement in these operations, with a view toward reforming the laws, policies, and practices that permitted such cooperation;
- Ensure that those state actors and any foreign agents responsible for crimes under domestic and international law committed on any territory under their jurisdiction, such as torture or enforced disappearance, are criminally charged and held accountable after fair trials;
- Afford victims of the human rights violations attendant to these operations a full and effective remedy.

All countries should ensure that they take the necessary investigative action in the event that a US official or former official against whom there is evidence of involvement in crimes under international law is found to be present in any territory under their jurisdiction.

## PART 1 – JOINING THE DOTS

### 1.1 SENATE COMMITTEE ADDS TO EXISTING PICTURE

*We're at war... All the rules have changed... Together we will win this war and make our President and the American people proud... We will win it for all we value as a nation.*  
CIA Director George Tenet, memorandum to CIA leadership, 16 September 2001<sup>82</sup>

In 1984, Amnesty International wrote in a major report on torture around the world:

“However perverse the actions of individual torturers, torture itself has a rationale: isolation, humiliation, psychological pressure and physical pain are means to obtain information, to break down the prisoner and to intimidate those close to him or her... Torture is most often used as an integral part of a government's security strategy.... Apologists for torture generally concentrate on the classical argument of expediency: the authorities are obliged to defeat terrorists or insurgents who have put innocent lives at risk and who endanger both civil society and the state itself”.<sup>83</sup>

“We're fighting for our way of life”, President Bush said on 6 September 2006 in a speech in which he publicly confirmed for the first time the existence of the secret detention programme, which he asserted had “saved innocent lives”.<sup>84</sup> Among those interrogated under an “alternative set of procedures”, he said, had been Abu Zubaydah. In his memoirs published in 2010, Bush recalled that in 2002 Zubaydah had been resisting interrogation. “CIA experts”, Bush said, drew up a list of interrogation techniques:

“I took a look at the list of techniques. There were two that I felt went too far, even if they were legal. I directed the CIA not to use them. Another technique was waterboarding, a process of simulated drowning... Had I not authorized waterboarding on senior al Qaeda leaders, I would have had to accept a greater risk that the country would be attacked... I approved the use of the interrogation techniques”.<sup>85</sup>

The original list of 12 “novel interrogation methods” was formulated by “Dr Grayson Swigert”, the psychologist contracted by the CIA.<sup>86</sup> Until publication of the Senate Committee's summary report, only 11 of these techniques had been disclosed.<sup>87</sup> The Committee reveals that the 12<sup>th</sup> was “mock burial”. In July 2002, the President's National Security Adviser, Condoleezza Rice, asked the CIA to provide the Office of Legal Counsel at the US Department of Justice with a description of the interrogation techniques and to “provide any empirical data on the reactions and likelihood of prolonged mental harm from the use of the water-board and the staged burial”.<sup>88</sup> If President Bush balked at ‘mock burial’, something

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<sup>82</sup> Subject: We're at War. Memorandum for CIA leadership. From George J. Tenet, Director of Central Intelligence, 16 September 2001.

<sup>83</sup> Torture in the Eighties. Amnesty International Publications, 1984, pages 4-6.  
<http://www.amnesty.org/en/library/info/ACT40/001/1984/en>

<sup>84</sup> Remarks on the war on terror, 6 September 2006.

<sup>85</sup> George W. Bush, Decision Points, page 168-169.

<sup>86</sup> SSCI Executive Summary, page 32.

<sup>87</sup> Investigation into the Office of Legal Counsel's Memoranda concerning issues relating to the Central Intelligence Agency's use of ‘enhanced interrogation techniques’ on suspected terrorists. Office of Professional Responsibility, US Department of Justice, 29 July 2009.

<sup>88</sup> SSCI Executive Summary, page 34.

approaching it could be said to have been achieved via the CIA's use of confinement in coffin-like boxes, including on Abu Zubaydah, on which the Senate Intelligence Committee has provided more detail. Mock burial is also alleged to have been used in Egypt in the case of Ibn Shaykh al-Libi rendered between CIA and Egyptian custody before, as the Committee now reveals, becoming one of the detainees held in secret CIA custody at Guantánamo. Such renditions were carried out under presidential authority.

The other one of the 12 techniques which was not specifically given Department of Justice approval in the 1 August 2002 memorandum relating to Abu Zubaydah was "use of diapers" (but was given verbal approval by Attorney General John Ashcroft on 24 July 2002 along with the other techniques).<sup>89</sup> In fact, use of diapers became a routine part of the sleep deprivation technique (as well as during renditions). The Committee found that in some cases a principal "purpose" of diapering was "to cause humiliation" and "to induce a sense of helplessness".<sup>90</sup>

Some of the case material that appears in the summary concerns high-profile detainees about whom much was already known. The cases of Zayn al Abidin Muhammad Husayn (Abu Zubaydah) and 'Abd Al Rahim Hussayn Muhammad Al Nashiri, for example, had already resulted in rulings by the European Court of Human Rights based on far more detailed specifics of how each detainee was treated in CIA detention, with dates, rendition flight details, and other information not contained in the summary. Even in these cases, however, there are some additional or confirming details provided by the Committee. For example,

- For the CIA, interrogating **Abu Zubaydah** took precedence over preventing infection of life-threatening wounds he had sustained on arrest in late March 2002.<sup>91</sup> That his health remained poor for months showed in a 15 July 2002 cable transmitted from the secret facility in which he was being held to CIA HQ acknowledging the possibility that he could develop "a serious medical condition which may involve a host of conditions including heart attack or another catastrophic type of condition". If he was to die, "we need to be prepared to act accordingly, keeping in mind the liaison equities involving our hosts" (believed to be in Thailand). To "address these issues", the summary reveals, "the cable stated that if Abu Zubaydah were to die during interrogation, he would be cremated". If he survived, on the other hand, "in light of the planned psychological pressure techniques to be implemented, we need to get reasonable assurances that [Abu Zubaydah] will remain in isolation and incommunicado for the remainder of his life". CIA officers responded that the team at the secret facility was correct in its "understanding that the interrogation process takes precedence over preventative medical procedures". The response added: "all major players are in concurrence that [Abu Zubaydah] should remain incommunicado for the rest of his life".<sup>92</sup> The plan, it seems, was that his treatment

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<sup>89</sup> SSCI Executive Summary, page 36.

<sup>90</sup> SSCI Executive Summary, page 415.

<sup>91</sup> Compare to page 365, George Tenet, *At the Center of the Storm*, Harper 2007. "We found ourselves suddenly concerned with trying to save a terrorist's life. Not that we had any sympathy for Zubaydah; we just didn't want him dying before we could learn what he might have to tell us about plans for future attacks. Fortunately, Buzzy Krongard, our [CIA] executive director, was also on the board of directors of John Hopkins Medical Center. Using his contacts there, he arranged for a world-class medical expert to jump aboard an aircraft we had chartered so he could be flown to Pakistan and save a killer's life." See also FBI interrogator Ali Soufan's account: a John Hopkins doctor was "flown in by the CIA to evaluate Abu Zubaydah's condition" after emergency surgery in the country to which the CIA had rendered him. In that account, the doctor "consulted with the surgeons, wrote a report, and left." Ali H. Soufan. *The Black Banners: The inside story of 9/11 and the war against al-Qaeda*. W.W. Norton (2011), page 383.

<sup>92</sup> SSCI Executive Summary, pages 34-35.

in CIA custody would, one way or another, go to the grave with him.<sup>93</sup>

- After a month in United Arab Emirates custody in 2002 (“foreign government” custody as the Senate Committee puts it), **‘Abd al Nashiri** was transferred by the CIA eight times in four years to different secret detention sites, before being taken to military detention at Guantánamo in 2006. During the period June 2003 to September 2006, he was transferred to five different CIA detention facilities, and was diagnosed by some CIA psychologists as having “anxiety” and “major depressive” disorder. He “complained of bodily pain and insomnia”.<sup>94</sup> In May 2004, he “launched a short-lived hunger strike that resulted in the CIA force feeding him rectally”.<sup>95</sup> “Ensure [liquid food] was infused into al-Nashiri ‘in a forward-facing position...with head lower than torso’”.<sup>96</sup> In mid-2005, a CIA psychologist assessed ‘Abd al Nashiri as being on the “verge of a breakdown”.<sup>97</sup>

There are other cases on which the Senate Committee provides pieces of information where there was little previously. Some of these individuals had been among those named in a 2007 report issued by Amnesty International and other organizations on US responsibility for enforced disappearances, and whose whereabouts remained unknown at that time.<sup>98</sup> One such individual was Suleiman Abdalla Salim, said to have been abducted in Somalia on 18 March 2003 and handed over to US personnel at Mogadishu airport. The 2007 publication reported that he may have been held in two secret US facilities in Afghanistan in 2004 and that he had been subjected to torture. The summary report reveals that **Suleiman Abdullah** was held in CIA custody for between 430 and 439 days, and subjected to “enhanced interrogation techniques”. A passing reference in a footnote reveals that CIA Headquarters had approved the use of such techniques against him, but had not approved water dousing. According to the Senate Committee, he was subjected to that technique nonetheless.<sup>99</sup> Neither the date of this interrogation, nor the location, are provided in the summary.

**Redha al-Najar**,<sup>100</sup> a Tunisian national arrested in Pakistan in May 2002, and **Hassan Ghul**, arrested in Iraq in January 2004, were two others named in the 2007 NGO report on US enforced disappearances and about whom the Senate Committee summary now provides some substantial information. Other cases on which it provides major new information to add to the relatively small amount about them hitherto in the public domain are those of **Muhammad Rahim al Afghani**, **Abu Faraj al-Libi**, **Janat Gul** and **Abu Ja’far al-Iraqi**. Amnesty International outlines what the Senate Committee reveals about these cases in Part 3 below.

There are snippets of information on other detainees and the use of particular interrogation techniques, as well as about aspects of the programme that supplement the existing picture. The remainder of this section provides examples of how these details add to what was known prior to publication of the summary. It is something of a joining-the-dots exercise.

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<sup>93</sup> His interrogators even told him that “that the only way he would leave the facility was in the coffin-shaped confinement box” which they put him in for long periods. SSCI Executive Summary, page 42.

<sup>94</sup> SSCI Executive Summary, page 72.

<sup>95</sup> SSCI Executive Summary, pages 66-67.

<sup>96</sup> SSCI Executive Summary, footnote 584.

<sup>97</sup> SSCI Executive Summary, page 114.

<sup>98</sup> USA: Off the Record. US Responsibility for Enforced Disappearances in the ‘War on Terror’, 7 June 2007, <http://www.amnesty.org/en/library/info/AMR51/093/2007/en>

<sup>99</sup> SSCI Executive Summary, footnote 607.

<sup>100</sup> Named Retha al-Tunisi in ‘Off the Record’, *op. cit.* He is named as Ridha al-Najjar/al-Tunisi in the SSCI Summary, see footnote 2211.

### 1.1A CASH FOR DISAPPEARANCES. SECRET SITES AND 'FOREIGN GOVERNMENTS'

Names and locations of the CIA's secret detention facilities are hidden behind pseudonyms and redactions in the summary, but some details are given about the facilities and related issues. The CIA poured "millions of dollars in cash payments to foreign government officials" to encourage them to host secret facilities or to increase support for existing sites.<sup>101</sup> The CIA itself has confirmed that "to encourage governments to clandestinely host detention sites, CIA provided cash payments to foreign government officials... CIA has independent authority to make subsidy payments". There was "nothing improper about such payments" the CIA asserted in June 2013.<sup>102</sup> The fact that the CIA, even now, considers that there is nothing improper about paying other countries to host secret detention facilities is staggering.

Abu Zubaydah's transfer from Pakistan to **Detention Site Green**, believed to be in Thailand,<sup>103</sup> was approved by President Bush on 29 March 2002 (see below). That same day, the CIA Station in the country obtained the approval of authorities in that country for the CIA detention site. The CIA itself asserts that "after Abu Zubaydah was captured, CIA was forced to move quickly to identify and prepare a suitable location, and to do so with great secrecy".<sup>104</sup> Of course, there was no such compulsion. The decision of the USA to engage in conduct that violated international law was a political choice not a legal requirement. Detention Site Green was closed in December 2002.<sup>105</sup> The Senate Committee points to only two detainees being held there; Abu Zubaydah and Abd al-Nashiri. Both were tortured there.

**Detention Site Cobalt** (believed to be the Salt Pit facility near Kabul in Afghanistan)<sup>106</sup> was built using \$200,000 approved for that purpose by CIA Headquarters on 6 June 2002.<sup>107</sup> The original plan had been for the facility to be owned and operated by the Afghan government, but in the end it was "controlled and overseen by the CIA and its officers from the day it became operational in September 2002."<sup>108</sup> It appears to have employed Afghan guards.

The Senate Intelligence Committee reports that a US military legal adviser who visited Detention Site Cobalt in November 2002 concluded that "concealment of the facility from the ICRC" would involve risks for the military if military personnel were to interrogate a detainee there.<sup>109</sup> The status of Detention Site Cobalt within the secret prison network seems unclear. One footnote in the summary report suggests that it was not a "blacksite", but a "CIA-controlled facility".<sup>110</sup> If not defined as a "black site", it may have been because it was being used mainly for "medium value targets", rather than "high value detainees".<sup>111</sup>

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<sup>101</sup> SSCI Executive Summary, Findings and Conclusions, pages 16-17.

<sup>102</sup> CIA June 2013 Response, [https://www.cia.gov/library/reports/CIAs\\_June2013\\_Response\\_to\\_the\\_SSCI\\_Study\\_on\\_the\\_Former\\_Detention\\_and\\_Interrogation\\_Program.pdf](https://www.cia.gov/library/reports/CIAs_June2013_Response_to_the_SSCI_Study_on_the_Former_Detention_and_Interrogation_Program.pdf)

<sup>103</sup> In the remainder of this report after this section, Amnesty International will add after the SSCI pseudonym the country believed to be the location, e.g. Detention Site Green (Thailand).

<sup>104</sup> CIA June 2013 response.

<sup>105</sup> SSCI Executive Summary, page 67.

<sup>106</sup> Whether Cobalt was chosen as a veiled reference to salt or as a misdirection is not known.

<sup>107</sup> SSCI Executive Summary, page 49.

<sup>108</sup> SSCI Executive Summary, footnote 250.

<sup>109</sup> SSCI Executive Summary, page 53.

<sup>110</sup> SSCI Executive Summary, footnote 1937.

<sup>111</sup> SSCI Executive Summary, p. 57 ("DCI Tenet stated that he was 'not very familiar' with Detention Site Cobalt and 'what the CIA is doing with medium value targets'"). Interrogation plans for three "Medium Value" detainees were approved by CIA HQ in late 2002 or early 2003. (pages 60-61).

CIA General Counsel Scott Muller told the CIA Inspector General in August 2003 that he thought Detention Site Cobalt was a “holding facility” and asserted that he had “no idea” who was responsible for the facility.<sup>112</sup> When the CIA notified the Senate Select Committee on Intelligence of the death of Gul Rahman in November 2002 (see below), it referred to the prison as a facility “operated by the [Afghanistan] government and funded by CIA”.<sup>113</sup> The CIA’s Deputy Director for Operations, to whom CIA Director George Tenet delegated “management and oversight of the capture and detention authorities” granted to the CIA by President Bush, told the CIA Office of Inspector General in August 2003 that “there are those who say that [Detention Site Cobalt] is not a CIA facility, but that is bullshit”.<sup>114</sup>

According to the Senate Intelligence Committee, Detention Site Cobalt was one of four secret CIA facilities operated in Afghanistan (although the summary does not reveal the name of that country), in addition to the use by the CIA of Afghan-controlled facilities. The Committee also points to the CIA using another facility prior to the opening of Detention Site Cobalt; this may again be a reference to an Afghan-controlled facility (see further below).<sup>115</sup>

Detention Site Cobalt was operated from 2002 to 2004. The other three facilities in (presumably) Afghanistan are code-named **Detention Site Gray** (2003), **Detention Site Orange** (2004-2006), and **Detention Site Brown** (2006-2008). Detention Site Orange was built to replace Detention Site Cobalt. A passing reference, perhaps mistakenly left unredacted, is made to a “safehouse” in Afghanistan used by the CIA for detentions and where it also used “enhanced interrogation techniques” (see below).

The Senate Committee has confirmed what has long been reported, namely that the CIA operated a “black site” at the US naval base at Guantánamo Bay in 2003 and 2004 (see further below). The summary report reveals that CIA detainees were held at two facilities there, which it codes as **Detention Site Maroon** and **Detention Site Indigo**.<sup>116</sup> In the same footnote, the Senate Committee refers to a “third” facility, **Detention Site Red**, but whether this was also located at Guantánamo, or at another US military base (see section on Bagram in Part 2), or elsewhere, is redacted from the declassified version of the summary.<sup>117</sup>

As noted above, five months before publication of the summary report, the European Court of Human Rights found Poland to have been complicit in the CIA programme. Twelve years earlier, in a speech to welcome the President of Poland to Washington, DC, in mid-July 2002, in what was “only the second state visit of my administration”, President Bush said:

“Together, Poland and America are standing and fighting side by side in the war against global terrorism. From military forces to law enforcement, terrorist financing and intelligence, Poland’s support and solidarity in this great struggle has been unqualified, and America is deeply grateful.”<sup>118</sup>

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<sup>112</sup> SSCI Executive Summary, page 57. John Rizzo said that he knew less about Site Cobalt than about Green and Blue, and José Rodríguez said that he focussed less on Cobalt than “other higher priorities”.

<sup>113</sup> SSCI Executive Summary, footnote 2450.

<sup>114</sup> SSCI Executive Summary, footnote 28.

<sup>115</sup> SSCI Executive Summary, footnote 267. Also page 51 Redha al-Najar and Hassan Muhammad Abu Bakr were arrested in Pakistan in late May 2002. The SSCI reports that the two named men were transferred to “CIA custody at a Country [redacted] detention facility” in early June 2002.

<sup>116</sup> SSCI Executive Summary, footnote 848.

<sup>117</sup> On the colour spectrum, Red is situated next to Orange. The footnote naming Detention Site Red also references the Memorandum of Agreement between the Department of Defence and the CIA on the Detention of Certain Terrorists at a Facility at Guantánamo Bay Naval Station, dated 1 September 2006.

<sup>118</sup> Remarks at a Welcoming Ceremony for President Aleksander Kwasniewski of Poland, 17 July 2002.

**Detention Site Blue** (believed to be in Poland), opened in or around early December 2002. It was “initially designed for two detainees” – Abu Zubaydah and ‘Abd al-Nashiri were transferred there from Detention Site Green in December 2002 – but by the first quarter of 2003, it was holding five detainees.<sup>119</sup> The “site review team” had determined that conditions at this site, including “three purpose-built ‘holding units’, were adequate.<sup>120</sup> Four months after it “began hosting CIA detainees”, the country in question had “rejected the transfer” to it of a number of detainees, including Khalid Sheikh Mohammed.<sup>121</sup> After the US ambassador “intervened with the political leadership” of the host country “on the CIA’s behalf”, the decision was reversed. The following month, the CIA provided some millions of dollars “to the country’s [redacted]”.<sup>122</sup>

Ramzi bin al-Shibh was rendered to Detention Site Blue in February 2003,<sup>123</sup> and Khalid Sheik Mohammed early the following month.<sup>124</sup> The site was closed in the autumn of 2003.<sup>125</sup> The CIA’s activities caused “multiple, ongoing difficulties” between the host country and the CIA.<sup>126</sup> Officials of this country were “deeply disappointed” in not having received more warning of President Bush’s 6 September 2006 public confirmation of the existence of the secret detention programme, and the CIA Station in the country pointed to a “serious blow” to the bilateral relationship.<sup>127</sup>

During a trip to Romania in November 2002, President Bush noted in a TV interview that “Romania will be an active participant in the war against terror.”<sup>128</sup> It appears that Romania’s subsequent participation included hosting secret detentions in violation of international law.<sup>129</sup> The first detainees were transferred to **Detention Site Black** (believed to be in Romania) in the autumn of 2003.<sup>130</sup> This timing coincides with the closure of Detention Site Blue. The agreement between the CIA and the country hosting Detention Site Black was entered into in “[month redacted] 2002”.<sup>131</sup> By April 2005, Detention Site Black had “transitioned from an intelligence production facility to a long-term detention facility”, with the attendant problems of the “natural and progressive effects of long-term solitary confinement on detainees”.<sup>132</sup> The chief of base also wrote at this time that

“If this program truly does represent one of the agency’s most secret activities then it defies logic why inexperienced, marginal, underperforming and/or officers with

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<sup>119</sup> SSCI Executive Summary, page 62. Unlock the truth: Poland’s involvement in CIA secret detention, 12 June 2013, <http://www.amnesty.org/en/library/info/EUR37/002/2013/en>

<sup>120</sup> SSCI Executive Summary, page 62.

<sup>121</sup> SSCI Executive Summary, page 74.

<sup>122</sup> SSCI Executive Summary, page 74.

<sup>123</sup> SSCI Executive Summary, page 67.

<sup>124</sup> SSCI Executive Summary, page 84.

<sup>125</sup> SSCI Executive Summary, page 74.

<sup>126</sup> SSCI Executive Summary, page 74.

<sup>127</sup> SSCI Executive Summary, pages 74-75. An email which the SSCI cites was entitled “CIA Prisons in [Country [redacted]]”. Footnote 388.

<sup>128</sup> Interview with TVR of Romania, 18 November 2002.

<sup>129</sup> Current Evidence: European Complicity in the CIA Rendition and Secret Detention Programmes: Background paper, 25 January 2011, <http://www.amnesty.org/en/library/info/EUR01/001/2011/en>

<sup>130</sup> SSCI Executive Summary, page 97.

<sup>131</sup> SSCI Executive Summary, page 97.

<sup>132</sup> SSCI Executive Summary, pages 143-144.

potentially significant [counterintelligence] problems are permitted to deploy to this site".<sup>133</sup>

Then on 2 November 2005, the Washington Post published an article which began:

"The CIA has been hiding and interrogating some of its most important al Qaeda captives at a Soviet-era compound in Eastern Europe, according to US and foreign officials familiar with the arrangement. The secret facility is part of a covert prison system set up by the CIA nearly four years ago that at various times has included sites in eight countries, including Thailand, Afghanistan and several democracies in Eastern Europe..."<sup>134</sup>

Following publication of this article, officials of the host country "demanded the closure of Detention Site Black within [redacted] hours".<sup>135</sup> The CIA transferred the detainees who were held there out of the facility "shortly thereafter", that is, presumably in November 2005.<sup>136</sup>

**Detention Site Violet**, believed to be in Lithuania, opened in early 2005.<sup>137</sup> Just over two years earlier, in an interview with Lithuanian television on the eve of his visit to that country, the first by a US president, President Bush was asked what Lithuania and the USA were "going to do together". He responded that "we're going to work to fight terror."<sup>138</sup> Reading between the redactions in the Senate Intelligence Committee summary, it seems that by mid-2003, the CIA already had a "holding cell" in that country, which was then unused.<sup>139</sup> Again, reading between redactions, the summary suggests that "the first detainees arrived" in this country in 2003 (month redacted), and were held in an "existing" host country facility for several months in 2003 and then again during a month in 2004.<sup>140</sup> The CIA decided that due to the growing number of detainees in CIA custody, it should have a bigger facility built in the country.<sup>141</sup> Detention Site Violet was the result.

Detention Site Violet closed in 2006, the precise date redacted. Its closure was prompted by issues around medical treatment. CIA detainee **Mustafa Ahmad al-Hawsawi** had serious medical problems but his admission to a local hospital had been refused. After the US Department of Defense had also refused to assist, "the CIA was forced to seek assistance from three third-party countries in providing medical care to al-Hawsawi and four other CIA detainees with acute ailments".<sup>142</sup> The assisting countries are not identified.

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<sup>133</sup> SSCI Executive Summary, page 144.

<sup>134</sup> CIA holds terror suspects in secret prisons. Washington Post, 2 November 2005, <http://www.washingtonpost.com/wp-dyn/content/article/2005/11/01/AR2005110101644.html>

<sup>135</sup> The number redacted appears to be double digit – 24, 48, 72 or 96 hours?

<sup>136</sup> SSCI Executive Summary, page 153.

<sup>137</sup> SSCI Executive Summary, page 143. See Lithuania: Unlock the truth in Lithuania: Investigate secret prisons now, 29 September 2011, <http://www.amnesty.org/en/library/info/EUR53/002/2011/en>. For an analysis of the SSCI summary adding to the evidence that Detention Site Violet was indeed located in Lithuania, see New evidence shows CIA held prisoners in Lithuania, Reprieve news release with linked briefing at <http://www.reprieve.org.uk/press/new-evidence-shows-cia-held-prisoners-in-lithuania/>. See also, Lithuanian prosecutors restart investigation into CIA jail, Reuters, 2 April 2015, <http://www.reuters.com/article/2015/04/02/us-usa-cia-torture-lithuania-idUSKBNOMT18Z20150402>

<sup>138</sup> Interview with LNK TV of Lithuania, 18 November 2002.

<sup>139</sup> SSCI Executive Summary, page 98.

<sup>140</sup> SSCI Executive Summary, footnote 870.

<sup>141</sup> SSCI Executive Summary, page 98.

<sup>142</sup> SSCI Executive Summary, page 154.



During 2005 and 2006, the CIA transferred detainees to “at least nine countries” as well as to the US military in Iraq.<sup>143</sup> By January 2006, it was operating two facilities, Detention Site Violet and Detention Site Brown, holding 28 detainees at that point.<sup>144</sup> When Detention Site Violet was shut down in 2006, all the CIA’s remaining detainees were transferred to Detention Site Brown in Afghanistan. From (presumably) Detention Site Brown, 14 detainees were transferred to Guantánamo on 4/5 September 2006 on the eve of President Bush confirming publicly for the first time the existence of the secret detention programme.

Senate Committee code	Location <sup>145</sup>	Dates of operation <sup>146</sup>
Detention Site Green	Thailand	April to December 2002
Detention Site Cobalt	Afghanistan	September 2002 to 2004
Detention Site Blue	Poland	December 2002 to fall 2003
Detention Site Gray	Afghanistan	Spring/summer 2003 to fall 2003
Detention Site Black	Romania	Fall 2003 to November 2005
Detention Site Indigo	Guantánamo, Cuba	September 2003 to April 2004
Detention Site Maroon	Guantánamo, Cuba	September 2003 to April 2004
Detention Site Red	?	Before 1 September 2006
Detention Site Orange	Afghanistan	Spring/summer 2004 to early 2006
Detention Site Violet	Lithuania	Early 2005 to 2006
Detention Site Brown	Afghanistan	Early 2006 to 2008

In a few places in the summary, the CIA detention site colour code is redacted. For example, **Khaled Sheikh Mohammed** “was transferred to **Detention Site [Redacted]** on [redacted], 2005.”<sup>147</sup> Elsewhere, the Senate Committee notes that “Mohammed Shoroeiya, aka Abd al-Karim, was rendered to CIA custody at Detention Site [redacted] on April [redacted], 2003.” On this occasion, the site appears to refer to Detention Site Cobalt in Afghanistan.<sup>148</sup> In relation to the redacted date, this Libyan national told Amnesty International in Tripoli in 2011 that he was taken into custody on 18 April 2003 (see further below).

In 2006, the CIA built **another facility** in a country the identity of which also remains classified. According to the Senate Committee, by late 2006 the CIA had already invested several million dollars in its construction. It was later finished [apparently at a cost of at least 100 million dollars], but it was never used by the CIA for detentions. It was subsequently given to the host government.<sup>149</sup> The country in question may be Morocco (see below).

<sup>143</sup> SSCI Executive Summary, page 157.

<sup>144</sup> SSCI Executive Summary, page 156.

<sup>145</sup> Apart from Maroon and Indigo, locations not revealed by the SSCI and therefore remain unconfirmed.

<sup>146</sup> These dates only what can be read between redactions and therefore may be inaccurate. For more on dates of operation of Cobalt, Orange, Gray and Brown, see Part 2 on Afghanistan.

<sup>147</sup> SSCI Executive Summary, page 96.

<sup>148</sup> SSCI Executive Summary, footnote 623. But compare to footnote 620.

<sup>149</sup> SSCI Executive Summary, page 156.

Also during this period, the CIA reached an agreement with **another country** to “establish a CIA detention facility in that country and arranged for the leadership of Country [redacted] not to inform the US ambassador there”. In the event, no detainees were held there.<sup>150</sup> In late 2005, an agreement was also reached with **another country** to “temporarily house” a number of CIA detainees.<sup>151</sup>

On 22 January 2009, by executive order, President Obama ordered an end to the CIA’s secret detention programme and the use of interrogation techniques not authorized under the Army Field Manual.<sup>152</sup> On 9 April 2009, CIA Director Leon Panetta said that the “CIA no longer operates detention facilities or black sites and has proposed a plan to decommission the remaining sites”. He said that the CIA “retains the authority to detain individuals on a short-term transitory basis”.<sup>153</sup>

### **1.1B INVOLVEMENT OF FEDERAL BUREAU OF PRISONS IN SECRET DETENTION**

The Senate Committee reveals that in November 2002, “a delegation of several officers from the Federal Bureau of Prisons conducted an assessment” of Detention Site Cobalt, the secret CIA facility in Afghanistan where detainees were being subjected to enforced disappearance, torture and other ill-treatment. The delegation made recommendations and provided training.

After the visit, on 4 December 2002, officers at CIA Headquarters in Virginia met with the members of the Bureau of Prisons delegation. The Senate Intelligence Committee reported that the members of the delegation had said they were “WOW’ed” by the facility because they had never been to a facility where individuals were

“so sensory deprived, i.e., constant white noise, no talking, everyone in the dark, with the guards wearing a light on their head when they collected and escorted a detainee to an interrogation cell, detainees constantly being shackled to the wall or floor, and the starkness of each cell (concrete and bars). There is nothing like this in the Federal Bureau of Prisons. They then explained that they understood the mission and it was their collective assessment that in spite of all this sensory deprivation, the detainees were not being treated in humanely (sic). They explained that the facility was sanitary, there was medical care and the guard force and our staff did not mistreat the detainee(s).”<sup>154</sup>

The visit led not to an immediate shutdown of the secret facility and an end to the crimes under international law being committed in it, as one would have expected after intervention from an institution which describes itself as having been “established in 1930 to provide more progressive and humane care”, but the continuation of this human rights black hole.<sup>155</sup>

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<sup>150</sup> SSCI Executive Summary, page 154-155.

<sup>151</sup> SSCI Executive Summary, page 155.

<sup>152</sup> Executive Order 13491, Ensuring Lawful Interrogations. See also USA: The promise of real change. President Obama’s executive orders on detentions and interrogations, 30 January 2009, <http://www.amnesty.org/en/library/info/AMR51/015/2009/en>

<sup>153</sup> Statement to Employees by Director of the Central Intelligence Agency Leon E. Panetta on the CIA’s Interrogation Policy and Contracts, 9 April 2009, <https://www.cia.gov/news-information/press-releases-statements/directors-statement-interrogation-policy-contracts.html>

<sup>154</sup> SSCI Executive Summary, page 60.

<sup>155</sup> <http://www.bop.gov/about/> See also, however, USA: Entombed: Isolation in the US federal prison system, 16 July 2014, <http://www.amnesty.org/en/library/info/AMR51/040/2014/en>. Assertions that the CIA programme and other abusive US detentions were inconsistent with “American values”, may be set aside the fact that the USA was no stranger to cruelty to those deprived of their liberty long before its response to the 9/11 attacks. See page 75 of USA: Human dignity denied: Torture and accountability in the ‘war on terror’, May 2004, <http://www.amnesty.org/en/library/info/AMR51/145/2004/en>

Although redactions conceal who the Bureau staff were training on their visit, it may have been Afghan “security staff” at the facility. In which case, the Bureau of Prisons was providing training to nationals of another country to continue working in a facility in which they would oversee detainees being subjected to systematic human rights violations.<sup>156</sup>

### 1.1C DEATH OF GUL RAHMAN AND INTERROGATOR TRAINING

The Senate Committee summary notes that **Gul Rahman** died “at the end of the Federal Bureau of Prisons visit to the CIA detention site”. It has been public knowledge for nearly a decade that in November 2002 a detainee died in the Salt Pit facility. It was first reported in March 2005 by the Washington Post which among other things, reported that “Afghan guards – paid by the CIA and working under CIA supervision in an abandoned warehouse code-named the Salt Pit – dragged their captive around on the concrete floor, bruising and scraping his skin, before putting him in his cell”.<sup>157</sup> The 2004 CIA Inspector General’s report, a declassified version of which was released in 2009, described the “hard takedown”:

“...the hard takedown was used often in interrogations at [redacted] as ‘part of the atmospherics’. For a time, it was the standard procedure for moving a detainee to the sleep deprivation cell. It was done for shock and psychological impact and signalled the transition to another phase of the interrogation. The act of putting a detainee into a diaper can cause abrasions if the detainee struggles because the floor of the facility is concrete”.<sup>158</sup>

The summary footnotes a description of a “hard takedown” given by “Dr Hammond Dunbar” in an interview with the CIA Office of Inspector General after Gul Rahman’s death:

“According to [Dunbar], there were approximately five CIA officers from the renditions team. Each one had a role during the takedown and it was thoroughly planned and rehearsed. They opened the door of [a detainee] cell and rushed in screaming and yelling for him to ‘get down’. They dragged him outside, cut off his clothes and secured him with Mylar tape. They covered his head with a hood and ran him up and down a long corridor adjacent to his cell. They slapped him and punched him several times. [Dunbar] stated that although it was obvious they were not trying to hit him as hard as they could, a couple of times the punches were forceful. As they ran him along the corridor, a couple of times he fell and they dragged him through the dirt (the floor outside of the cell is dirt). [The detainee] did acquire a number of abrasions on his face, legs, and hands, but nothing that required medical attention.”<sup>159</sup>

The Senate Committee found that CIA interrogators had subjected Gul Rahman to “sleep deprivation, facial slap, use of cold (including cold cells and cold showers), ‘hard takedowns’, dietary manipulation, nudity, and light deprivation”.<sup>160</sup> A description by a CIA linguist said:

“Rahman was placed back under the cold water by the guards at [CIA officer 1]’s direction. Rahman was so cold that he could barely utter his alias. According to the [on-

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<sup>156</sup> SSCI Executive Summary, page 60. Article 10 of the UN Convention against Torture requires that “education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment”.

<sup>157</sup> CIA avoids scrutiny of detainee treatment, Washington Post, 3 March 2005.

<sup>158</sup> Special Review. Counterterrorism detention and interrogation activities (September 2001 – October 2003), CIA Office of Inspector General, 7 May 2004, para 191.

<sup>159</sup> SSCI Executive Summary, footnote 278.

<sup>160</sup> SSCI Executive Summary, footnote 596.

site linguist], the entire process lasted no more than 20 minutes. It was intended to lower Rahman's resistance and was not for hygienic reasons. At the conclusion of the shower, Rahman was moved to one of the four sleep deprivation cells where he was left shivering for hours or overnight with his hands chained over his head".<sup>161</sup>

The first training for CIA interrogators took place from 12 to 18 November 2002.<sup>162</sup> Less than a month after Gul Rahman died from suspected hypothermia, these newly trained interrogators were working on plans for stripping detainees in Detention Site Cobalt in temperatures described as 45 degrees Fahrenheit (7.2 Celsius), and "the use of interrupted sleep, loud music, and reduction in food quality and quantity."<sup>163</sup> Whether in this or other training, "cold water immersion" was taught to interrogators as well.<sup>164</sup>

### 1.1D 'ENHANCED' INTERROGATION IN CIA 'SAFEHOUSE'

In January 2006, Amnesty International interviewed Laid Saidi, an Algerian man who said he had been held for a year and a quarter in secret US detention in 2003 and 2004 after being subjected to rendition to Afghanistan from Malawi.<sup>165</sup> Laid Saidi recalled how he had had his clothes cut off him, was put in diapers, blindfolded, chained and then put in the trunk of a car and taken to an airport from where he was flown out to Bagram air base and taken to a dark prison near the airport outside Kabul. There he said that he was subjected to sleep deprivation via very loud music and noise, flashlights being shone into his eyes, and other methods. He said that he was given nothing to eat for 36 to 48 hours, and that he was tied to a wall at a height that made it impossible for him to stand upright. This, he said, continued for three to four days. After about a week, he was taken to another facility, where he said he was suspended by his arms from the ceiling with his feet attached to the floor. This, he said, lasted for five days. After 40 days in this facility, he was moved to a third facility, where he said there was no torture. From there he said that he was taken in late April 2004, blindfolded with other detainees, to an airport, put on a plane and flown for five to six hours, and after landing taken to a helicopter for a two-hour flight to further detention before eventual release in August 2004.

Asked about what else he had been subjected to, Laid Saidi described to Amnesty International being blindfolded by US personnel in the second facility in Afghanistan, and put in a bathtub-sized container and having his head pushed under the water. He said that he had believed that they were trying to drown him. He said that at other times, cold water, and at other times filthy water, over him. He said that he was routinely abused physical by guards, mainly by being hit in the stomach and body with their fists.

The Senate Committee gives some detail on this case, in the text of the summary calling him **Abu Hudhaifa**, but listing him in the appendix as also known as Laid Ben Dohman Saidi. This list records him as having been subjected to "enhanced interrogation techniques", but in the text of the summary his case is referenced only fleetingly in footnotes. He "was subjected to baths in which ice water was used, standing sleep deprivation for 66 hours that was discontinued due to a swollen leg attributed to prolonged standing, nudity, and dietary manipulation."<sup>166</sup> A March 2004 email from a CIA psychologist who had heard Abu Hudhaifa "gasp out loud several times as he was placed in the tub" is cited; the CIA Inspector General

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<sup>161</sup> SSCI Executive Summary, footnote 314.

<sup>162</sup> SSCI Executive Summary, page 58.

<sup>163</sup> SSCI Executive Summary, pages 59-60.

<sup>164</sup> SSCI Executive Summary, page 415.

<sup>165</sup> See also Algerian Tells of Dark Term in US Hands, The New York Times, 7 July 2006.

<sup>166</sup> SSCI Executive Summary, footnotes 602 and 2424.

had later reported that “as a result of being bathed in ice water, Abu Hudhaifa was ‘shivering’ and interrogators were concerned about his body temperature dropping”.<sup>167</sup> This use of immersion in a bathtub of ice water against this detainee took place at “a safehouse” used by the CIA in Afghanistan, and possibly also at Detention Site Cobalt.<sup>168</sup> The location of the safe house is not revealed in the summary. Amnesty International reported in 2003 that the CIA might have been using the former Ariana hotel in Kabul as a place to hold detainees.<sup>169</sup> This location was believed to be where the CIA was based in Afghanistan.

The summary indicates that Abu Hudhaifa was not the only detainee to be subjected to “enhanced interrogation techniques” at this safe house. It appears that they included **Majid Khan**. He alleged that in May 2003 he was subjected to “immersion in a tub that was filled with ice and water”. The summary notes that “while CIA cables do not confirm bathing or water dousing, Chief of Interrogations [name redacted] subjected Abu Hudhaifa to an (unauthorized) ‘icy water’ bath at the same [redacted] where Majid Khan was held”.<sup>170</sup>

Majid Khan was moved from Pakistan to CIA custody in May 2003.<sup>171</sup> Both he and Abu Hudhaifa were immediately subjected to “enhanced” interrogation. Both CIA cables cited in the summary are dated May 2003 (24 May in Khan’s case, day redacted in Hudhaifa’s case).<sup>172</sup> Citing CIA cables from 27 and 28 May 2003, the Committee reveals that “after being rendered to CIA custody, Majid Khan was subjected by the CIA to sleep deprivation, nudity, and dietary manipulation, and may have been subjected to an ice water bath”.<sup>173</sup> Majid Khan told the ICRC in Guantánamo in 2006 that in Afghanistan, the second country in which he had been detained after Pakistan, he had been subjected to three days of nudity and prolonged stress standing, and had not been provided solid food for seven days. A June 2006 CIA email stated that Majid Khan had “fabricated a lot of his early [CIA] interrogation reporting to stop... what he called ‘torture’.” The email said that Majid Khan had alleged that he had been “hung up” for a day in a sleep deprivation position and that he had provided “everything they wanted to hear to get out of the situation”.<sup>174</sup>

The Senate Intelligence Committee notes that after between 460 and 469 days in CIA custody, Abu Hudhaifa was released after “the CIA discovered he was likely not the person he was believed to be”.<sup>175</sup> Majid Khan was transferred to Guantánamo in September 2006 after between 1,200 and 1,210 days in secret CIA custody.<sup>176</sup> He is still there today.

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<sup>167</sup> SSCI Executive Summary, footnotes 2355 and 2356.

<sup>168</sup> SSCI Executive Summary, see footnotes 615 and 558 and accompanying text.

<sup>169</sup> USA: The threat of a bad example: Undermining international standards as ‘war on terror’ detentions continue, 18 August 2003, <http://www.amnesty.org/en/library/info/AMR51/114/2003/en>; USA: Human dignity denied, October 2004, *op.cit.* Also Rights group reports Afghanistan torture, New York Times, 19 December 2005, <http://www.nytimes.com/2005/12/19/international/asia/19prisons.html> (“mid-level Afghan intelligence officials...said they were aware of several places where Americans currently detain people. One official mentioned the main military headquarters, Camp Eggers, in Kabul, and the Ariana Hotel, which is close to the presidential palace that CIA officials have occupied since December 2001, when they first arrived in the capital after the fall of the Taliban”).

<sup>170</sup> SSCI Executive Summary, footnotes 610 and 615.

<sup>171</sup> SSCI Executive Summary, footnote 1167.

<sup>172</sup> SSCI Executive Summary, footnote 2366.

<sup>173</sup> SSCI Executive Summary, footnote 497.

<sup>174</sup> SSCI Executive Summary, footnote 497.

<sup>175</sup> SSCI Executive Summary, footnote 2424.

<sup>176</sup> Originally the SSCI indicated he was in custody for 1,180 to 1,189 days, but has now revised this.

## 1.1E CONSEQUENCES OF TORTURE AND OTHER ILL-TREATMENT

From early 2004, after he had been in secret detention for more than a year of what would become three and a half year enforced disappearance, **Majid Khan** engaged in a series of hunger strikes and acts of self-mutilation.<sup>177</sup> The CIA responded aggressively. In September 2004, after about three weeks of a hunger strike,

“the CIA developed a more aggressive treatment regimen ‘without unnecessary conversation’ [i.e. with the detainee]. Majid Khan was then subjected to involuntary rectal feeding and rectal hydration, which included two bottles of Ensure. Later that same day [23 September 2004], Majid Khan’s ‘lunch tray’, consisting of hummus, pasta with sauce, nuts, and raisins, was ‘pureed’ and rectally infused. Additional sessions of rectal feeding and hydration followed”.<sup>178</sup>

Majid Khan subsequently “engaged in acts of self-harm that included attempting to cut his wrist on two occasions” [in November 2004 and March 2005]; “an attempt to chew into his arm at the inner elbow” [December 2004]; “an attempt to cut a vein in the top of his foot” [December 2004]; and “an attempt to cut into his skin at the elbow joint using a filed toothbrush” [June 2005].<sup>179</sup>

The Senate Committee summary makes public for the first time this and some other details of the consequences of the torture and other ill-treatment to which detainees were subjected. For example, it reveals that

“multiple CIA detainees subjected to prolonged sleep deprivation experienced hallucinations, and CIA interrogation teams did not always discontinue sleep deprivation after the detainees had experienced hallucinations”.<sup>180</sup>

**Arsala Khan**, an Afghan national, was subjected to 56 hours of standing sleep deprivation in October 2003 in Detention Site Cobalt (Afghanistan), after which he was described as “barely able to enunciate, and being ‘visibly shaken by his hallucinations depicting dogs mauling and killing his sons and family’”.<sup>181</sup>

According to the Senate Intelligence Committee, “numerous detainees subjected to standing sleep deprivation suffered from edema”.<sup>182</sup> It also discloses that detainees were subjected to “the CIA’s enhanced interrogation techniques, notwithstanding concerns that the interrogation techniques could exacerbate their injuries”. For example, **Muhammad Umar ‘Abd al-Rahman**, also known as Asadallah, who was held in secret CIA custody for about five months in 2003, was subjected to

“standing sleep deprivation position despite a sprained ankle. Later, when Asadallah was placed in stress positions on his knees, he complained of discomfort and asked to sit. Asadallah was told he could not sit unless he answered questions truthfully”.

He was subjected to water dousing, nudity and cramped confinement.<sup>183</sup> He was put into a “small isolation box”. This is believed to have taken place at Detention Site Cobalt

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<sup>177</sup> Specifically, “beginning in March 2004, and continuing until his rendition to Guantánamo Bay in 2006”. SSCI Executive Summary, pages 114-115.

<sup>178</sup> SSCI Executive Summary, page 115.

<sup>179</sup> SSCI Executive Summary, page 115.

<sup>180</sup> SSCI Executive Summary, page 412. See also footnote 2510.

<sup>181</sup> SSCI Executive Summary, pages 109-110.

<sup>182</sup> SSCI Executive Summary, footnote 2357.

<sup>183</sup> SSCI Executive Summary, footnote 599.

(Afghanistan). This Egyptian national, taken into custody in February 2003 in Pakistan, had been one of the detainees whose whereabouts remained unknown when Amnesty International and others issued a report in June 2007 on US enforced disappearances.<sup>184</sup>

Besides Asadallah, there were three other detainees “with medical complications in their lower extremities” whom the CIA subjected to various methods of interrogation that could exacerbate their conditions. Two had broken feet (see Abu Hazim and Abd al Karim below) and one, **Khallad (Walid) bin Attash**, had a prosthetic leg. The Senate Committee reports:

“CIA interrogators shackled each of these detainees in the standing position for sleep deprivation for extended periods of time until medical personnel assessed that they could not maintain the position.”<sup>185</sup>

Khallad bin Attash’s one leg “swelled during standing sleep deprivation, resulting in the transition to seated sleep deprivation. He was also subjected to nudity and dietary manipulation during this period”.<sup>186</sup> Again, this serves to confirm what the US government was told more than eight years ago, when Khallad bin Attash’s own allegations were included in the ICRC report transmitted to the authorities. He said that during his detention in Afghanistan, possibly Detention Site Cobalt, he was held naked, in a small dark cell with “no light, artificial or natural”, with “loud music” playing 24 hours a day “throughout the three weeks I was held there”. He said that was kept

“in a standing position, feet flat on the floor, but with my arms above my head and fixed with handcuffs and a chain to a metal bar running across the width of the cell... After some time being held in this position my stump began to hurt so I removed my artificial leg to relieve the pain. Of course my one good leg then began to ache and soon started to give way so that I was left hanging with all my weight on my wrists. I shouted for help but at first nobody came. Finally, after about one hour a guard came and my artificial leg was given back to me and I was again placed in the standing position with my hands above my head. After that the interrogators sometimes deliberately removed my artificial leg in order to add extra stress to the position. For the first two weeks I was held in this position apart from two or three occasions when I was allowed to lie down, but I cannot remember for how long.”<sup>187</sup>

In the case of **Abu Zubaydah**, personnel at CIA Headquarters and Detention Site Green (Thailand) agreed that the interrogation process would take precedence over preventing his wounds from becoming infected (he had been shot on arrest and had emergency surgery). During this period, “medical personnel described how Abu Zubaydah’s interrogation resulted in the ‘steady deterioration’ of his surgical wound from April 2002”.<sup>188</sup> An email to the CIA’s Office of Medical Services stated that “we are providing absolute minimum wound care” and Abu Zubaydah “has no opportunity to practice any form of hygienic self-care (he’s filthy), the

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<sup>184</sup> USA: Off the Record. US Responsibility for Enforced Disappearances in the ‘War on Terror’, 7 June 2007, <http://www.amnesty.org/en/library/info/AMR51/093/2007/en>

<sup>185</sup> SSCI Executive Summary, page 101.

<sup>186</sup> SSCI Executive Summary, footnote 692.

<sup>187</sup> ICRC Report on the treatment of fourteen ‘high value detainees’ in CIA custody. February 2007, op. cit., pages 31-32. He also alleged that “while being held in a form of stress standing position with his arms shackled above his head, and his feet touching the floor, had his lower leg measured on a daily basis with a tape measure by a person he assumed to be a doctor for signs of swelling; the health person finally ordered that he be allowed to sit on the floor, albeit with his arms still shackled above his head”. *Ibid.*, page 22.

<sup>188</sup> SSCI Executive Summary, page 111.

physical nature of this phase dictates multiple physical stresses”.<sup>189</sup> Five days later, on 20 August, medical personnel wrote that the detainee’s wound had undergone “significant” deterioration. A CIA document from 25 August stated,

“During the most aggressive portions of [Abu Zubaydah’s] interrogation, the combination of a lack of hygiene, sub-optimal nutrition, inadvertent trauma to the wound secondary to some of the stress positions utilized at that stage and the removal of formal, obvious medical care to further isolate the subject had an overall additive effect on the deterioration of the wound”.<sup>190</sup>

This can now be set against what Abu Zubaydah himself told the ICRC at Guantánamo after his transfer to military detention there in September 2006. He recalled of this “aggressive” interrogation phase, as the CIA called it, that

“After the beating I was then placed in the small box. They placed a cloth or cover over the box to cut out all light and restrict my air supply. As it was not high enough even to sit upright, I had to crouch down. It was very difficult because of my wounds. The stress on my legs held in this position meant my wounds both in the leg and stomach became very painful. I think this occurred about 3 months after my last operation. It was always cold in the room, but when the cover was placed over the box it made it hot and sweaty inside. The wound on my leg began to open and started to bleed.”<sup>191</sup>

During this phase, one of Zubaydah’s eyes began to deteriorate. at which point CIA officers requested testing of his other eye, not out of concern for his well-being, but rather “driven by our intelligence needs”.<sup>192</sup> The 25 August cable said that the reason was “we have a lot riding on his ability to see, read and write”.<sup>193</sup> CIA records indicate that “Abu Zubaydah ultimately lost the eye” that had deteriorated during the interrogation.<sup>194</sup>

Detainees were also subjected to rectal rehydration and others were threatened with it, according to CIA records seen by the Senate Intelligence Committee. In addition, senior CIA personnel, including General Counsel Scott Muller and Deputy Director of Operations James Pavitt, were told of allegations that rectal exams were conducted with “excessive force” against two detainees held at Detention Site Cobalt (Afghanistan), information that appears not to have resulted in any sanction. One of the detainees, **Mustafa al-Hawsawi** was later diagnosed with “chronic haemorrhoids, an anal fissure, and symptomatic rectal prolapse”.<sup>195</sup> He is currently facing a capital trial by military commission at Guantánamo.<sup>196</sup>

Other injuries included those from physical assaults and the use of restraints. After a period of “intense questioning and walling” on 20 March 2003, for example, **Khaled Sheikh Mohammed** was described as “tired and sore, with abrasions on his ankles, shins, and wrists,

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<sup>189</sup> SSCI Executive Summary, footnote 649.

<sup>190</sup> SSCI Executive Summary, footnote 2314.

<sup>191</sup> ICRC Report on the treatment of fourteen ‘high value detainees’ in CIA custody. February 2007, op. cit., page 30.

<sup>192</sup> SSCI Executive Summary, page 491.

<sup>193</sup> SSCI Executive Summary, page 112.

<sup>194</sup> SSCI Executive Summary, footnote 651.

<sup>195</sup> SSCI Executive Summary, footnotes 584 and 2655.

<sup>196</sup> In late 2014, the UN Working Group on Arbitrary Detention concluded that Mustafa al-Hawsawi’s detention was arbitrary, in violation of the USA’s obligations and that, “taking into account all the circumstances of the case”, the adequate remedy would be to release him and “accord him an enforceable right to compensation”. UN Doc.: A/HRC/WGAD/2014, 23 January 2015.



as well as on the back of his head. He also suffered from pedal edema result from extended standing”.<sup>197</sup> Yet he was only about a quarter of the way through a period of sleep deprivation, “most of it in the standing position, which would last for seven and a half days, or approximately 180 hours”. That began on the evening of 18 March 2003.<sup>198</sup> And on 22 March 2003, he faced more “intense” walling, and two days after that he was subjected to his 15<sup>th</sup> documented session of waterboarding.<sup>199</sup> He too is facing a military commission trial at which the prosecution intends to seek the death penalty in the event of a conviction.

**Presidential statements in support of victims of torture (made around 26 June each year)**

Bush 2003. *I further urge governments to join America and others in supporting torture victims’ treatment centers, contributing to the UN Fund for the Victims of Torture, and supporting the efforts of nongovernmental organizations to end torture and assist its victims*

Bush 2004. *The victims often feel forgotten, but we will not forget them. America supports accountability and treatment centers for torture victims... We stand with the victims to seek their healing and recovery and urge all nations to join us in these efforts to restore the dignity of every person affected by torture*

Bush 2005. *On United Nations International Day in Support of Victims of Torture, the United States reaffirms its commitment to the worldwide elimination of torture*

Obama 2009. *My administration is committed to taking concrete actions against torture and to address the needs of its victims*

Obama 2010. *We will also continue our close collaboration with international and domestic groups working to rehabilitate and reintegrate torture victims and offenders*

Obama 2011. *As a nation that played a leading role in the effort to bring this treaty into force, the United States will remain a leader in the effort to end torture around the world and to address the needs of torture victims*

Obama 2012. *On this International Day in Support of Victims of Torture, the United States joins the international community in pledging to work toward the elimination of torture and all other forms of cruel, inhuman or degrading treatment or punishment*

Obama 2014. *We honor those who have faced the horrors of torture, remember those who have lost their lives in the face of it, and renew our pledge to the struggle against torture and other cruel, inhumane or degrading treatment or punishment throughout the world*

The “austere conditions” and solitary confinement in which detainees were held by the CIA, in addition to whatever interrogation techniques and treatment during transfers they had endured, caused “management challenges for the CIA”.<sup>200</sup> The plight of Ramzi bin al-Shibh and Majid Khan are cases in point.

**Ramzi bin al-Shibh** was subjected to weeks of “enhanced” interrogation, including sleep deprivation, nudity, dietary manipulation, and various types of physical assault.<sup>201</sup> CIA interrogators used the techniques also for “behaviour adjustment purpose, in response to perceived disrespect”. At a time in early 2003, when CIA policy was to keep detainees in constant light, Ramzi bin al Shibh was “kept in total darkness to heighten his sense of fear”. At one point in February 2003, security personnel found him “cowering in the corner,

<sup>197</sup> SSCI Executive Summary, page 90-91.

<sup>198</sup> SSCI Executive Summary, page 90.

<sup>199</sup> SSCI Executive Summary, page 91 and 92.

<sup>200</sup> SSCI Executive Summary, pages 113-4.

<sup>201</sup> SSCI Executive Summary, pages 75-79.

shivering” when the light bulb in his cell had burned out.<sup>202</sup> The interrogators then decided “to use darkness as an interrogation technique. He was then placed in sleep deprivation ‘standing, shackled feet and hands, with hands over his head, naked, in total darkness’.”<sup>203</sup>

The Senate Committee summary provides examples of how loud music or noise was used for by the CIA for “conditioning” and breaking “resistance” to interrogation. Also specific music was used to signal to a detainee that another interrogation was about to begin. In the case of Ramzi bin al Shibh, “the Blues Brothers rendition of ‘Rawhide’ [was] played. CIA records state that bin al-Shibh’s reaction to hearing the song was evidence of his conditioning, as bin al-Shibh ‘knows when he hears the music where he is going and what is going to happen’.” The CIA used “loud noise, to prevent concentrating, planning, and derailing of the exploitation/interrogation process with interrogation countermeasures (resistance).”<sup>204</sup>

The CIA later came to recognize that Ramzi bin al Shibh’s “psychological problems” – including “visions, paranoia, insomnia, and attempts at self-harm” – were caused by his “long-term social isolation and anxiety that the CIA would return to using its enhanced interrogation techniques against him”.<sup>205</sup> By the first quarter of 2005, after more than two years in custody, his “deterioration” was assessed as “alarming”. When he was transferred in early September 2006 to Guantánamo (where he remains), he was “placed on anti-psychotic medications”. His mental health has become an issue in military commission proceedings against him, at which the Obama administration still intends to seek the death penalty.

**Majid Khan** also remains in Guantánamo today awaiting sentencing after pleading guilty in 2012 before a military commission. As part of his plea deal he agreed not to sue the USA or any of its agencies for anything that happened to him between being taken into custody in March 2003 and his guilty plea on 29 February 2012. At the hearing in Guantánamo on that date, an official from the Counterterrorism Section of the US Department of Justice clarified that while the USA considered that the pre-trial agreement prevented Majid Khan from suing “officials or agencies of the United States Government”, it “does not bind him in any respect with respect to foreign governments”. Undoubtedly, the US administration here obtained an agreement meshing with its broad litigation and political strategy generally to block accountability and access to remedy in the USA for human rights violations committed by US personnel in the counter-terrorism context.<sup>206</sup>

While Majid Khan’s right to seek remedy is one that only he can choose not to exercise, regardless of this or any other similar plea agreements,<sup>207</sup> the US government is not absolved of its obligation under international law to ensure accountability for the crimes committed against Majid Khan and other detainees, effective access to meaningful remedy for those victims of US human rights violations who seek it, and to respect and meet the individual and collective right to truth about such violations.<sup>208</sup>

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<sup>202</sup> SSCI Executive Summary, footnote 423.

<sup>203</sup> SSCI Executive Summary, footnote 2369.

<sup>204</sup> SSCI Executive Summary, Footnote 2407.

<sup>205</sup> SSCI Executive Summary, page 80.

<sup>206</sup> See USA: ‘Congress has made no such decision’: Three branches of government, zero remedy for counter-terrorism abuses, 6 February 2012, <http://www.amnesty.org/en/library/info/AMR51/008/2012/en>

<sup>207</sup> Other detainees still at Guantánamo include Ahmed al-Darbi, facing sentencing after agreeing as part of his guilty plea not to sue the USA for his prior treatment which included rendition from Azerbaijan in 2002. He is not listed in the SSCI report, presumably as the SSCI determined that even if the CIA was responsible for his rendition, it did not render him to CIA custody.

<sup>208</sup> USA: One-way accountability: Guantánamo detainee pleads guilty; Details of government crimes

## 1.1F WATERBOARDING-PLUS

At a hearing in front of the US Senate Select Committee on Intelligence on 5 February 2008, the then CIA Director, General Michael Hayden, confirmed that among its “enhanced” interrogation techniques, the CIA had used “waterboarding” against three detainees in 2002 and 2003.<sup>209</sup> In a statement entirely incompatible with the unequivocal prohibition of torture at all times and in all circumstances, General Hayden said that “The Agency’s decision to employ waterboarding in the wake of 9/11 was not only lawful, it reflected the circumstances of the time.”<sup>210</sup>

The three detainees in question were Khalid Sheikh Mohammed, ‘Abd al-Rahim Al Nashiri and Abu Zubaydah. The Senate Intelligence Committee summary confirms that the waterboarding of the three detainees in question took place in Detention Site Green (Thailand), and Detention Site Blue (Poland). A thorough, independent and impartial investigation into such allegations, as required under international law, never occurred, while the CIA, Bush administration and other officials repeatedly pointed to the “limited” use of waterboarding as an indicator of a controlled and limited programme.<sup>211</sup>

In a report on torture around the world published 40 years ago, Amnesty International wrote:

“History shows that torture is never limited to ‘just once’: ‘just once’ becomes once again – becomes a practice and finally an institution. As soon as its use is permitted once, as for example in one of the extreme circumstances like a bomb, it is logical to use it on people who might plant bombs, or on people who might think of planting bombs, or on people who defend the kind of person who might think of planting bombs.”<sup>212</sup>

An email dated 10 April 2003 from a medical officer at Detention Site Blue (Poland), wrote that the CIA interrogators “felt that the [waterboard] was the big stick and that [CIA] HQ was more or less demanding that it be used early and often”.<sup>213</sup> In the 2003/2004 review of the CIA programme by the CIA Office of Inspector General (OIG), the fact that Abu Zubaydah and Khaled Sheikh Mohammed had been subjected to more than 80 and more than 180 applications of the waterboard respectively had raised the OIG’s concern. Contemporaneous White House familiarity with this concern – and knowledge that the technique had been used – is revealed by the Senate Committee when it discloses that in early June 2003 White House Counsel Alberto Gonzales, and Vice President Cheney’s Counsel, David Addington, had spoken to CIA General Counsel Scott Muller about whether the number of applications had exceeded Justice Department guidance.<sup>214</sup>

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against him remain classified top secret, 18 July 2012,  
<http://www.amnesty.org/en/library/info/AMR51/063/2012/en>

<sup>209</sup> In November 2007, the CIA had “prepared and provided a set of talking points to the CIA director for an ‘upcoming meeting with the President regarding the Waterboard Enhanced Interrogation Technique’.” SSCI Executive Summary, page 245.

<sup>210</sup> Statement to Employees by Director of the Central Intelligence Agency, General Mike Hayden on Lawful Interrogation, 13 February 2008, <https://www.cia.gov/news-information/press-releases-statements/press-release-archive-2008/directors-statement-on-lawful-interrogation.html>

<sup>211</sup> For example, former Vice President Cheney to the American Enterprise Institute, 21 May 2009, <http://www.aei.org/publication/remarks-by-richard-b-cheney/> (“let me draw your attention to some points that are routinely overlooked. It is a fact that only detainees of the highest intelligence value were ever subjected to enhanced interrogation. You’ve heard endlessly about waterboarding. It happened to three terrorists”).

<sup>212</sup> Amnesty International, Report on Torture, 1973,  
<http://www.amnesty.org/en/library/info/ACT40/001/1973/en>

<sup>213</sup> SSCI Executive Summary, page 85.

<sup>214</sup> SSCI Executive Summary, footnote 698.

In the ICRC report transmitted to the US authorities in February 2007, the organization reported not only that waterboarding had been used against three detainees, but that the cold water dousing or immersion had been another technique more widely used. Seven of the 14 detainees it interviewed at Guantánamo about their prior time in secret CIA custody reported having been doused with cold water during interrogation sessions. Four told the ICRC that the dousing had occurred while they were being held in the stress standing position with their arms shackled above their heads for prolonged periods. In three cases, including **Khallad (Walid) bin Attash** in Afghanistan, the detainee had been made to lie on a plastic sheet with the corners raised so that he would be subjected to a cold water “immersion bath”. One detainee alleged that he had been strapped to a “tilting bed and cold water was poured over his body while he was threatened with ‘water-boarding’.”<sup>215</sup>

Among the revelations in the Senate Committee summary is one contained in a footnote, which states that the Committee’s full report contains a CIA photograph of a waterboard at Detention Site Cobalt (Afghanistan). The footnote continues:

“While there are no records of the CIA using the waterboard at Cobalt, the waterboard device in the photograph is surrounded by buckets, with a bottle of unknown pink solution (filled two thirds of the way to the top) and a watering can resting on the wooden beams of the waterboard. In meetings between the Committee and the CIA in the summer of 2013, the CIA was unable to explain the details of the photograph, to include the buckets, solution, and watering can, as well as the waterboard’s presence at Cobalt.”<sup>216</sup>

Libyan national **Abd al-Karim** told Amnesty International in Tripoli in 2011 that waterboarding was one of the methods used at the detention facility in which he was held in Afghanistan in 2004 (see further below).<sup>217</sup> What the Senate Intelligence Committee summary reveals is that “water dousing” with cold water or ice water baths was used at Detention Site Cobalt without authorization from CIA Headquarters, and without the latter following up once it had become known. From June 2003, the technique was categorized as a “standard” interrogation technique. The Committee found that

“detainees were often held down, naked, on a tarp[aulin] on the floor, with the tarp pulled up around them to form a makeshift tub, while cold or refrigerated water was poured on them. Others were hosed down repeatedly while they were shackled naked, in the standing sleep deprivation position. These same detainees were subsequently placed in rooms with temperatures ranging from 59 to 80 degrees Fahrenheit [often or always naked]. Other accounts suggest detainees were water doused while placed on a waterboard.”<sup>218</sup>

In interrogation sessions at Detention Site Cobalt on 5 and 6 April 2003, a senior CIA interrogator and another interrogator subjected **Mustafa al-Hawsawi** to water dousing.<sup>219</sup> Another CIA interrogator subsequently wrote that Mustafa al-Hawsawi might have been waterboarded or subjected to treatment that “could be indistinguishable from the

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<sup>215</sup> ICRC Report on the treatment of fourteen ‘high value detainees’ in CIA custody. February 2007, op. cit., pages 15-16, and page 32.

<sup>216</sup> SSCI Executive Summary, footnote 245. See also footnotes 620 and 623.

<sup>217</sup> Other methods he said were frequently used was confinement in a small box and a wardrobe-like object in which the detainee would be placed with loud speakers at ear level blasting loud music.

<sup>218</sup> SSCI Executive Summary, page 105.

<sup>219</sup> SSCI Executive Summary, page 106.

waterboard".<sup>220</sup> The Senate Intelligence Committee reports that

“both of the interrogators who subjected al-Hawsawi to the CIA’s enhanced interrogation techniques on April 6, 2003, said that al-Hawsawi cried out for God while the water was being poured on him and one of the interrogators asserted that this was because of the cold temperature of the water. Both of the interrogators also stated that al-Hawsawi saw the waterboard and that its purpose was made clear to him.”<sup>221</sup>

The CIA Inspector General found that Mustafa al-Hawsawi’s experience reflected “the way water dousing was done” at Detention Site Cobalt, and that it had been developed with guidance from CTC attorneys and the CIA’s Office of Medical Services.<sup>222</sup>

In 2011 in Libya, Amnesty International spoke to a number of Libyan nationals who had been held in the secret CIA programme before being sent back to Libya. The Senate Committee summary confirms that they were indeed held in CIA custody and provides some limited information about their treatment during that time. One of them, **Abu Hazim**, recalled that doctors in the secret detention facility in Afghanistan had behaved more like interrogators.<sup>223</sup> He and another former detainee, **Abd al-Karim**, recalled how a doctor had advised the interrogators to cover the plaster-casts on their legs to make them waterproof during interrogations, which often involved water. At the time of their arrest in a house in Peshawar, Pakistan on 3 April 2003, Abu Hazim said he had broken a foot when jumping off a wall and Abd al-Karim had been shot in the right foot.

The summary report throws further light on these accounts, as well as stating that these men were held in Detention Site Cobalt:

“In April 2003, CIA detainees Abu Hazim and Abd al-Karim each broke a foot while trying to escape capture and were placed in casts... To accommodate [their] injuries... rather than being shackled standing during sleep deprivation, the detainees would be seated, secured to a cell wall, with intermittent disruptions of normal sleeping patterns. For water dousing, the detainees’ injured legs would be wrapped in plastic.”<sup>224</sup>

According to CIA records, Abu Hazim was subjected to water dousing in April 2003 in a way that “approximated waterboarding”. A CIA linguist related that a cloth was put over the detainee’s face and the CIA interrogator “poured cold water directly on Abu Hazim’s face to disrupt his breathing”. When the detainee “turned blue”, the “Physician’s Assistant” removed the cloth so that Abu Hazim could breathe.”<sup>225</sup>

On 18 April 2003, “a CIA physician assistant recommended that Abd al-Karim avoid extended standing for ‘a couple of weeks’.” He was then subjected to cramped confinement on 19-20 April, to stress positions on 21 April, and to “walling” on 21 and 29 April. Although CIA Headquarters had not approved these at the time, and indeed had reviewed X-rays of Abd al-Karim’s foot (recommending that “no weight bearing and the use of crutches for a total of three months”), on 10 May 2003, CIA HQ approved an “expanded list of CIA

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<sup>220</sup> SSCI Executive Summary, page 106.

<sup>221</sup> SSCI Executive Summary, page 107.

<sup>222</sup> *Ibid.*

<sup>223</sup> See also ICRC Report on the treatment of fourteen ‘high value detainees’ in CIA custody. February 2007, *op. cit.*, page 22, allegation by Hambali that after a period of “prolonged stress standing”, a health professional intervened to stop further use of the method, but told the detainee “I look after your body only because we need you for information”.

<sup>224</sup> SSCI Executive Summary, page 112 and footnote 654 (internal quotation marks omitted).

<sup>225</sup> SSCI Executive Summary, page 107.

enhanced interrogation techniques that could be used against Abd al-Karim, including walling and stress positions”.<sup>226</sup>

On 4 May 2003, “the CIA regional medical officer examined Abu Hazim and recommended that he avoid all weight-bearing activities for an additional five weeks due to his broken foot”. On 24 April 2003, a cable from CIA HQ to Detention Site Cobalt authorized the use against Abu Hazim of the attention grasp, facial insult slap, abdominal slap, water dousing, and sleep deprivation up to 72 hours. From 27 to 29 April, he was also subjected to walling and facial hold which had not been authorized (but were approved in a 10 May 2003 cable).

On 12 May 2003, another CIA physician assistant said that both men’s injuries had healed sufficiently to allow them to be placed “in the standing sleep deprivation position”. Abu Hazim was subjected to 52 hours of standing sleep deprivation from 3 to 5 June 2003, while Abd al-Karim underwent an “unspecified period” of standing sleep deprivation on 15 May.<sup>227</sup>

The summary report records that Abu Hazim was held in CIA custody for 730-739 days, and Abd al-Karim to 490-499 days.<sup>228</sup> This would be consistent with what the men told Amnesty International, namely that they were transferred to Libya in May 2005 and August 2004 respectively. Abd al-Karim had said that he was transferred to the CIA on 18 April 2003, about two weeks after he had been arrested in Pakistan.

### 1.1G ‘WE CAN NEVER LET THE WORLD KNOW WHAT I HAVE DONE TO YOU’

On or around 16 September 2003, a CIA interrogator told **Riduan bin Isomuddin**, also known as **Hambali**, who had been taken into custody in Thailand and rendered into CIA custody the previous month,<sup>229</sup> that he would never be taken to a court because “we can never let the world know what I have done to you”.<sup>230</sup> About a month after he was transferred to CIA custody, CIA Headquarters approved the use of “enhanced interrogation techniques” on him.<sup>231</sup> Techniques to which he was subjected before being questioned apparently included being “stripped and shackled nude” and “placed in the standing position for sleep deprivation”.<sup>232</sup>

Over a decade later, Hambali has still not been brought to court. Rather, he is still in the classified conditions of Camp 7, Guantánamo, where he has been held without charge or trial since September 2006. He told the ICRC that when held in Thailand after his arrest on 11 August 2003, he had been in US custody and kept for four or five days naked, blindfolded and with a type of sack over his head, before being taken to Afghanistan where he is believed to have been held in Detention Site Cobalt. He may have been in Detention Site Blue (Poland) by the time the interrogator said he was not ever going to see the inside of a courtroom.<sup>233</sup>

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<sup>226</sup> SSCI Executive Summary, page 112 and footnote 655.

<sup>227</sup> SSCI Executive Summary, pages 112-113 and footnote 655.

<sup>228</sup> The SSCI first said that Abu Hazim was held in custody for 720-729 days and Abd al-Karim for 480-489 days. It has since revised these figures, along with many others.

<sup>229</sup> SSCI Executive Summary, page 108.

<sup>230</sup> SSCI Executive Summary, findings and conclusions, page 4. Among those involved in Hambali’s interrogation was CIA contractor psychologist Hammond Dunbar (Bruce Jessen) who participated in the interrogation as an interrogator. Footnote 631. See also Amnesty International Urgent Action, 19 August 2003, USA: Incommunicado detention/Fear of ill-treatment: Riduan Isamuddin aka Hambali, <http://www.amnesty.org/en/library/info/AMR51/119/2003/en>

<sup>231</sup> SSCI Executive Summary, page 108.

<sup>232</sup> SSCI Executive Summary, page 77 and footnote 2366.

<sup>233</sup> The interrogation template developed for Ramzi bin al-Shibh in Detention Site Blue (Poland) was used in the case of Hambali. SSCI Executive Summary, footnote 403 and accompanying text page 76.

The only former CIA or Guantánamo detainee to have been taken to an ordinary court for trial in the USA is **Ahmed Khalfan Ghailani**. He was transferred from Guantánamo to New York in 2009 and charged with complicity in the 1998 bombings of two US embassies in east Africa in which 224 people were killed and many more injured. In 2010 a federal jury found him guilty of one conspiracy charge and acquitted him on all the other charges he had faced. In January 2011, he was sentenced to life imprisonment.<sup>234</sup>

It has long been known that Ahmed Khalfan Ghailani – held in secret CIA custody for two years before being transferred to Guantánamo in September 2006 – was subjected to “enhanced interrogation techniques”.<sup>235</sup> In 2010, US District Court Judge Lewis Kaplan had found that after Ghailani was “transferred to exclusive CIA custody”, he was “imprisoned at a secret site and subjected to extremely harsh interrogation methods as part of the CIA’s Rendition, Detention and Interrogation Program.” What “Ghailani’s personal experience in that program” had been, including “certain conditions of his confinement and the specific interrogation techniques used on the defendant”, was redacted from the public record. An affidavit signed by Ahmed Ghailani in 2010 stated that “while detained at the Black Site, personnel whom I believed were part of the CIA interrogated me and subjected me to the following enhanced interrogation techniques.”<sup>236</sup> The remaining four pages of the affidavit were redacted from the public record. Judge Kaplan noted that this detail included how “Ghailani was subjected to some severe mistreatment, all or most of it pursuant to specific authorization from the CIA and the Department of Justice”.<sup>237</sup> Judge Kaplan also pointed to the “discomfort and pain” that Ahmed Ghailani suffered as a result of this.

Very limited extracts of Ahmed Ghailani’s treatment have been disclosed in the summary. It was already known that he was taken into custody on 25 July 2004 in Gujrat, Pakistan. The summary does not provide that date, and the precise date of his transfer from Pakistani custody to CIA custody has been redacted, given only as having occurred in September 2004 (apparently between 1 and 6 September). However, it does reveal that the date that the CIA began using “enhanced interrogation techniques” on him was 17 September 2004.

The Senate Committee discloses that the use of such techniques against Ghailani was done with “individualized approval from the Department of Justice”.<sup>238</sup> The Committee minority views emphasise that on 6 September 2004, a letter from Acting Assistant Attorney General Dan Levin to CIA Acting General Counsel John Rizzo advised that the use of “twelve particular interrogation techniques” on Ahmed Ghailani would not violate US law or US treaty obligations.<sup>239</sup> Like a number of other detainees, “Ghailani also experienced auditory hallucinations following sleep deprivation”.<sup>240</sup> Ahmed Ghailani was “debriefed by foreign

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<sup>234</sup> See Ghailani verdict underlines need for fair trials for all Guantánamo detainees, 18 November 2010, <http://tinyurl.com/33g5pav>, and also USA: Shadow over justice: Absence of accountability and remedy casts shadow over opening of trial of former secret detainee accused in embassy bombings, 1 October 2010, <http://www.amnesty.org/en/library/info/AMR51/094/2010/en>

<sup>235</sup> *USA v. Ghailani*, Supplement to opinion ruling on defendant’s motion to dismiss the indictment for alleged deprivation of speedy trial, US District Court for Southern District of New York, 12 July 2010.

<sup>236</sup> *USA v. Ghailani*. Affidavit of Ahmed Khalfan Ghailani, New York, 27 April 2010.

<sup>237</sup> The CIA Declaration provided to Judge Kaplan asserts that “in the program’s early years”, use of “enhanced interrogation techniques” on specific detainees “required authorization by the Director of the CIA Counter Terrorism Center”, whereas “later this authorization had to come from the Director of the CIA”. *USA v. Ghailani*, Supplement to opinion ruling on defendant’s motion to dismiss the indictment for alleged deprivation of speedy trial, US District Court for Southern District of New York, 12 July 2010.

<sup>238</sup> SSCI Executive Summary, page 136. Presumably this means the Office of Legal Counsel at the Department. This was also the case with Janat Gul and Sharif al-Masri. *Ibid*.

<sup>239</sup> SSCI minority views, page 94.

<sup>240</sup> SSCI Executive Summary, page 139.

government officials”, presumably Pakistan, prior to his enforced disappearance and torture or other ill-treatment in CIA custody.

In his 2010 ruling, Judge Kaplan said that he would not address the constitutionality of the methods used in the CIA secret detention program because that question was not before him. Having noted that the CIA’s techniques included stripping, hooding, isolation, use of white noise, loud music, continuous light or darkness, sleep deprivation, shackling in stress positions, prolonged diapering, cramped confinement and water-boarding, he acknowledged that Ahmed Ghailani “is not alone in questioning the propriety of at least some of the techniques that the CIA was authorized to use on certain detainees”, and added that some of the methods used by the CIA “might give rise to civil claims or even criminal charges”.<sup>241</sup>

### 1.1H ‘LET’S ROLL WITH THE NEW GUY’: INSIGHTS FROM CIA COMMUNICATIONS

The summary also reveals more of the communications that were going on between officials during the lifetime of the CIA detention programme and which provide some chilling insights.

On the morning of 4 August 2002, for example, a medical officer at the secret facility where **Abu Zubaydah** was being interrogated (Detention Site Green, Thailand) wrote an email to the “leadership” at the CIA’s Office of Medical Services (OMS), which included that:

“The sessions accelerated rapidly progressing quickly to the water board after large [confinement] box, walling, and small [confinement] box periods. [Abu Zubaydah] seems very resistant to the water board. Longest period with the cloth over his face so far has been 17 seconds. This is sure to increase shortly. NO useful information so far... He did vomit a couple of times during the water board with some beans and rice. It’s been 10 hours since he ate so this is surprising and disturbing. We plan to only feed Ensure for a while now. I’m heading back for another water board session”.<sup>242</sup>

Abu Zubaydah was subjected to at least 83 applications of the waterboard. The two psychologists whom the Senate Committee names Dr Swigert and Dr Dunbar wrote in an email after these August 2002 torture sessions, referring to Abu Zubaydah as “our buddy”:

“As for our buddy; he capitulated the first time. We chose to expose him over and over until we had a high degree of confidence that he wouldn’t hold back. He said he was ready to talk during the first exposure”.<sup>243</sup>

Less than two hours after **Khalid Sheikh Mohammed** was taken into custody in Pakistan on 1 March 2003, the chief of interrogations at Detention Site Cobalt sent an email to CIA Headquarters, anticipating the detainee’s arrival at the facility. The email was headed “Let’s roll with the new guy”, and requested permission to “press” the detainee “for threat info right away”. The same day, CIA Headquarters authorized the use of “enhanced interrogation techniques”.<sup>244</sup> Two days before Khalid Sheikh Mohammed’s arrival at the facility on or around 5 March 2003, CIA HQ approved an interrogation plan, and “a few minutes” after they began questioning him interrogators began using the techniques.<sup>245</sup>

On 5 March 2003 at Detention Site Cobalt, Khalid Sheikh Mohammed was subjected to an additional rectal hydration which was described by someone from the CIA’s Office of Medical

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<sup>241</sup> *USA v. Ghailani*. Opinion, US District Court for the Southern District of New York, 12 July 2010.

<sup>242</sup> SSCI Executive Summary, pages 41-2.

<sup>243</sup> SSCI Executive summary, footnote 2578.

<sup>244</sup> SSCI Executive Summary, page 81.

<sup>245</sup> SSCI Executive Summary, page 82.



Services as helping to “clear a person’s head” and to make the detainee talk.<sup>246</sup> A previous rectal hydration on this detainee, apparently conducted soon after his arrival at the facility, was described by the chief of interrogations as illustrative of the interrogator’s “total control over the detainee”.<sup>247</sup> Khaled Sheikh Mohammed was then rendered to Detention Site Blue (Poland), where upon arrival he was “immediately stripped and placed in the standing sleep deprivation position”.<sup>248</sup> Travelling with him from Detention Site Cobalt were “medical and psychological personnel” who cleared him for further subjection to enhanced interrogation about half an hour after their arrival. His interrogation under “enhanced” techniques began about another half an hour after that.

In 2003, the chief of interrogations at the secret facility in Afghanistan, Detention Site Cobalt, told that CIA Inspector General that the facility was “good for interrogations because it is the closest thing he has seen to a dungeon, facilitating the displacement of detainee expectations”.<sup>249</sup>

In May 2005, Acting Assistant Attorney General Steven Bradbury wrote to the CIA and asked whether it was “possible to tell reliably (e.g. from outward physical signs like grimaces) whether a detainee is experiencing severe pain”. The CIA responded that “all pain is subjective, not objective”. It continued:

“Medical officer [sic] can and do ask the subject, after the interrogation session has concluded, if he is in pain, and have and do provide analgesics, such as Tylenol and Aleve, to detainees who report headache and other discomforts during their interrogations.”<sup>250</sup>

## 1.11 FROM CIA TORTURE TO CIA TRANSFER TO TORTURE?

The Department of Justice, as in the case of Ahmed Ghailani and others, also gave “individualized approval” for the use of “enhanced interrogation techniques against **Sharif al-Masri** in 2004.<sup>251</sup> The Senate Intelligence Committee reveals this and some other new detail on this detainee, transferred from interrogation in “foreign government custody” to CIA detention in September 2004 (sometime between 16 and 30 September).<sup>252</sup> He is believed to have been in Pakistan custody after being arrested on 29 August 2004 in Quetta, Pakistan.<sup>253</sup> The summary indicates that Sharif al-Masri told the CIA that he was prepared to cooperate as he was “frightened of interrogations because he had been tortured while being interrogated in [redacted]”. He was nonetheless subjected to at least a week of “enhanced interrogation techniques” in CIA custody, including sleep deprivation which “coincided with auditory hallucinations”. Despite his “repeated descriptions of torture in [redacted], the CIA transferred al-Masri to that government’s custody”.<sup>254</sup> The summary does not reveal the country in question. Sharif al-Masri is an Egyptian national.<sup>255</sup>

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<sup>246</sup> SSCI Executive Summary, page 83.

<sup>247</sup> SSCI Executive Summary, pages 82-83.

<sup>248</sup> SSCI Executive Summary, page 84.

<sup>249</sup> SSCI Executive Summary, footnote 240.

<sup>250</sup> SSCI Executive Summary, page 420.

<sup>251</sup> SSCI Executive Summary, page 136.

<sup>252</sup> SSCI Executive Summary, footnote 2203.

<sup>253</sup> USA: Off the Record. U.S. Responsibility for Enforced Disappearances in the ‘War on Terror’, 7 June 2007, <http://www.amnesty.org/en/library/info/AMR51/093/2007/en>

<sup>254</sup> SSCI Executive Summary, page 138-139.

<sup>255</sup> The summary states that Sharif al-Masri was transferred out of CIA custody to that of a “foreign

### 1.1J NO CIA 'ENHANCED' INTERROGATION DUE TO 'US PERSON STATUS'

**Saifullah Paracha**, a Pakistan national who is today held at Guantánamo without charge or trial over 11 years after being abducted by CIA agents in Thailand, is not named in the Senate Committee's list of CIA detainees, because he was rendered by the CIA not to CIA custody but to US military custody. The summary notes that "On July 5, 2003, Saifullah Paracha was detained in [redacted], in an operation orchestrated by the FBI. Shortly thereafter, Saifullah Paracha was rendered to US military custody at Bagram Air Force Base." Illustrating the absurd nature of the redaction process, it has long been known that Saifullah Paracha was seized at Bangkok international airport in Thailand.<sup>256</sup> A footnote reveals that:

"the CIA originally sought to take direct custody of Saifullah Paracha. On May 6, 2003, CTC's chief of operations, [name redacted] sent an email to [redacted] CTC Legal, [name redacted], and CTC attorney [redacted], with a proposal for the CIA to detain Saifullah Paracha and interrogate him using the CIA's enhanced interrogation techniques, writing: 'we MUST have Paracha arrested without delay and transferred to CIA custody for interrogation using enhanced measures'."<sup>257</sup>

The footnote points to Saifullah Paracha's "US person status" as making his rendition to the CIA secret detention programme "difficult". Saifullah Paracha was a US alien resident who had studied and worked in the USA in the 1970s and 80s. The human rights violations committed in the CIA's secret program were compounded by discrimination, approved on the basis that they would not be committed against US nationals. "Based on CIA assurances", the Office of Legal Counsel at the US Department of Justice wrote in May 2005, "we understand that the CIA interrogation program is not conducted in the United States or territory under [US] jurisdiction, and that it is not authorized for use against United States persons".<sup>258</sup> Khalid Sheikh Mohammed has said he was told in secret CIA custody, "you are not American and you are not on American soil. So you cannot ask about the Constitution... This is your bad luck you been part of the exception of our laws"<sup>259</sup>

It is not clear if the Senate Committee was referencing this residency issue when it further noted that Saifullah Paracha's detention and rendition to US military custody in Afghanistan was "complicated". This is because the explanation is redacted from the public version of the

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government" after "approximately three months of CIA detention". SSCI Executive Summary, 138-9. It originally stated that he had been held in CIA custody for between 810 and 819 days – meaning that his transfer out of CIA custody would have come in late 2006 rather than late 2004. It has since revised this figure to 80-89 days.

<sup>256</sup> The detainee himself wrote in 2004: "I reached Bangkok International Airport on July 06, 2003 and at the airport I was illegally and immorally arrested...there was no human consideration at all. From the airport I was taken to unknown place for few days and kept eyes covered, ears cover, handcuffed, leg cuffed. After few day[s] I was transported by plane to Afghanistan, under extremely severe bad conditions. I was kept in isolation from July 2003 – September 20, 2004 and since September 20, 2004 – I am in isolation cell in Guantánamo Bay Island... Am I being considered human being or animal, or is USA my God?" See Pakistan: Human rights ignored in the 'war on terror', 28 September 2006, <http://www.amnesty.org/en/library/info/ASA33/036/2006/en>. A leaked Guantánamo "Detainee Assessment" from 2008, says Saifullah Paracha "was arrested in Bangkok, TH, by an other government agency (OGA) after the FBI arranged for his capture." (OGA usually refers to the CIA).

<sup>257</sup> SSCI Executive Summary, footnote 2008.

<sup>258</sup> Memorandum for John A. Rizzo, Senior Deputy General Counsel, Central Intelligence Agency, from Steven G. Bradbury, Principal Deputy Assistant Attorney General, Office of Legal Counsel, Re: Application of United States Obligations Under Article 16 of the Convention Against Torture to Certain Techniques That May Be Used in the Interrogation of High Value al Qaeda Detainees, 30 May 2005, page 2, <http://www.justice.gov/sites/default/files/olc/legacy/2013/10/21/memo-bradbury2005.pdf>

<sup>259</sup> Verbatim transcript of Combatant Status Review Tribunal Hearing for ISN 10024, held at Guantánamo Bay, 10 March 2007, version as declassified on 12 June 2009.

summary. In 2006 Amnesty International had reported that the Pakistani authorities appeared to have facilitated Saifullah Paracha's arrest in Thailand in order to avoid having to do it themselves in Pakistan, which would have been unpopular.<sup>260</sup>

### 1.1K LOBBYING OTHER GOVERNMENTS TO HIDE DETAINEES

The summary report makes clear that a principal reason why Abu Zubaydah had been hidden away in secret CIA custody rather than being transferred to US military custody was because in military custody he "would have to be declared" to the ICRC.<sup>261</sup> That would have prevented his enforced disappearance and might have stopped his torture.

In March 2003, the US Department of State issued its annual human rights report, covering the year 2002. Its entry on Afghanistan reported that the ICRC "continued to visit detainees during the year; however, fighting and poor security for foreign personnel limited the ability of the ICRC to monitor prison conditions." The entry did not record how the CIA had built a secret facility in the country in 2002 (Detention Site Cobalt) and concealed it and the detainees held there from the ICRC, as the Senate Committee has now confirmed.

The Committee reveals the USA's response to a January 2004 letter from the ICRC to the US government in relation to the organization's belief that the USA was holding unacknowledged detainees in several facilities in Afghanistan (the name of the country is redacted). The ICRC referred to the detainees being held "incommunicado for extensive periods of time, subjected to unacceptable conditions of confinement, to ill-treatment and torture, while deprived of any possible recourse."<sup>262</sup>

In response, officials from the US Department of State met with senior ICRC officials in Geneva to explain that it was US policy to encourage all countries to provide the ICRC access to detainees, and that this was US policy in relation to Afghanistan also. The ICRC notes that even as the ICRC was being told this in Geneva, "the CIA was repeatedly directing the same country to deny the ICRC access to the CIA detainees".<sup>263</sup> In June 2004, Secretary of State Colin Powell ordered the US ambassador in Afghanistan to deliver a demarche "in essence demanding [the country] provide full access to all [country redacted] detainees", which included all detainees being held at the CIA's behest.<sup>264</sup>

According to the Senate Committee, "these conflicting messages from the United States Government, as well as increased ICRC pressure on the country for failing to provide access, created significant tension between the United States and the country in question".<sup>265</sup>

It took some 17 months for the Bush administration to respond to the ICRC's letter of January 2004.<sup>266</sup> The summary does not disclose the contents of this 13 June 2005 reply. A month earlier it had rendered Abu Faraj al-Libi to secret CIA custody at Detention Site Orange (Afghanistan) and thereafter to Detention Site Black (Romania) where he would be subjected to "enhanced" interrogation techniques (see further below).

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<sup>260</sup> Pakistan: Human rights ignored in the 'war on terror', *op. cit.*

<sup>261</sup> SSCI Executive Summary, 22.

<sup>262</sup> SSCI Executive Summary, page 119.

<sup>263</sup> SSCI Executive Summary, page 120.

<sup>264</sup> Secretary of State Powell received a briefing on the use of enhanced interrogation techniques against detainees in the CIA secret programme on 16 September 2003. SSCI Executive Summary, page 335.

<sup>265</sup> SSCI Executive Summary, page 120.

<sup>266</sup> SSCI Executive Summary, page 121.

### 1.1L LITTLE OR NO 'ACCOUNTABILITY'

The summary reveals some minimal “accountability” actions taken during the lifetime of the secret detention programme, and how the sort of contextualization of torture that has become familiar over the years in the USA has played a part in this leniency. In its June 2013 response to the Committee, the CIA asserted that between 2003 and 2012 there had been six “accountability proceedings”, which assessed the “performance of 30 individuals (staff officers and contractors) and 16 were deemed accountable and sanctioned”.

The CIA interrogator who ordered **Gul Rahman** shackled overnight to the wall of his cell in Detention Site Cobalt in Afghanistan in November 2002, and who had earlier ordered that the detainee’s clothing be removed due to his alleged lack of cooperation during interrogation, was recommended for a “cash award” of \$2,500 four months after Gul Rahman died on that night, “likely froze to death” as the Senate Committee put it.<sup>267</sup> The recommendation was in recognition of the interrogator’s “consistently superior work”.<sup>268</sup> The interrogator was formally certified as a CIA interrogator in April 2003 after the practical part of his training was waived because of his past experience at the secret detention facility.

About three years after Gul Rahman’s death – with the fact of it now in the public domain – the CIA convened an “Accountability Board” on the case. The Board recommended that the interrogator in question be suspended without pay for 10 days. This “punishment”, the Board suggested, would strike a balance between the fact that the interrogator was the only person who made decisions that led directly to Gul Rahman’s death, and the “significant weight” which the Board attached to the “mitigating factors at play in this incident”. Even this 10-day suspension for causing the death of a detainee under indisputable cruelty was considered inappropriate by the CIA’s Executive Director K.B. Foggo. On 10 February 2003, he notified the interrogator that no action would be taken against him, explaining that: “While not condoning your actions, it is imperative, in my view, that they... be judged within the operational context that existed at the time of Rahman’s detention”.<sup>269</sup> Foggo cited “cable traffic” showing that CIA headquarters was aware of the conditions of detention and interrogation techniques being used at Detention Site Cobalt.

No one has been brought to justice for this death. In August 2012, the US Attorney General announced that an investigation was closed and no charges would be filed against anyone.<sup>270</sup>

Another reference to accountability in the summary concerns the interrogation of **'Abd al-Nashiri** in Detention Site Blue (in Poland) in December 2002 when a number of techniques approved by the chief of the detention facility but not by CIA headquarters were used against the detainee. They included “standing stress position” with the detainee’s “hands affixed over his head” for about two and a half days, threats with a handgun near his head and a cordless drill operated near his body, threats to his family, slapping, forced bath using a stiff brush, and improvised stress positions.

In April 2004, the interrogator and the chief of base were disciplined. The interrogator received a one-year Letter of Reprimand which meant no promotion or permanent salary rises during that period, and a five-day suspension without pay. The interrogator retired from the CIA in 2004. In 2005, he was employed on a CIA contract again. The chief of base received a two-year Letter of Reprimand and a 10-day suspension without pay. This individual retired

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<sup>267</sup> SSCI Executive Summary, page 55 and footnote 291.

<sup>268</sup> SSCI Executive Summary, page 55.

<sup>269</sup> SSCI Executive Summary, footnote 277.

<sup>270</sup> Statement of Attorney General Eric Holder on Closure of Investigation into the Interrogation of Certain Detainees, 30 August 2012, <http://www.justice.gov/opa/pr/statement-attorney-general-eric-holder-closure-investigation-interrogation-certain-detainees>

from the CIA before this was implemented.<sup>271</sup> This case, the CIA asserted in its June 2013 response to the Committee, was an example of “more robust” accountability.

The summary points to three CIA interrogators having their certification to conduct interrogations withdrawn. One was the chief of interrogations at Detention Site Cobalt in Afghanistan who in July 2003 had “placed a broomstick behind the knees of **Zubair** when Zubair was in a stress position on his knees on the floor”<sup>272</sup> In the other two cases, there were no official records as to why the decertification had occurred.<sup>273</sup>

The CIA’s June 2013 response stated that there had been 29 investigations of conduct related to the secret detention programme during its lifetime. According to the Senate Committee, however, only 14 of these were directly related to the secret detention programme. Indeed, the CIA did with the Senate Committee what the Obama administration had done with the UN Human Rights Committee, namely to gloss over the accountability gap by reference to the case of David Passaro, a CIA contractor convicted in the beating death of Abdul Wali in a US forward operating base in Afghanistan in 2003. In its own submission to the Human Rights Committee in 2013, Amnesty International noted that:

“In its Fourth Periodic Report, the USA has highlighted its prosecution of David Passaro, a civilian contracted by the CIA who was convicted of assault in the case of Abdul Wali, an Afghan detainee who died in US military custody in Afghanistan in 2003. Indeed, not only does it highlight it in the report itself, but it twice cites the Passaro prosecution in its 3 July 2013 written responses to the Committee’s questions about whether the USA has taken steps to prosecute US perpetrators. There is little else the USA can point to. The prosecution of David Passaro – who was released in 2011 after serving just over four years in prison – remains the exception to the more general rule of impunity for CIA personnel or contractors, despite the agency’s undoubted involvement in crimes under international law.”<sup>274</sup>

The summary notes that the Passaro case – the only prosecution cited by the CIA, and the only one it can point to – referred to a detainee who was “never part of the CIA’s Detention and Rendition Program”.<sup>275</sup> Like the Human Rights Committee, the Senate Committee was not taken in by this attempt to prove a non-existent rule of accountability via the exception.

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<sup>271</sup> SSCI Executive Summary, pages 69-70 and footnote 356.

<sup>272</sup> SSCI Executive Summary, footnote 609 and page 117.

<sup>273</sup> SSCI Executive Summary, page 117.

<sup>274</sup> See page 18, USA: Life, liberty and the pursuit of human rights, 16 September 2013, <http://www.amnesty.org/en/library/info/AMR51/061/2013/en>

<sup>275</sup> SSCI Executive Summary, footnote 608. The CIA response also cites the case of a CIA contractor who “slapped, kicked, and struck detainees when they were in military custody”. This individual had his contract terminated by the CIA, “had his security clearances revoked, and was placed on a contractor watchlist”. CIA response, page 44.

## PART 2 – TWO HUBS OF SHAMEFUL SECRETS

### 2.1 BAGRAM AND BEYOND: CIA DETENTIONS IN AFGHANISTAN

*I call on every American to uphold the values of America... In our war against terror, we must never lose sight of the values that makes our country so strong*  
President George W. Bush, Embassy of Afghanistan, 10 September 2002<sup>276</sup>

Within days of President Bush standing outside the Embassy of Afghanistan in Washington DC in September 2002 and speaking of people's pride in "our country", "our military" and "our allies", for "working together to free Afghanistan", the CIA opened a secret detention facility north of Kabul, under his authority.

To hide its location at the request of the CIA, the Senate Committee calls the facility "Detention Site Cobalt". It is believed to be the "Salt Pit" facility, built at the site of an old brick factory a few miles northeast of Kabul. The summary report provides some new detail on that facility, who was held in it, and what they faced there. For example,

"the windows at Detention Site Cobalt were blacked out<sup>277</sup> and detainees were kept in total darkness. The [redacted] guards monitored detainees using headlamps and loud music was played constantly in the facility. While in their cells, detainees were shackled to the wall and given buckets for human waste. Four of the twenty cells at the facility included a bar across the top of the cell. Later reports describe detainees being shackled to the bar with their hands above their heads, forcing them to stand, and therefore not allowing them to sleep."<sup>278</sup>

The summary report provides some insight into the depravities perpetrated in this facility and some chilling attitudes towards detainees displayed by some CIA personnel. It quoted the recollection of a senior interrogator that "literally, a detainee could go for days or weeks without anyone looking at him" and that his team had found one detainee who, "as far as we could determine", had been "chained to the wall in a standing position for 17 days". Some of the detainees "literally looked like a dog that had been kennelled. When the doors to their cells were opened, they cowered".<sup>279</sup>

The chief interrogator at the base had told the CIA's Inspector General that this secret facility was "good for interrogations because it was the closest thing he has seen to a dungeon, facilitating the displacement of detainee expectations". An analyst who conducted interrogations there characterised the facility as itself amounting to an "enhanced interrogation technique".<sup>280</sup>

Detainees stripped of their clothing were "kept in a central area outside the interrogation room" at the facility, and were "walked around" by guards as a form of humiliation,

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<sup>276</sup> Remarks at the Embassy of Afghanistan and an exchange with reporters, 10 September 2002.

<sup>277</sup> Elsewhere the report says cells were "blacked out at all times using curtains plus painted exterior windows. And double doors. The lights are never turned on". SSCI Executive Summary, footnote 2369.

<sup>278</sup> SSCI Executive Summary, page 49.

<sup>279</sup> SSCI Executive Summary, footnote 240.

<sup>280</sup> Ibid. "An analyst who conducted interrogations at Detention Site Cobalt told the CIA OIG that '[Detention Site Cobalt] is an EIT'."

according to a 14 April 2003 CIA document cited by the Senate Committee.<sup>281</sup>

Detainees were also subjected to rectal rehydration and others were threatened with it, according to CIA records seen by the Committee. In addition, senior CIA personnel, including General Counsel Scott Muller and Deputy Director of Operations James Pavitt, were told of allegations that rectal exams were conducted with “excessive force” against Mustafa al-Hawsawi and another detainee held at the secret facility, information that appears not to have resulted in any sanction.<sup>282</sup>

The “full details of the CIA interrogations there remain largely unknown” because “multiple uses of sleep deprivation, required [forced] standing, loud music, sensory deprivation, extended isolation, reduced quantity and quality of food, nudity, and ‘rough treatment’ of CIA detainees” went undocumented.<sup>283</sup> A 2009 report by the Office of Inspector General at the US Department of Justice had pointed to “allegations that CIA agents physically assaulted detainees in Afghanistan in August and September 2002.”<sup>284</sup>

Because of poor record keeping at Detention Site Cobalt, the Senate Committee concluded that in the case of 16 detainees held there between September and December 2002 it was not possible to determine whether they were subjected to “enhanced” interrogation due to the lack of detail in the CIA documents. It concluded therefore that the estimate that at least 39 detainees were subjected to one or more “enhanced interrogation techniques” over the course of the secret detention programme is a “conservative” one. For example, it was possible that there may have been five detainees who were subjected to “enhanced interrogation techniques” at Detention Site Cobalt in 2002 in addition to those 39.

Prior to opening Detention Site Cobalt, the CIA used an Afghanistan government detention facility to hold detainees.<sup>285</sup> The summary points to three other facilities:

Facility code name	Possible Location	Years of operation	Detainees
Detention Site Cobalt	Salt Pit, North of Kabul	2002 – 2004	64
Detention Site Gray	Kabul?	2003	8
Detention Site Orange	Replacement for Salt Pit, located on Bagram air base?	2004 – 2006	34
Detention Site Brown	Replacement for Orange?	2006 – 2008	12

The precise dates of detention operations at these facilities are not given. Reading between the redactions indicates that Detention Site Cobalt opened in September 2002 and closed between March and July 2004. Detention Site Gray held detainees between spring 2003 and fall/winter of the same year. Given the small number of detainees held there, and its operation in 2003, it is possible that this refers to the CIA safe house in which Abu Hudhaifa and Majid Khan were subjected to interrogation (see above).

Detention Site Orange replaced Detention Site Cobalt, opening in the period that the latter

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<sup>281</sup> SSCI Executive Summary, page 415.

<sup>282</sup> SSCI Executive Summary, footnote 584.

<sup>283</sup> SSCI Executive Summary, page 51.

<sup>284</sup> A review of the FBI’s involvement in and observations of detainee interrogations in Guantánamo Bay, Afghanistan, and Iraq. Office of the Inspector General, US Department of Justice, October 2009 (revised), footnote 165, <http://www.justice.gov/oig/special/s0910.pdf> (hereinafter FBI OIG Report, October 2009).

<sup>285</sup> SSCI Executive Summary, page 51 and footnote 267.

closed in the spring or summer of 2004. There may have been an overlap in operations in Detention Sites Orange and Cobalt, given reference to “restricted access” to both facilities in an email dated 14 May 2004.<sup>286</sup> There are few references to Detention Site Orange in the summary. The facility was operating by August 2004 as Syed Habib was being prepared for release from the facility that month. He had been in custody since April 2003, so presumably was shifted between facilities at some point.<sup>287</sup> Detention Site Orange was still operating in January 2006 when it was one of the CIA’s “two remaining facilities” (the other being Detention Site Violet (Lithuania)).<sup>288</sup> It appears that Detention Site Brown replaced Detention Site Orange sometime in 2006, as later that year after Detention Site Violet (Lithuania) closed down, the CIA transferred the remainder of its detainees to Brown.<sup>289</sup> Detention Site Orange still had detainees in it in January 2006, when the chief of base wrote that it “lacked debriefers to support intelligence collection requirements”.<sup>290</sup> Brown was operational as early as March 2006, as that is when Khaled Sheikh Mohammed was transferred there.<sup>291</sup> On 4 September 2006, 14 detainees were transferred to Guantánamo, presumably from Detention Site Brown, and two days later President Bush publicly confirmed the existence of the secret detention programme for the first time.

In its 2009 report on FBI involvement in interrogations, the Office of Inspector General at the Department of Justice noted that several forward operating bases in Afghanistan, or “firebases”, were “operated jointly by the military and the CIA”.<sup>292</sup> The report noted that Firebase Salerno – in Khost province near the Pakistan border was of “particular interest” to the review because from late May 2004, the “military detention facilities at Salerno included a makeshift holding area built using cubic eight-foot wire-mesh containers...stacked like building blocks in order to create rows of about ten individual cells with wire mesh doors across the front of each”. Nearby was Forward Operating Base Chapman, housing US intelligence officers among others.<sup>293</sup>

Amnesty International has previously reported the difficulties of fixing how many facilities were being used by the CIA in Afghanistan, and in which ones individual detainees were held. The use of hooding and other sensory deprivation during transportation and movement within the facility and the use of solitary confinement have all made this task difficult. The use of redaction and coding in the summary report perpetuates this difficulty.<sup>294</sup>

Nine years before the Senate Committee published its summary, for example, Amnesty International reported **Abdulsalam al-Hela’s** description of being held in US custody in four detention facilities in Afghanistan between September 2002 and September 2004 after he was rendered there from Egypt via Azerbaijan.<sup>295</sup> He described three and a half months in

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<sup>286</sup> SSCI Executive Summary, footnote 2467.

<sup>287</sup> SSCI Executive Summary, footnote 448.

<sup>288</sup> SSCI Executive Summary, page 156.

<sup>289</sup> SSCI Executive Summary page 154.

<sup>290</sup> SSCI Executive Summary, page 144.

<sup>291</sup> SSCI Executive Summary, page 96.

<sup>292</sup> FBI OIG report October 2009, *op. cit.*, page 19.

<sup>293</sup> See Statement on CIA Casualties in Afghanistan, CIA Director Leon Panetta, 31 December 2009, <https://www.cia.gov/news-information/press-releases-statements/cia-casualties-in-afghanistan.html>

<sup>294</sup> See, for example, USA: A case to answer – From Abu Ghraib to secret CIA custody: The case of Khaled al-Maqtari, March 2008, <http://www.amnesty.org/en/library/info/AMR51/013/2008/en>.

<sup>295</sup> A leaked Guantánamo detainee assessment document, dated 24 September 2008, states: “detainee travelled to Cairo, where he was “secretly” apprehended. Following detainee’s alleged “disappearance” from Egypt in late September 2002,... in early November 2002, during a meeting with senior Egyptian



the “dark prison”, followed by a period in a more modern underground facility, followed by 14 months in an Afghan-controlled facility at, where he was told he was being held at the behest of the USA, followed by a brief return to the underground facility, before being taken to Bagram and on 19 September 2004 to Guantánamo, where he remains.<sup>296</sup> The Senate Committee summary throws no further light on his case or where he was held, as his case is not referenced at all in the text, only as a name in the list of CIA detainees in the appendix. He is recorded as having been held for 590-599 days in secret CIA custody, beginning in 2002. The time between, say, 30 September 2002 and 18 September 2004 would have totalled 719 days. This would indicate that for around 100 days of his custody prior to being transferred to Guantánamo, the Committee considered that he was not in CIA custody. Presumably, however, the CIA had access to him and he was being held at the USA’s behest.

The CIA used Afghan officials to keep detainees for it. In early 2003, the CIA continued to hold detainees at facilities in “Country [redacted]”, believed to be Afghanistan, who did not meet the standard for detention under the presidential authorization of 17 September 2001.<sup>297</sup> On 14 March 2003, a CIA officer who worked at Detention Site Cobalt wrote in an email about the arrangement he had with the host country:

“[redacted]. They also happen to have 3 or 4 rooms where they can lock up people discretely [sic]. I give them a few hundred bucks a month and they use the rooms for whoever I bring over – no questions asked. If it very useful for housing guys that shouldn’t be in [Detention Site Cobalt] for one reason or another but still need to be kept isolated and held in secret detention”.<sup>298</sup>

The US Department of State human rights reports covering the year 2003 condemned the apparent existence of “secret or informal detention centers” in Afghanistan.<sup>299</sup> The USA itself was responsible for secret facilities and secret detentions in that country at that very same time and for years afterwards, and to this day accountability for the crimes under international law of enforced disappearance and torture committed in them remains absent.

## 2.1A MULTIPLE DETAINEES, MULTIPLE LOCATIONS

Cross-referencing the cases of detainees listed in the Senate Intelligence Committee’s summary report with earlier leaked Detainee Assessment documents from Guantánamo illustrates how little information the US authorities have revealed about detainee treatment, transfers and detention locations after its military intervention in Afghanistan.

According to the leaked document on his case, Yemeni national **Tawfiq Nasser Awad al Bihani** was arrested in late 2001 or early 2002 by Iranian police in a marketplace in Zahedan, Iran. After several weeks in Iranian custody, in mid-March 2002 he was transferred “to Afghan custody”. He “remained in Afghan custody until he was transferred to US custody

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General Intelligence Service (EGIS) officials and Yemeni officials, EGIS responded to Yemeni queries by informing the Yemeni Ambassador in Egypt, Abd al-Aziz Nasir al-Kamim, that detainee departed Egypt voluntarily on board a private plane destined for Baku, Azerbaijan. EGIS officials advised the Yemeni government to put the issue to rest and warned that continued pursuit of the issue would only complicate Yemeni relations with Egypt and possibly the United States. Detainee is adamant in his belief that he was set up for capture in a joint effort between Egyptian intelligence and the CIA.”

<sup>296</sup> See USA: Who are the Guantánamo detainees: Case Sheet No. 15: Yemeni national: Abdulsalam al-Hela, 11 January 2006, <http://www.amnesty.org/en/library/info/AMR51/012/2006/en>. In the summary, this detainee is listed as Abd al-Salam al-Hilah (#15).

<sup>297</sup> SSCI Executive Summary, page 61.

<sup>298</sup> SSCI Executive Summary, page 61.

<sup>299</sup> <http://www.state.gov/j/drl/rls/hrrpt/2003/27943.htm>

at the Bagram Control Point in approximately mid-December 2002”.<sup>300</sup> On 6 February 2003, he was transferred to Guantánamo, where he remains without charge or trial today.

Tawfiq Nasser Awad al Bihani also appears in the Senate Committee’s list of detainees held in secret CIA custody. It states that he was held in CIA custody for 50 to 59 days, which approximates to the time between mid-December 2002 and 6 February 2003. Here then, the link between custody in Bagram and CIA custody is unclear. A brief reference in the text also states that he was subjected to 72 hours of sleep deprivation between his arrival at Detention Site Cobalt and his interrogation in mid to late October 2002 (precise date redacted).<sup>301</sup>

In April 2002, Yemeni national **Omar Muhammed Ali al Rammah**, also known as Zakaria, was taken into custody in or around Duisi in the Pankisi Gorge area of Georgia. According to the Guantánamo document, he was taken into custody by “Georgian authorities”, handcuffed, put in a vehicle, “taken to a parking lot where he was transferred to another car and then taken to a warehouse where he stayed for four days. After the four days, detainee was driven to another location where he was examined and later taken to an airport and put on a plane. When detainee landed, an American interrogator told him he was in Afghanistan.”<sup>302</sup>

The document relates that Zakaria was held in the “Afghan National Directorate of Security Prison Number Two” for one year. It states that he was transferred from Afghan to US custody in Bagram air base on 9 April 2003 and thereafter to Guantánamo on 9 May 2003.

Afghan National Directorate of Security (NDS) Prison Number Two may refer to a building that was located opposite the Headquarters of the NATO-led International Security Assistance Force (ISAF) in District 9 of Kabul. Amnesty International has spoken to an individual familiar with NDS who recalled seeing US forces inside Department 2 of NDS during the 2002 and 2003 period. It was stated that US Special Forces were there. Located nearby was also the former Ariana Hotel, which is believed to have been the CIA centre in Afghanistan and, as noted above, a location where detainees may have been held.

There is no detail on Zakaria’s case in the Senate Committee’s summary, apart from his inclusion in the list of detainees and that he was held for between 370 and 379 days in CIA custody.<sup>303</sup> If he was held in CIA custody in the Afghan National Directorate of Security Prison Number Two, was this the facility referred to in the summary as the “detention facility that was used before [Cobalt] was opened”?<sup>304</sup> Or was it simply one of those referred to as a “[government [redacted]]” facility where the CIA was holding detainees?

On 10 September 2002 Pakistani forces arrested **Muhammad Ahmad Ghulam Rabbani**, also known as Abu Badr, thinking he was Hassan Ghul (see §3.6b) in Karachi.<sup>305</sup> Further raids on several residences in the city the following day resulted in the arrest of another 11 men, according to the Senate Committee (10 according to the military files).<sup>306</sup> Muhammad Ghulam Rabbani and eight of these men are still held at Guantánamo. Eight of the nine have

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<sup>300</sup> <http://media.miamiherald.com/static/images/escenic-images/gitmopdfs/us9sa-000893dp.pdf>

<sup>301</sup> SSCI Executive Summary, footnote 592.

<sup>302</sup> <http://media.miamiherald.com/static/images/escenic-images/gitmopdfs/us9ym-001017dp.pdf>

<sup>303</sup> The SSCI originally gave his detentions as having been 360-369 days but later revised this.

<sup>304</sup> SSCI Executive Summary, footnote 267.

<sup>305</sup> SSCI Executive Summary, page 325.

<sup>306</sup> SSCI Executive Summary, page 326. Ghulam Rabbani’s driver was arrested with him and “cooperat[ed] with Pakistani authorities and provid[ed] information for the raids”. Footnote 1827. The driver was not one of those rendered to CIA custody, it seems. Another individual arrested during the raids was Sayf al-Rahman who was “retained in Pakistani custody”. JTF-GTMO Detainee Assessment, 20 June 2008 (Musab Omar al-Madhwani).

never been charged, and the other is facing a capital military commission trial. All nine were subjected to various periods in secret CIA detention (see table below). How many were tortured in addition to being subjected to enforced disappearance is still unclear because there is little or no detail on most of their cases in the text of the Committee's summary.

Guantánamo Detainee Assessment documents on these cases were among those leaked into the public realm. They provide some information, albeit minimal, on where these men were held prior to their transfer to Guantánamo. That can now be set against what appears in the summary, also limited, as well as other information in the public domain. It is believed that all were held in Afghanistan for at least part of their time in CIA custody.

**Ramzi bin al-Shibh** was "unexpectedly" one of the men taken into custody on 11 September 2002.<sup>307</sup> On 14 September 2002, President Bush referenced the arrest, saying that "yesterday, thanks to the efforts of our folks and people in Pakistan, we captured one of the planners and organizers of the September the 11<sup>th</sup> attack". The CIA's "ALEC Station" would later conclude that Ramzi bin al-Shibh was "not a senior member of al-Qa'ida" and was not in a position to know that organization's planning.<sup>308</sup> In the interim, he had been subjected to an "estimated 34 days" of "enhanced interrogation techniques" in secret CIA custody, because he was considered a "high-value" detainee.<sup>309</sup>

The Senate Committee reports that in September 2002 (the precise date is redacted) he was "rendered to a foreign government", the identity of which has been redacted from the summary.<sup>310</sup> He was interrogated there.<sup>311</sup> According to the Committee, Ramzi bin al Shibh was rendered to this "foreign government" for approximately five months. In early February 2003, he was transferred back to CIA custody, "becoming the 41<sup>st</sup> CIA detainee".<sup>312</sup> At this point he was taken to Detention Site Blue (believed to be in Poland) where he was subjected to weeks of "enhanced interrogation", including by sensory deprivation, sleep deprivation, nudity, dietary manipulation, and various forms of physical assault.

The summary does not relate where he was held between arrest and his rendition to the "foreign government", but in 2008/9, the FBI Inspector General had disclosed that in mid-September 2002, the Assistant Chief for the FBI's Counterterrorism Operational Response Section, along with several FBI agents, had travelled to a "CIA-controlled" detention facility to conduct a joint interrogation of Ramzi Binalshibh and another detainee, apparently **Hassan Ali bin Attash**, a 17-year-old who had just been transferred to this facility from Pakistan. The detainees were "manacled to the ceiling and subjected to blaring music around the clock".<sup>313</sup>

One of the FBI agents has written about this episode. Ali Soufan's account has been heavily redacted by the CIA, but provides some more detail. He stated that the persons detained by the Pakistani forces were "processed by an FBI team in Karachi" and then "handed over to

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<sup>307</sup> SSCI Executive Summary, page 320. Again, the minority SSCI report diverge from the majority's view that his arrest was not attributable to the CIA programme, characterising it and the other Karachi arrests as "stunning operational successes, made possible, in part, by the CIA's Detention and Interrogation Program". Again, the fact that some or all of these detainees were subjected to enforced disappearance and to torture or other ill-treatment is overlooked in this debate over effectiveness.

<sup>308</sup> SSCI Executive Summary, page 75

<sup>309</sup> *Ibid.*

<sup>310</sup> *Ibid.*

<sup>311</sup> SSCI Executive Summary, page 76.

<sup>312</sup> SSCI Executive Summary, page 75.

<sup>313</sup> FBI OIG Report, October 2009, *op. cit.*, page 74.

the CIA, by order of the Bush administration.”<sup>314</sup> The detainees, “all blindfolded and handcuffed, were one by one taken from a building on the side of the runway”, to a cargo plane and flown to Kabul. From there they were taken to “a detention facility outside the city” used by the CIA for interrogations and apparently employing Afghan guards.<sup>315</sup>

According to Ali Soufan, the head of the CIA’s “high-value target” (HVT) unit in Kabul told him that the FBI could not have access to Ramzi bin al Shibh and Hassan bin Attash, on orders from CIA HQ, as there was a plan to subject them to rendition to two countries for interrogation. Nevertheless, according to Soufan, the HVT chief decided to give him 45 minutes with each of the two detainees, with the aim of avoiding the renditions if the interrogations were fruitful. Ali Soufan asserted that despite successful interrogations during the allotted 45 minutes with each of the two detainees, the Deputy Chief of the Kabul CIA station said that “nobody can stop these guys from being sent to [the countries in question]” and that “this is an order coming from the White House... You can’t stop this rendition”.<sup>316</sup>

Ramzi bin al Shibh told the ICRC in Guantánamo in 2006 that in this place of detention in Afghanistan he was shackled naked in the “prolonged stress standing” position – wrists shackled to a bar or hook in the ceiling above the head – for two or three days.<sup>317</sup> Hassan bin Attash told investigators in Bagram on 7 June 2004 that when he was held “in Kabul” for two or three days before being taken to Jordan he had been held for with his “hands cuffed above his head”.<sup>318</sup> He said he was rendered on 19 September 2002 to Jordan where he has said he was tortured.<sup>319</sup> He says that he was brought back to Kabul on 9 January 2004 and sometime thereafter to Bagram, possibly in May 2004.

The original version of the Senate Intelligence Committee’s summary report published on 9 December 2014 recorded Hassan bin Attash as having been in CIA custody for between 590 and 599 days. It has subsequently revised this to 120-129 days. The number of days between his arrest on 11 September 2002 and his transfer to Guantánamo on 19 September 2004 was 739 days. Between 11 September 2002 and 1 May 2004 was 598 days. It seems, then, that the period he says he was in Jordan was originally recorded by the Committee as having been in CIA custody, but it has now not included this.

Hassan bin Attash has said that he was in Jordan with **Sharqawi Ali Abdu al-Hajj** (Riyadh the Facilitator). The latter was “captured on February 7, 2002”, and then transferred to the custody of “a foreign government” later that month.<sup>320</sup> Nearly two years later, in January 2004, he was “rendered into the CIA’s Detention and Interrogation Program”.<sup>321</sup> He was

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<sup>314</sup> Ali Soufan, *The Black Banners. The Inside Story of 9/11 and the War against al-Qaeda*. W.W. Norton and Company (2011), page 485.

<sup>315</sup> *Ibid.*

<sup>316</sup> *Ibid.*, pages 484-500.

<sup>317</sup> ICRC Report on the treatment of fourteen ‘high value detainees’ in CIA custody. February 2007, op. cit., page 11.

<sup>318</sup> Criminal Investigative Task Force. Report of Investigative Activity, 7 June 2004. In *Re Guantanamo Bay Detainee Litigation, Attash v. Bush*, US District Court for DC, Case 1:05-cv-01592-UNA. Document 222-1. Factual Return. Filed 29 July 2009.

<sup>319</sup> See Jordan: ‘Your confessions are ready for you to sign’: Detention and torture of political suspects, 23 July 2006, <http://www.amnesty.org/en/library/info/MDE16/005/2006/en>

<sup>320</sup> SSCI Executive Summary, page 382 and footnote 2185. A leaked JTF-GTMO Detainee Assessment form from July 2008 states that “Pakistan’s Inter-Service Intelligence Directorate (ISID), working in conjunction with US officials, arrested detainee and sixteen others on 7 February 2002 during a raid on a suspected al-Qaida safe house in Karachi.”

<sup>321</sup> SSCI Executive Summary, footnote 2160.

transferred to US military custody in Afghanistan in May 2004. On 19 September 2004, the same day as Hassan bin Attash, he was transferred to Guantánamo, where he remains. The Senate Committee has recorded him as having been in CIA custody for somewhere between 120 and 129 days – in other words, the same as Hassan bin Attash. Unlike in the latter’s case, the Committee never included the time he was allegedly held in Jordan. It would seem that whether or not to record a detainee who may have been held at the behest of the CIA as having been in direct CIA custody caused some confusion in the calculations.

The length of Ramzi bin al Shihb’s CIA custody is given as 1,300-1,309 days.<sup>322</sup> In reality, his detention between arrest in Karachi on 11 September 2002 and transfer to Guantánamo on 4 September 2006 was some 1,455 days. In his case, then, the Senate Committee appears to have excluded from the time he was deemed in CIA custody the approximately five months that he was rendered to the detention of a “foreign government” by the CIA.

Ali Soufan’s description appears to point to Detention Site Cobalt as the detention facility where these men were held after their transfer to Kabul from Karachi and prior to their rendition to “foreign government” custody. Hassan bin Attash has said he was held in the “dark prison”, suggesting that perhaps the Salt Pit and the “dark prison” are one and the same place. After all these years, the USA has still failed to disclose the truth.

DETAINEES TAKEN INTO CUSTODY IN KARACHI, PAKISTAN ON 10 AND 11 SEPTEMBER 2002			
Name	Days in CIA custody <sup>323</sup>	Information on pre Guantánamo custody from leaked JTF/GTMO Detainee Assessment document	Information on treatment in Senate Committee summary
Said Salih Said Nashir	30-39	‘turned over to US forces at the Karachi Airport and then transferred to Bagram’	Alleged that he was “mistreated and beaten by Americans while blindfolded and stripped down to his underwear in [redacted]”. <sup>324</sup>
Ayub Marshid Ali Salih	30-39	‘turned over to US forces at the Karachi Airport and then transferred to Bagram’	Sleep deprivation indicated, but poor record-keeping. <sup>325</sup>
Bashir al-Marwalah	30-39	‘taken to a prison facility and held for approximately a month before US forces took custody of detainee at Bagram’	Alleged that he was forced to “stand up for five days straight and answer questions” and “was also forced to strip naked and stand in front of a female interrogator”. <sup>326</sup>
Musab al-Madhvani	30-39	‘taken to a prison facility and held for approximately a month before US forces took custody of detainee at Bagram’	Nothing in summary, but torture allegations have been described as credible by US federal judge (see above)

<sup>322</sup> Originally recorded in the SSCI summary as 1,280-1,289 days, but revised after publication.

<sup>323</sup> These figures are as revised in 2015 from those originally given by the SSCI in its summary.

<sup>324</sup> SSCI Executive Summary, footnote 589.

<sup>325</sup> SSCI Executive Summary, footnote 589.

<sup>326</sup> SSCI Executive Summary, footnote 589. The 2009 report into FBI involvement in interrogations by the Office of Inspector General at the US Department of Justice noted that Marwalah had told FBI agents at Guantánamo that “after being arrested in Pakistan he was beaten by unidentified captors in Bagram. In another interview, Marwalah stated the beatings occurred at a prison run by Pakistanis before he was transferred to Bagram”. OIG FBI report, October 2009, *op. cit.*, page 218.

Shawqi Awad Balzuhair	30-39	'turned over to US forces at the Karachi Airport and then transferred to Bagram'	
Ha'il Aziz al-Mithali	30-39	'turned over to US forces at the Karachi Airport and then transferred to Bagram'	sleep deprivation indicated but poor records. <sup>327</sup>
Abd al-Rahim Ghulam Rabbani	550-559	'held in Pakistan for two months, a portion of which time was spent in Islamabad, PK, after which he was transferred to Kabul. Detainee remained in Kabul for seven months and was then moved to another prison before being transferred to US Forces custody in Bagram'	
Ghulam Rabbani (Abu Badr)	550-559	'held in Pakistani custody and was transferred to US custody at Bagram, AF in May 2004'	Forced standing, attention grasps, and cold temperatures without blankets in November 2002. <sup>328</sup>
Hassan Ali bin Attash	120-129	'held in Karachi for three or four days and then taken to Kabul, where he was detained for two or three days. From Kabul detainee stated he was taken to Jordan... for approximately one year and four months. Detainee stated that on 8 January 2004 he was moved to Kabul and then to the Bagram Personnel Control Facility'	Nothing in Senate Committee's summary report. Has alleged torture and other ill-treatment in Afghanistan and Jordan
Ramzi bin al-Shibh	1,300-1,309	Nothing on this in leaked file on pre-Guantánamo detention.	Rendered to "foreign government" for five months, then Detention Site Blue, then possibly to Morocco, then Guantánamo, then back to Morocco, eventually to Detention Site Brown and then to Guantánamo. Weeks of "enhanced interrogation

Afghanistan remained a location for secret CIA detentions until the programme ended. The last documented detainee taken into custody, Muhammad Rahim was taken into CIA custody at Detention Site Brown in July 2007, rendered to US custody from Pakistan about three weeks after he was arrested. He was transferred to Guantánamo, where he remains, after some eight months of enforced disappearance by the USA (see further below).

## 2.1B THE CASE OF REDHA AL-NAJAR

A case about which relatively little was known publicly prior to its disclosure in the Senate Intelligence Committee's summary report, is that of Redha al-Najar. His case illustrates not only the absence of accountability, but the way that unlawful detentions and absence of remedy begun under the Bush administration continued under the Obama administration.

<sup>327</sup> SSCI Executive Summary, footnote 589.

<sup>328</sup> SSCI Executive Summary, footnote 595.

In December 2008, lawyers filed a habeas corpus petition in US federal court on behalf of Tunisian national Redha al-Najar. By then he was in US military custody in the detention facility at Bagram air base in Afghanistan, and had been for more than four years. The lawyers had never been able to meet or communicate with him, and still would not have had any contact with him by the time the Senate Committee released its summary on 9 December 2014. They had learned of his case through the detainee's family.

The habeas corpus petition, amended in 2010, alleged that Redha al-Najar was seized from his home in Karachi, Pakistan in May 2002, in front of his wife and child "by Pakistani and French-speaking individuals wearing plain clothes." For the next 18 months, his family had no knowledge of his whereabouts, or whether he was alive or dead, until they received a communication via the ICRC that he was in Bagram. The petition alleged that prior to that he had been subjected to enforced disappearance in secret CIA detention, and subjected to torture and other ill-treatment. Rather than address the allegations that crimes under international law had been committed against this man, the Obama administration devoted its energies on the case to opposing his getting access to the courts and to legal counsel.

The Senate Committee has now revealed some detail of what Redha al-Najar faced in CIA custody. He, Hassan Muhammad Abu Bakr, and a "number of other individuals" were arrested in Karachi, Pakistan in late May 2002.<sup>329</sup> It reports that the two named men were transferred to "CIA custody at a Country [redacted] detention facility" in early June 2002, the precise date redacted.<sup>330</sup> No further mention of Hassan Abu Bakr is made in the summary, apart from that he was held in CIA custody for between 520 to 529 days.<sup>331</sup>

As noted above, Redha al-Najar's impending interrogation was discussed at the CIA while construction of the agency's new secret facility, Detention Site Cobalt, was built. Among the interrogation techniques suggested in a CIA cable dated 16 July 2002, for example, were to

- exploit the detainee's "fear for the well-being of his family to our benefit
- use "vague threats" to create a "mind virus" that would cause the detainee to believe his situation would worsen until he cooperated
- use hooding, restraints and music to manipulate his environment, and to
- implement sleep deprivation through round-the-clock interrogations.<sup>332</sup>

Ten days after that, CIA personnel on the ground proposed that Redha al-Najar be put in isolation, be subjected to "sound disorientation techniques", "sense of time deprivation", "limited light, cold temperatures, and sleep deprivation". The interrogators expressed confidence that they could "break" the detainee in their pursuit of information about Osama bin Laden and his family.<sup>333</sup> On 5 August 2002, CIA Headquarters approved the interrogation plan, which included the use of loud music, sleep deprivation, worse food, isolation in darkness, cold temperatures, hooding and shackling.<sup>334</sup>

When Detention Site Cobalt opened in September 2002, Redha al-Najar became its first detainee, taken there sometime between 10 and 21 September 2002, reading between the

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<sup>329</sup> SSCI Executive Summary, page 51.

<sup>330</sup> On or around 5 June 2002, it seems that he was still in Pakistani custody ("foreign government"). SSCI Executive Summary, page 382.

<sup>331</sup> In the original summary released in December 2014, the SSCI gave 510 to 519 days.

<sup>332</sup> SSCI Executive Summary, page 52.

<sup>333</sup> SSCI Executive Summary, page 52.

<sup>334</sup> SSCI Executive Summary, page 53.

redactions.<sup>335</sup> Indicating that he had already been subjected to abuse in the facility in which he had been held for the past three months, by 21 September he was reported by CIA interrogators to be “clearly a broken man” and “on the verge of complete breakdown”.

Among other things, in Detention Site Cobalt, he was “left hanging – which involved handcuffing one or both wrists to an overhead bar which would not allow him to lower his arms – for 22 hours each day for two consecutive days, in order to ‘break’ his resistance”. He was made to wear a diaper and denied access to toilet facilities.<sup>336</sup>

Redha al-Najar is recorded as having been in CIA custody for between 700 and 709 days.<sup>337</sup> This would mean that his transfer to military custody at Bagram took place around May 2004. He was still there on 9 December 2014, over 10 years later, having been held for his entire time in US custody without charge or trial, or access to a lawyer or the courts. The day after the summary was published, he was transferred to Afghan custody.

In April 2009, after considering the habeas corpus petition, a US District Court judge had ruled that Redha al-Najar could challenge the lawfulness of his detention in his court. Judge John Bates considered that if the Guantánamo detainees had the right to do so (as determined by the US Supreme Court in *Boumediene v. Bush* 2008), so did non-Afghan nationals held at Bagram. Among other things, Judge Bates pointed out that any practical barriers to consideration of habeas corpus petitions from detainees captured outside of Afghanistan “are largely of the Executive’s choosing” if “the only reason” such detainees were in “an active theater of war” was because the US government “brought them there”.<sup>338</sup>

The Obama administration disagreed, and persisted with the approach adopted under its predecessor. It appealed the District Court decision and eventually got it reversed on the basis of legislation incompatible with international law passed by Congress in 2006.<sup>339</sup> After extensive litigation, in December 2013 the US Court of Appeals dismissed Redha al-Najar’s habeas corpus petition on the grounds that the Military Commissions Act of 2006 (legislation sought by the Bush administration, among other things, to allow the CIA secret detention programme and impunity for abuse in it to continue) had stripped the court of jurisdiction to consider such a petition from a detainee held at Bagram.<sup>340</sup>

Other individuals held for years without charge or access to legal counsel in Bagram also appear on the Senate Committee’s list of detainees held in secret CIA custody. They include another Tunisian national, **Lutfi al-Arabi al-Gharisi**, who was held for over a year (380-389 days) in CIA custody. He was subjected to “enhanced interrogation techniques”, including “at least two 48-hour sessions of sleep deprivation in October 2002”.<sup>341</sup> Like Redha al-Najar, he was transferred to Afghan custody around the time of publication of the summary.

According to another habeas corpus petition, dismissed along with Redha al-Najar’s in December 2013, Yemeni national **Amin al-Bakri** was abducted by US agents in Bangkok on 30 December 2002 when on his way to the airport to fly back to Yemen after a trip to

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<sup>335</sup> SSCI Executive Summary, page 51.

<sup>336</sup> SSCI Executive Summary, page 53.

<sup>337</sup> The SSCI summary originally gave this as 690 to 699 days. This was revised in 2015.

<sup>338</sup> USA: Federal judge rules that three Bagram detainees can challenge their detention in US court, 3 April 2009, <http://www.amnesty.org/en/library/info/AMR51/048/2009/en>

<sup>339</sup> USA: Government opposes habeas corpus review for any Bagram detainees; reveals ‘enhanced’ administrative review procedures, 16 September 2009, <http://www.amnesty.org/en/library/info/AMR51/100/2009/en>

<sup>340</sup> *Al Maqaleh v. Hagel*, US Court of Appeals for the DC Circuit, 24 December 2013.

<sup>341</sup> SSCI Executive Summary, footnote 594.



Thailand. His family did not know his whereabouts or whether he was alive or dead until months later when they received a postcard in his handwriting, via the ICRC, from the Bagram detention facility. The Senate Committee revealed that prior to being put into military detention at the airbase, he was held in CIA custody for between 490 and 499 days. No other detail is given. He was released to the custody of the Yemeni government on 25 August 2014, after nearly 12 years without charge or trial in US custody.<sup>342</sup>

## 2.1C WHAT ABOUT CIA ACTIVITIES IN BAGRAM?

The US military detention facility at the US airbase in Bagram became almost as infamous as the prison camp at Guantánamo over the years. FBI personnel deployed there, for example, reported military interrogators using “rough or aggressive treatment”, prolonged use of shackles, stress positions, nudity, and sleep deprivation.<sup>343</sup>

Twelve years before the Senate Intelligence Committee published its summary report, the Washington Post published an article which began:

“Deep inside the forbidden zone at the US-occupied Bagram air base in Afghanistan, around the corner from the detention center and beyond the segregated clandestine military units, sits a cluster of metal shipping containers protected by a triple layer of concertina wire. The containers hold the most valuable prizes in the war on terrorism -- captured al Qaeda operatives and Taliban commanders.

Those who refuse to cooperate inside this secret CIA interrogation center are sometimes kept standing or kneeling for hours, in black hoods or spray-painted goggles, according to intelligence specialists familiar with CIA interrogation methods. At times they are held in awkward, painful positions and deprived of sleep with a 24-hour bombardment of lights – subject to what are known as ‘stress and duress’ techniques.”<sup>344</sup>

This “improvised” facility was later reported to have lasted only for the short-term. The Salt Pit – Detention Site Cobalt – opened in September 2002, but because “the road leading to it was not safe to travel” on, “the jail was eventually moved inside Bagram Air Base.”<sup>345</sup> According to the Senate Committee, Detention Site Orange was built to replace Detention Site Cobalt, taking its first detainees in the first half of 2004. Was Detention Site Orange located on Bagram airbase? It appears to have taken about a year to build and to have had air conditioning, “conventional plumbing”, lighting, and shower and laundry facilities.<sup>346</sup>

A number of detainees have said that they believe they were held in secret CIA custody in

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<sup>342</sup> See How Obama handed Afghanistan a prisoner dilemma. Aljazeera America, 16 March 2015, <http://america.aljazeera.com/articles/2015/3/16/how-obama-handed-afghanistan-a-prisoner-dilemma.html>

<sup>343</sup> FBI OIG Report, October 2009, *op. cit.*, pages 213-234.

<sup>344</sup> US decries abuse but defends interrogations. Washington Post, 26 December 2002, <http://www.washingtonpost.com/wp-dyn/content/article/2006/06/09/AR2006060901356.html>

<sup>345</sup> CIA holds terror suspects in secret prisons. Washington Post, 2 November 2005, <http://www.washingtonpost.com/wp-dyn/content/article/2005/11/01/AR2005110101644.html>

<sup>346</sup> SSCI Executive Summary, page 62. A review dated 22 May 2003, reporting on the January to April 2003 period, said that Detention Site Orange was under construction at that time (Footnote 310). The SSCI notes that despite the claims made for it, detainees undergoing interrogation in the facility were held in “smaller cells, with waste buckets rather than toilet facilities”. “The cell also contained what Khaled al-Maqtari described as a large grey plastic bucket to urinate in, similar to the portable plastic toilets used in Bagram before flush toilets were installed for the troops in 2003”. USA: A case to answer – From Abu Ghraib to secret CIA custody: The case of Khaled al-Maqtari, March 2008, <http://www.amnesty.org/en/library/info/AMR51/013/2008/en>. As noted, Khaled al-Maqtari believed he was held in Bagram in 2004.

Bagram, but this is difficult to confirm. **Khaled Sheikh Mohammed** told the ICRC that he thought that the first place he was taken to after being rendered to CIA custody from Pakistan in the first week of March 2003 was Bagram, because during his time in that place of detention he could hear planes taking off and landing, and when he was taken for his next rendition, the drive took about 10 minutes.<sup>347</sup> The Senate Intelligence Committee asserts that he was held in Detention Site Cobalt, according to CIA records.<sup>348</sup>

In similar vein, **Khaled al-Maqtari** (listed in the summary report as Firas al-Yemeni), told Amnesty International in 2007 that he thought the secret facility in which he was held from January to April 2004 was at Bagram. He was there at the same time as Majid Khan, who was brought to the facility about six to eight weeks after Khaled al-Maqtari (that is, around March 2004), and who told another detainee that he “had been here before, was transferred to another prison in Kabul and then was returned to this prison”. At the prison in Kabul, Majid Khan had said, there had been both Arab and Afghan prisoners, who were able to communicate more freely with one another, although their general conditions of detention were worse.

In 2011, in Tripoli, Amnesty International spoke to three former detainees who had been returned to Libya after being held in the CIA programme (all three are listed in the summary). **Adnan al-Libi**, for example, said that in Bagram he had been subjected to hanging from the ceiling for 15 days, naked apart from diapers, loud music, sound tracks from pornographic films, and cold temperatures. The summary lists him as one of the detainees who was threatened with rectal hydration.<sup>349</sup> Another of the men referred to having been taken to the “main prison” in Bagram at one point. The former detainees also mentioned that when the ICRC visited, perhaps on a monthly basis, the prison was cleaned and the loud music stopped. The CIA’s secret detention facilities were hidden from the ICRC. The ICRC did visit the main military detention facility on Bagram airbase.

In 2007, Amnesty International and other organizations reported on the USA’s use of enforced disappearance, listing a number of detainees who remained unaccounted for.<sup>350</sup> Among them was **Abu Yasir al-Jaza’iri**, a Moroccan national taken into custody in Lahore, Pakistan on 15 March 2003. The organizations pointed to witness testimonies indicating that he was held in “a CIA-operated portion of Bagram Air Base, Afghanistan, in late 2003 through early 2004,” before being transferred to a secret detention facility in April 2004. Among other things he had allegedly been subjected to loud music for four months straight. The Senate Committee summary now reveals that he was held in Detention Site Cobalt (Afghanistan) in March 2003, where he was subjected to water dousing.<sup>351</sup> He is also listed as a detainee who was subjected to “enhanced interrogation techniques” prior to being questioned, and that this included being “stripped and shackled, nude, in the standing stress position for sleep deprivation”.<sup>352</sup> It is not clear if this occurred in Cobalt or Detention Site Blue (Poland) to where he was transferred at some point.<sup>353</sup> His treatment was modelled on

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<sup>347</sup> ICRC Report on the treatment of fourteen ‘high value detainees’ in CIA custody. February 2007, op. cit., page 33 and page 34.

<sup>348</sup> SSCI Executive Summary, pages 82-83.

<sup>349</sup> SSCI Executive Summary, footnote 584.

<sup>350</sup> USA: Off the Record. U.S. Responsibility for Enforced Disappearances in the “War on Terror”, 7 June 2007, <http://www.amnesty.org/en/library/info/AMR51/093/2007/en>

<sup>351</sup> SSCI Executive Summary, footnote 606.

<sup>352</sup> SSCI Executive Summary, footnote 2366.

<sup>353</sup> SSCI Executive Summary, footnote 606.

the interrogation plan developed for Ramzi bin al-Shibh at Detention Site Blue.<sup>354</sup> Abu Yasir al-Jaza'iri was held in CIA custody for between 1,260 and 1,269 days,<sup>355</sup> pointing to his transfer out of secret US detention occurring around August or September 2006, presumably from Detention Site Brown (Afghanistan),<sup>356</sup> to one of the “at least nine countries” to which CIA detainees were transferred in 2005 and 2006.<sup>357</sup>

If there is a reference in the Senate Committee's summary to a secret CIA site on the Bagram airbase, then it has been redacted or disguised under one of the colour codes.

At a press conference in Washington on 31 May 2005, President Bush was asked for his reaction to Amnesty International's allegation that the USA was holding people “beyond the reach of the law and decency” in Afghanistan and elsewhere. The President responded with the suggestion that the organization was relying on false allegations made by detainees motivated by antipathy for the USA:

“The United States is a country that is – promotes freedom around the world. When there's accusations made about certain actions by our people, they're fully investigated in a transparent way...We've investigated every single complaint against the detainees. It seemed like to me [that Amnesty International] based some of their decisions on the word of – and the allegations – by people who were held in detention, people who hate America, people that had been trained in some instances to disassemble [sic] – that means not tell the truth.”<sup>358</sup>

The following week, Amnesty International issued another report on US detentions in Afghanistan.<sup>359</sup> A decade later, the Senate Committee has added further details that make the absence of accountability and remedy in relation to what CIA and military personnel did to detainees in Afghanistan and elsewhere even starker. And it is the USA that is still not disclosing the truth about the human rights violations for which it was responsible.

## 2.2 CONFIRMING GUANTÁNAMO AS A CIA ‘BLACK SITE’

*[I]t is less clear whether policymakers were aware of the [CIA] detention facilities in Country [redacted] and at Guantánamo Bay, Cuba*  
Senate Committee summary report, December 2014

When the Office of Inspector General at the US Department of Justice released its 2009 report into FBI involvement in interrogations of detainees in US custody, a paragraph of its description of the various detention facilities at Guantánamo was redacted. Did the blacked out text refer to the CIA?<sup>360</sup>

Five years later, the Senate Select Committee on Intelligence has finally confirmed that the

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<sup>354</sup> SSCI Executive Summary, pages 76-77, and references to Abu Yasir al-Jaza'iri in footnotes 403 and 409.

<sup>355</sup> At the time of publication, the day range was given as 1,240 and 1,249 days, but revised in 2015.

<sup>356</sup> SSCI Executive Summary, page 154. Detention Site Violet shut down in 2006 (month redacted), and remaining detainees transferred to Detention Site Brown. Detention Site Orange (Afghanistan) was still operating in early 2006 (page 156).

<sup>357</sup> SSCI Executive Summary, page 157.

<sup>358</sup> The President's news conference, 31 May 2005.

<sup>359</sup> USA: US detentions in Afghanistan: an aide-mémoire for continued action, 7 June 2005, <http://www.amnesty.org/en/library/info/AMR51/093/2005/en>

<sup>360</sup> FBI OIG Report, October 2009, *op. cit.*, page 29.

CIA operated a secret detention facility at Guantánamo in 2003 and 2004. It has to be considered highly unlikely that the military was unaware of this at the time it was happening on this highly secure naval base. No one comes and goes without the military knowing about it. At the time, President Bush was Commander in Chief of the Armed Forces, as well as effective head of the CIA, and Donald Rumsfeld was Secretary of Defense. George Tenet was CIA Director.

Nearly a decade before the Senate Intelligence Committee summary was issued, Amnesty International wrote:

“Reports that the CIA has operated a secret facility in Guantánamo, coupled with the Pentagon’s refusal to release identities or to give anything but approximate totals for the numbers of people held in the base, raise fears of secret transfers to and from it and the possibility that there have been people held for interrogation there who would fall into the category of “disappeared” under international standards. It is not known exactly how many detainees have been held in Guantánamo who were not in the custody of the Department of Defense.”<sup>361</sup>

The Senate Committee has now shown that there were at least five. On 22 January 2010, the Guantánamo Review Task Force established under President Obama’s order to close the facility by that date reported that “since 2002, a total of 779 individuals have been detained at Guantánamo in connection with the war against al-Qaida, the Taliban, and associated forces”.<sup>362</sup> It should revise that figure to 780 if it failed to count one of the five former CIA detainees, **Ibn Shaykh al-Libi**, who was only in CIA custody there. As far as is known the other four were among the 14 transferred from secret CIA custody to military detention at the base and so will be recorded in the 779. It remains an open question whether there were other CIA detainees held at the base about whom the Senate Committee was not informed.

According to the Committee’s summary report, in November 2001, the CIA’s initial search for locations for secret detention facilities was put on hold, when senior CIA officials took the position that detainees should be held at a US military base outside the USA. The officials urged the CIA Director to have the Department of Defense “agree to host a long-term facility” and specifically recommending the US naval base at Guantánamo as the location for this.

Guantánamo was indeed chosen as a location for military detainees, and was selected in late 2001 in part because it was considered by the administration to be a location where foreign detainees taken into custody outside the USA could be kept and interrogated without them having access to the courts or to legal counsel.<sup>363</sup> However, by the time Abu Zubaydah was arrested in late March 2002, the CIA rejected the idea of him being taken into military custody because his detention would have to be declared to the ICRC (even if the organization were denied access at certain times to certain detainees held in military custody there).<sup>364</sup> CIA PowerPoint presentations on 27 and 28 March 2002, two days before

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<sup>361</sup> See page 121 of USA: Guantánamo and beyond: The continuing pursuit of unchecked executive power, May 2005, <http://www.amnesty.org/en/library/info/AMR51/063/2005/en>.

<sup>362</sup> Final Report, Guantánamo Review Task Force, 22 January 2010, <http://www.justice.gov/sites/default/files/ag/legacy/2010/06/02/guantanamo-review-final-report.pdf>

<sup>363</sup> Possible habeas jurisdiction over aliens held in Guantánamo Bay, Cuba. Memorandum for William J. Haynes, II, General Counsel, Department of Defense, from Patrick F. Philbin, Deputy Assistant Attorney General, and John C. Yoo, Deputy Assistant Attorney General, Office of Legal Counsel, US Department of Justice, 28 December 2001. According to former Secretary Rumsfeld, among other locations discussed were Alcatraz Island; the US army facility at Fort Leavenworth, Kansas; US island military bases in the Pacific and Indian Oceans and a ship permanently stationed in the Arabian Sea. Donald Rumsfeld, *Known and unknown: A memoir*. Sentinel Books (2011), page 566.

<sup>364</sup> See USA: Human dignity denied: Torture and accountability in the ‘war on terror’, October 2004, <http://www.amnesty.org/en/library/info/AMR51/145/2004/en>, pages 15-16.

President Bush approved Abu Zubaydah's transfer to secret custody at Detention Site Green (Thailand), highlighted the CIA's concerns about lack of secrecy if the detainee was held in military custody and that the CIA would lose control over the detainee to the military and/or the FBI.

As indicated above, it had long been alleged that Guantánamo was used not just for military detentions, but also as a location for a CIA "black site" where the agency held and interrogated certain detainees, in addition to the agency involving itself in interrogations of detainees held in military custody.<sup>365</sup> Indeed, four of the 14 detainees interviewed by the ICRC after their transfer in September 2006 from CIA custody to military detention at Guantánamo told the organization that they believed that one of the places they had been held during their secret CIA detention was Guantánamo. The four said they had been held for periods ranging from one week to one year during 2003/4. In its report, which came into the public domain in 2009, the ICRC said that it had been assured by the Department of Defense that the organization had had access to all detainees held at the base during its visits. The ICRC expressed its concern that, "if the allegations are confirmed, it had in fact been denied access to these persons during the time in which they were detained there".

The Senate Intelligence Committee has now provided that confirmation. Beginning in September 2003, "the CIA held a number of detainees at CIA facilities on the grounds of, but separate from the US military detention facilities at Guantánamo Bay, Cuba."<sup>366</sup> They were held in two facilities at the base, which the summary calls "Detention Site Maroon" and "Detention Site Indigo".<sup>367</sup> Under this scenario, the CIA began using Guantánamo as a black site at a time when things were looking good for the administration in terms of the reason they chose the base in the first place. In July 2002, the US District Court in Washington, DC, had decided that it lacked jurisdiction to hear habeas corpus appeals from detainees held as "enemy combatants" there. In March 2003, the US Court of Appeals for the DC Circuit upheld this ruling, meaning that the detainees remained without access to lawyers or the courts over a year after the military detentions began there in early January 2002.

On 10 November 2003, however, the US Supreme Court agreed to take the case, *Rasul v. Bush*, to decide whether the US courts had jurisdiction to consider habeas corpus petitions filed on behalf of detainees held at Guantánamo. By early January 2004, there were five detainees held in secret custody by the CIA at Guantánamo according to the Senate Intelligence Committee. The CIA and the Department of Justice began discussing the possibility that these CIA detainees would benefit if the Supreme Court ruled against the government's position that the courts did not have jurisdiction. At this point,

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<sup>365</sup> In a memorandum sent to President Bush and other officials in June 2006, Amnesty International quoted from a military document that had come into the public domain: "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." USA: Memorandum to the US Government on the report of the UN Committee Against Torture and the question of closing Guantánamo, 22 June 2006, <http://www.amnesty.org/en/library/info/AMR51/093/2006/en>. In a letter to President Bush accompanying the memo, Amnesty International wrote, "As President and Commander-in-Chief, you have the power immediately to initiate speedy resolution of these matters. In this regard, Amnesty International urges you 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 you may have granted to the CIA or any other agency after 11 September 2001, should be revoked with immediate effect. We urge you publicly to condemn any policy or practice of secret detention, including those cases which amount to "disappearance", a crime under international law."

<sup>366</sup> SSCI Executive Summary, page 140.

<sup>367</sup> SSCI Executive Summary, footnote 848.

“CIA officers approached the [redacted] in Country [redacted] to determine if it would again be willing to host these CIA detainees, who would remain in CIA custody within an already existing Country [redacted] facility. By January [redacted], 2004, the [redacted] in Country [redacted] had agreed to this arrangement for a limited period of time”.<sup>368</sup>

At this stage “the CIA’s long-term facility in Country [redacted]... had not yet been completed”.<sup>369</sup> In the meantime, according to the Senate Intelligence Committee, CIA General Counsel Scott Muller asked the Department of Justice, the National Security Council, and the White House Council for advice on whether these five CIA detainees should stay at Guantánamo or be moved pending the Supreme Court’s ruling.

While, according to the Senate Committee, CIA records “indicate” that President Bush and other senior officials, “as a matter of White House policy”, were not told the location of secret CIA facilities except the first one in Thailand, the committee’s summary report does note that “it is less clear whether policymakers were aware of the [CIA] detention facilities in Country [redacted] and at Guantánamo Bay, Cuba.”

The summary notes that “because the Committee was not informed of the CIA detention site at Guantánamo Bay, Cuba, no member of the Committee was aware that the US Supreme Court decision to grant certiorari in the case of *Rasul v. Bush*... resulted in the transfer of CIA detainees from the CIA detention facility at Guantánamo Bay to other CIA detention facilities”.<sup>370</sup> The CIA alleges that “on more than one occasion the CIA directed CIA personnel” at the naval base to “withhold any information on the location of the CIA’s detention facilities”, including when Committee members visited the base.<sup>371</sup>

Clearly, however, there were senior officials in the administration who were aware that the CIA was subjecting detainees to secret detention at Guantánamo. They even included the Solicitor General Theodore Olson, who was the official in charge of representing the administration’s position in the Supreme Court.<sup>372</sup> He was consulted about this issue in February 2004, after which the Department of Justice recommended moving four of the five detainees out of the base pending the Supreme Court’s ruling, which was expected in June 2004. The Department concluded that the fifth man, Libyan national Ibn Shaykh al-Libi, could remain at Guantánamo as he had originally been in military custody (presumably in Afghanistan) at which time his detention had been declared to the ICRC.

In March 2004, the government filed its brief in the Supreme Court in the *Rasul* case. In it, it stated that the “The military is currently detaining about 650 aliens at Guantanamo.” It made no mention of detainees being held there in secret by the CIA. In the event, all five detainees had been spirited away from Guantánamo by a certain date in April 2004, the precise day (between 10<sup>th</sup> and 30<sup>th</sup>) redacted from the Senate Committee’s summary report. Oral arguments in the *Rasul v. Bush* were held in the Supreme Court on 20 April 2004. On 28 June 2004, the Court ruled against the administration, finding that the federal courts had jurisdiction to consider habeas corpus petitions from the Guantánamo detainees.

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<sup>368</sup> SSCI Executive Summary, page 141.

<sup>369</sup> SSCI Executive Summary, footnote 850.

<sup>370</sup> SSCI Executive Summary, footnote 2467.

<sup>371</sup> SSCI Executive Summary, page 440.

<sup>372</sup> Theodore Olson was nominated by President Bush in February 2001 and confirmed by the Senate, taking up the post on 11 June 2001. The Department of Justice notes that prior to this, he had “successfully represented candidates George W. Bush and Dick Cheney in the Supreme Court *Bush v. Gore* cases involving the 2000 presidential election.” <http://www.justice.gov/osg/bio/theodore-b-olson>. Theodore Olson was Solicitor General until July 2004, after which Paul Clement acted in the role until he was nominated and confirmed in 2005.

At one point during oral arguments, Justice Stephen Breyer had expressed his concern about “unchecked and uncheckable actions dealing with the detention of individuals that are being held in a place where America has power to do everything”. Solicitor General Olson responded that “Whether there is a check on the executive, there is a Congressional check through the power of legislation, through the power of oversight, through the power of appropriations.”<sup>373</sup>

The summary report states that the five detainees who were being held at Guantánamo were transferred to “other CIA detention facilities”. It would seem that some or all of the five were taken to “an already existing Country [redacted] facility for a second time”, presumably the country which had agreed to this arrangement by January 2004.<sup>374</sup> The Senate Committee does not divulge the country’s name, but it may be Morocco, as described in the next section.

The four detainees who told the ICRC they had been in CIA custody in Guantánamo before being transferred to military detention there in September 2006 were not identified in the ICRC report, but two are identified in the summary. They are ‘**Abd al-Nashiri** and **Ramzi bin al-Shibh**.<sup>375</sup> The other two may have been **Abu Zubaydah** and **Khaled Sheikh Mohammed**.

Meanwhile, after the *Rasul* decision, there was no shift in the administration’s failure to meet its international human rights obligations. Instead it pursued a strategy, including in litigation in the federal courts, seeking as Amnesty International put it at the time, “to drain the *Rasul* ruling of any meaning and to have the executive entirely control the detainees’ fate.”<sup>376</sup> It was largely successful in this and it would not be until June 2008, in *Boumediene v. Bush*, that it would finally lose, when the US Supreme Court ruled that the detainees held in military custody at Guantánamo had the constitutional right to a “prompt hearing” to challenge the lawfulness of their detention in federal court. Nearly seven years later, some detainees have not yet had a ruling on their habeas corpus petitions.

In oral argument in the US Supreme Court in another “war on terror” detention case on 28 April 2004, one of the Justices had asked the Deputy Solicitor General: “But if the law is what the executive says it is... what is it that would be a check against torture?... Suppose the executive says mild torture we think will help get this information.” To which the Deputy Solicitor General replied: “You have to recognize that in situations where there is a war – where the Government is on a war footing, that you have to trust the executive...”<sup>377</sup>

The Deputy Solicitor General was Paul Clement, and he replaced Theodore Olson when the latter left office in July 2004. Paul Clement continued to offer advice on the secret detention programme. In early 2005, when the administration was beginning to discuss the “endgame” for the CIA detainees – not least because the USA was running out of cooperative countries to host “black sites” – then Acting Solicitor General Clement advised against transferring the CIA detainees to Guantánamo Bay on the grounds that they might be able to file a habeas corpus petition in the courts and have access to lawyers.<sup>378</sup> Around that time the CIA opened another secret facility, dubbed Detention Site Violet in the summary report, believed to be in

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<sup>373</sup> *Rasul v. Bush*, oral argument in the US Supreme Court, 20 April 2004.

<sup>374</sup> SSCI Executive Summary, page 141.

<sup>375</sup> SSCI Executive Summary, page 140.

<sup>376</sup> See USA: Guantánamo and beyond: The continuing pursuit of unchecked executive power, May 2005, <http://www.amnesty.org/en/library/info/AMR51/063/2005/en>

<sup>377</sup> *Rumsfeld v. Padilla*, oral argument in the US Supreme Court, 28 April 2004.

<sup>378</sup> SSCI Executive Summary, page 151. Paul Clement was nominated to the position of Solicitor General in March 2005, confirmed by the Senate in June, and took office on 11 June 2005. He had acted as Solicitor General for almost a year by then. <http://www.justice.gov/osg/bio/paul-d-clement>

Lithuania. Detainees were also being held by the CIA in Detention Site Black (believed to be in Romania), and in detention facilities in two other countries whose identities are redacted from the summary.<sup>379</sup> In addition it was operating Detention Site Orange, believed to be in Afghanistan, to which in May 2005 **Abu Faraj al-Libi** was rendered before soon afterwards being transferred to Detention Site Black and subjected to “enhanced” interrogation (see further below). He had no access to lawyers or the courts, the newly nominated and soon to be confirmed Solicitor General Paul Clement might have noted.

Trusting the executive allowed abductions, enforced disappearances, torture and other cruel, inhuman or degrading treatment to continue for years. This deference came from, among others, Congress and the federal judiciary, equally bound under international law to ensure the USA meets its international treaty obligations. Today the impunity for the crimes under international law committed under an executive programme of secret detention operated by the CIA persists. Trust us, the US Government seems to be saying, this will never happen again, so no need for real accountability.

## 2.2A RENDITION TO TORTURE, GUANTÁNAMO, AND MOROCCO?

As the *Rasul* ruling drew near, the five detainees who were being held in secret CIA custody at Guantánamo were transferred to “other CIA detention facilities” in March or April 2004. It would seem that some or all of the five were taken to “an already existing Country [redacted] facility for a second time”. This was the country which had agreed to this arrangement by January 2004.<sup>380</sup> The Senate Intelligence Committee does not divulge the name of this country, but it may be Morocco, based on information already in the public domain.<sup>381</sup>

The summary states that **‘Abd al-Nashiri** was rendered from United Arab Emirates custody to CIA custody in Detention Site Cobalt (Afghanistan), then to Detention Site Green (Thailand), then to Detention Site Blue (Poland). The latter facility closed in the fall of 2003. The Senate Committee also indicates that al-Nashiri was in Detention Site Black in 2004 and 2005.<sup>382</sup> In between his time in Detention Sites Blue and Black, in what the CIA dubbed a “temporary patch” solution, in or around the spring of 2003 he and **Ramzi bin al-Shibh** were taken to “an already existing Country [redacted] facility”, while the CIA set aside an unrevealed number of millions of dollars for a “clandestine detention facility” to be constructed in that country.<sup>383</sup> This “temporary patch” lasted for five months longer than originally planned, but by September 2003 both ‘Abd al-Nashiri and Ramzi bin al-Shibh had been transferred out of this Country [redacted] facility to CIA custody in the US naval base at Guantánamo Bay.<sup>384</sup>

Materials previously filed in the European Court of Human Rights stated that after detention in UAE, ‘Abd al-Nashiri was taken to secret detention in the Salt Pit facility in Afghanistan, then to a “secret CIA prison in Bangkok, Thailand, code-named Cat’s Eye” and then to the Stare Kiejkuty black site in Poland on 4/5 December 2002. “After his transfer out of Poland” on 6 June 2003, he “was detained in Rabat, Morocco, until 22 September 2003, when he was flown to the US Naval Base in Guantánamo Bay. On 27 March 2004 the CIA flew [al-Nashiri] from Guantánamo Bay back to Rabat. On an unknown date he was moved to the CIA

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<sup>379</sup> SSCI Executive Summary, page 143.

<sup>380</sup> SSCI Executive Summary, page 141.

<sup>381</sup> See also case of Binyam Mohamed, page 121-122 below.

<sup>382</sup> SSCI Executive Summary, footnotes 372 and 674.

<sup>383</sup> SSCI Executive Summary, page 139.

<sup>384</sup> SSCI Executive Summary, pages 139-140.



secret detention facility in Bucharest, Romania”.<sup>385</sup> If this is accurate, the fact that he was held in Morocco twice, with time in Guantánamo in between, would indicate that Morocco was the “Country [redacted]” which was asked and agreed to take CIA detainees “again”.<sup>386</sup>

In 2007 former CIA detainee Khaled al-Maqtari (now listed in the summary) told Amnesty International that while in a secret detention facility in Afghanistan, he had been issued with a blanket on which was written, apparently by Ramzi bin al-Shibh, “To Cuba, to Morocco, to Romania and to this place”.<sup>387</sup> The Senate Intelligence Committee confirms that Ramzi bin al-Shibh was one of the detainees who was transferred from Guantánamo to Country [redacted].<sup>388</sup> If the words on the blanket were accurate, this latter country was Morocco.

Khaled al-Maqtari had also been told when in the secret facility in Afghanistan that Ibn Shaykh al Libi had been taken away from that facility a few weeks before, in early January 2004.<sup>389</sup> If so, the black site to which he was transferred at that point was Guantánamo. For the Senate Committee has revealed that **Ibn Shaykh al Libi** was one of the five CIA detainees in Guantánamo in early 2004. In their 2007 report on enforced disappearances in the USA’s so-called “war on terror”, Amnesty International and other organizations recorded that he had been arrested in Pakistan in November 2001, and transferred to US custody in Afghanistan. In January 2002, the CIA took custody of him. In his 2011 book, FBI interrogator Ali Soufan reported that after his initial interrogations by the FBI, he had been “taken away from the FBI and rendered by the CIA to another country, where he was tortured and forced to admit to false connections between al-Qaeda and Saddam [Hussein]... He was later transferred to Libya, where he was put in prison and died under suspicious circumstances.”<sup>390</sup>

Now the Senate Committee reveals what happened after Ibn Shaykh al-Libi and other detainees were transferred from Guantánamo to secret custody elsewhere. And that “shortly after placing CIA detainees with an already existing Country [redacted] facility for a second time” in March or April 2004, “tensions arose” between the CIA and the hosts when CIA detainees in the facility “claimed to hear cries of pain from other detainees”, presumably in the custody of the home government.<sup>391</sup> One of the detainees making this claim was Ibn Shaykh al-Libi, “who had previously been rendered from CIA custody to [redacted]”. The redaction may hide that he was rendered to Egypt (in 2002). This is what Khaled al-Maqtari had been told, and has been reported elsewhere.<sup>392</sup> While in Egyptian custody in 2002, and subjected among other things to “mock burial”, Ibn Shaykh al-Libi had told his interrogators

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<sup>385</sup> Case of Al Nashiri v. Poland. Judgment, European Court of Human Rights, 24 July 2014, ¶¶83-85, 91, 107-109.

<sup>386</sup> SSCI Executive Summary, page 141.

<sup>387</sup> USA: A case to answer – From Abu Ghraib to secret CIA custody: The case of Khaled al-Maqtari, March 2008, <http://www.amnesty.org/en/library/info/AMR51/013/2008/en>. In the SSCI summary, Khaled al-Maqtari is listed as Firas al-Yemeni (detainee No. 96).

<sup>388</sup> SSCI Executive Summary, pages 140, 142 (“There were also counterintelligence concerns relating to CIA detainee Ramzi bin al-Shibh, who had attempted to influence a Country [redacted] officer”).

<sup>389</sup> Spelt Ibn al-Sheikh al Libi in Amnesty International’s 2008 report, A case to answer.

<sup>390</sup> Ali H. Soufan. The Black Banners: The inside story of 9/11 and the war against al-Qaeda. W.W. Norton (2011), page 557.

<sup>391</sup> SSCI Executive Summary, page 141.

<sup>392</sup> According to what Khaled al-Maqtari was told, Ibn al Sheikh al-Libi had been in the secret facility where al-Maqtari now was for “a few months, having spent the summer in a “medieval prison” (possibly in Afghanistan) and the previous year in Egypt”. Two Libyan nationals in secret CIA custody before being transferred to Libya said that Ibn al-Sheikh al-Libi had told them that his interrogators had given him the choice of being sent to Israel or to Egypt, and that he had been sent to Egypt.

that Iraq was supporting al-Qa'ida with chemical and biological weapons.<sup>393</sup> The Senate Intelligence Committee notes, confirming what had long been in the public domain:

“Some of this information was cited by Secretary [of State Colin] Powell in his speech to the United Nations, and was used as a specific justification for the 2003 invasion of Iraq. Ibn Shaykh al-Libi recanted the claim after he was rendered to CIA custody on February [redacted], 2003, claiming that he had been tortured by the [redacted], and only told them what he assessed they wanted to hear”.<sup>394</sup>

While in secret detention in 2004 in the country to which he and others had been transferred from Guantánamo, Ibn Shaykh al-Libi “told CIA debriefers that the ‘sobbing and yelling’ he heard reminded him of what he previously endured in [redacted] custody and it sounded to him like a prisoner had been tied up and beaten.”<sup>395</sup> Later in 2004, the CIA chief of station again approached the host country authorities with the CIA detainees’ allegations about “mistreatment of Country [redacted] detainees”. By the end of 2004, relations between the CIA and Country [redacted] had “deteriorated”, and the CIA detainees were transferred from it in 2005, the precise date redacted from the Senate Committee summary.

The next paragraph of the summary reveals that during 2005, efforts continued to “establish a more permanent and unilateral CIA detention facility” in “Country [redacted], that is, Morocco, under this presumption. This was then approved by authorities in that country and a CIA facility was built. However, it was never used and by late 2006 “the CIA was working with Country [redacted] to decommission what was described as the ‘aborted’ project”.<sup>396</sup>

Meanwhile, Ibn Shaykh al-Libi was not among the 14 detainees transferred to military custody at Guantánamo in September 2006. He was transferred to Libya, the precise date unknown. On 19 July 2006 his name was included in the USA’s “Terrorists No Longer a Threat” list.<sup>397</sup> According to reports, he had been taken into custody in Pakistan in November 2001, came into CIA custody in January 2002 and was rendered to Egypt that same month. Now the Senate Intelligence Committee discloses that he was transferred back into CIA custody in February 2003. It also reveals that his total time spent in secret CIA custody was between 1,160 and 1,169 days, or just over three years.<sup>398</sup> This would mean that his transfer out of CIA custody occurred around March or April 2006. At that time, if he was one of the 28 detainees in CIA custody in the agency’s “two remaining facilities”, Detention Site Violet and Detention Site Orange, it would appear he was transferred to Libya either from Lithuania or Afghanistan.<sup>399</sup>

The summary reveals that “in 2005 and 2006, the CIA transferred detainees from its custody to at least nine countries” (names redacted). One of them was Libya, where Ibn Shaykh al-Libi died in 2009 in Abu Salim prison in Tripoli.<sup>400</sup>

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<sup>393</sup> See, e.g., Detainee Who Gave False Iraq Data Dies In Prison in Libya, Washington Post, 12 May 2009, <http://www.washingtonpost.com/wp-dyn/content/article/2009/05/11/AR2009051103412.html>

<sup>394</sup> SSCI Executive Summary, footnote 857.

<sup>395</sup> SSCI Executive Summary, footnote 857.

<sup>396</sup> SSCI Executive Summary, page 142.

<sup>397</sup> USA: Off the Record. U.S. Responsibility for Enforced Disappearances in the "War on Terror", 7 June 2007, <http://www.amnesty.org/en/library/info/AMR51/093/2007/en>

<sup>398</sup> As published in December 2014, the SSCI summary report recorded his custody as having been between 1,140 and 1,149 days. This was revised in early 2015.

<sup>399</sup> SSCI Executive Summary, page 156.

<sup>400</sup> Detainee Who Gave False Iraq Data Dies In Prison in Libya, Washington Post, 12 May 2009,

## 2.2B GREEN TO COBALT TO GUANTÁNAMO AND BEYOND: INTERROGATION ‘TEMPLATES’

The 2007 report of the ICRC of its interviews with the 14 detainees transferred in September 2006 to Guantánamo from secret CIA custody noted that Abu Zubaydah had said that he had been told in or around August 2002, “when the real torturing started”, that “I was one of the first to receive these interrogation techniques, so no rules applied. It felt like they were experimenting and trying out techniques to be used later on other people.”<sup>401</sup>

The Senate Committee cites a 20 August 2002 cable, “which CIA records indicate was authored by Swigert and Dunbar”, recommending that “the aggressive phase at [Detention Site Green] should be used as a template for future interrogation of high value captives”.<sup>402</sup>

Prior to the “aggressive phase” interrogation in August 2002, **Abu Zubaydah** was kept in a white halogen-lit cell with no natural light or windows. His captors wore black uniforms, boots, gloves, balaclavas and goggles, not only to preserve their anonymity but to heighten the detainee’s isolation. Loud music and noise generators were used to “enhance” his “sense of hopelessness”. He was “typically kept naked and sleep deprived”. From 18 June to 4 August 2002, he was subjected to 47 days of isolation to keep him “off-balance” and while his case was discussed at high levels.<sup>403</sup>

To the case of Abu Zubaydah the Senate Intelligence Committee now adds that of **Redha al-Najar**, a Tunisian national arrested in Pakistan in May 2002 and rendered into CIA custody the following month (see above)<sup>404</sup> He became the first detainee in the newly constructed Detention Site Cobalt when taken there in September 2002.<sup>405</sup>

While the “aggressive” or “enhanced” phase of Abu Zubaydah’s interrogation was being discussed and developed by the CIA, the Department of Justice and others during the summer of 2002, a “parallel internal discussion” was taking place at the CIA regarding the interrogation of Redha al-Najar. Present at a CIA “strategy session” on al-Najar’s interrogation were individuals who were also involved in Abu Zubaydah’s interrogation, including at least one official from the CIA’s Counterterrorism Center (CTC) Legal office, whose name has been redacted from the summary.<sup>406</sup>

The US authorities had of course been informed nearly eight years before the Senate Intelligence Committee issued its summary of Abu Zubaydah’s own allegations about this period of isolation and subsequent “aggressive phase” of interrogation:

“There then followed a period of about one month with no questioning. Then, about two and a half or three months after I arrived in this place, the interrogation began again, but with more intensity than before. Then the real torturing started. Two black wooden boxes were brought into the room outside my cell. One was tall, slightly higher than me and narrow. Measuring perhaps in area 1m x 0.75m and 2m in height. The other was shorter, perhaps only 1m in height. I was taken out of my cell and one of the interrogators

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<http://www.washingtonpost.com/wp-dyn/content/article/2009/05/11/AR2009051103412.html>

<sup>401</sup> ICRC Report on the treatment of fourteen ‘high value detainees’ in CIA custody. February 2007, op. cit., pages 29-30.

<sup>402</sup> SSCI Executive Summary, page 46.

<sup>403</sup> SSCI Executive Summary, page 30 and footnote 256. A June 2002 cable from Detention Site Green noted that Abu Zubaydah was “tense” which it said was “likely an anticipatory reaction given his recent unexpected rectal exam” the previous day. SSCI Executive Summary, page 488.

<sup>404</sup> The spelling here is that used in litigation in US courts. The SSCI uses the spelling Ridha al-Najjar.

<sup>405</sup> SSCI Executive Summary, page 51.

<sup>406</sup> SSCI Executive Summary, page 51-52.

wrapped a towel around my neck, they then used it to swing me around and smash me repeatedly against the hard walls of the room. I was also repeatedly slapped in the face. As I was still shackled, the pushing and pulling around meant that the shackles pulled painfully on my ankles.”<sup>407</sup>

He was subsequently subjected among other things to “cramped confinement” in the large and small boxes and to waterboarding. A cable transmitted from the secret facility on 4 August stated that Abu Zubaydah “was unhooded and the large confinement box was carried into the interrogation room and placed on the floor so as to appear as a coffin”.<sup>408</sup>

“Over the course of the entire 20-day ‘aggressive phase of interrogation,’ Abu Zubaydah spent a total of 266 hours (11 days, 2 hours) in the large (coffin size) confinement box and 29 hours in a small confinement box, which had a width of 21 inches, a depth of 2.5 feet, and a height of 2.5 feet. The CIA interrogators told Abu Zubaydah that the only way he would leave the facility was in the coffin-shaped confinement box”.<sup>409</sup>

On 5 August 2002, the day after Abu Zubaydah’s “aggressive” interrogation phase began, CIA Headquarters authorized the interrogation plan proposed for al-Najar, incorporating hooding, shackling, isolation in total darkness, sleep deprivation, lowering the quality of his food, keeping him at uncomfortably low temperatures, and loud music 24 hours a day.<sup>410</sup>

In 2005, the CIA Inspector General found that the detention and interrogation of Redha al-Najar “became the model” for handling detainees at Detention Site Cobalt.<sup>411</sup> The interrogation plan for Redha al-Najar had also been “circulated to senior CIA officers as part of the Daily DCI Operations Update”. Among the recipients of this 26 July 2002 email, entitled “Abu Zubaydah – sensitive addendum”, was John Brennan, who 11 years later would be nominated to the position of CIA Director by President Obama.<sup>412</sup> So too was José Rodríguez, then head of the CTC, who in 2005 would approve destruction of the videotapes of Abu Zubaydah’s 2002 interrogations, including under waterboarding (see further below).

Meanwhile, on 15 July 2002, about two weeks before Abu Zubaydah’s aggressive interrogation phase began in Thailand and the interrogation plan for Redha al-Najar in Afghanistan was finalized, as reported by the Department of Justice Inspector General in 2008, the FBI informed military authorities at Guantánamo that one of the detainees there, **Mohamed al-Qahtani**, may have been a possible “20th hijacker” for the 9/11 attacks. Attorney General John Ashcroft and President George W. Bush were briefed about the case. The response came back that there was “no interest in prosecuting Al-Qahtani in a US court” at this time.<sup>413</sup> There was, however, interest in interrogating him.

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<sup>407</sup> ICRC Report on the treatment of fourteen ‘high value detainees’ in CIA custody. February 2007, *op. cit.*, pages 29-30.

<sup>408</sup> SSCI Executive Summary, page 41.

<sup>409</sup> SSCI Executive Summary, page 42.

<sup>410</sup> SSCI Executive Summary, page 53.

<sup>411</sup> SSCI Executive Summary, page 54.

<sup>412</sup> John Brennan responded to the SSCI summary by stating: “we acknowledge that the detention and interrogation program had shortcomings and that the Agency made mistakes”, but asserted that “interrogations of detainees on whom EITs were used did produce intelligence that helped thwart attack plans, capture terrorists, and save lives. The intelligence gained from the program was critical to our understanding of al-Qa’ida and continues to inform our counterterrorism efforts to this day.” Statement from Director Brennan on the SSCI Study on the Former Detention and Interrogation Program, 9 December 2014, <https://www.cia.gov/news-information/press-releases-statements/2014-press-releases-statements/statement-from-director-brennan-on-ssci-study-on-detention-interrogation-program.html>

<sup>413</sup> FBI OIG Report, October 2009, *op. cit.*, pages 78-79.

Mohamed al-Qahtani, because he was not in CIA custody, is not named in the Senate Intelligence Committee's review. Nevertheless, his interrogation was influenced by the CIA's interrogation programme, and is part of the narrative about how interrogations developed. In early 2009, a Bush administration official stated that "we tortured" Mohamed al-Qahtani in 2002/2003.<sup>414</sup> No one has been brought to justice for this crime.<sup>415</sup>

On 8 August 2002, four days into Abu Zubaydah's "enhanced" interrogation, Mohamed al-Qahtani was moved to isolation in the Navy Brig at Guantánamo, a place he would later describe as the "worst" he was taken to. His cell window was covered, he could not tell what time of day it was, he never saw sunlight for the six months he was held there, the lights in his cell were lit 24 hours a day, his cell was very cold, he was allowed no recreation, and the guards covered their faces "to further isolate Al-Qahtani from human contact"<sup>416</sup>.

In Afghanistan the following month, Detention Site Cobalt opened and Redha al-Najar became its first detainee. The Senate Intelligence Committee also reveals that by 21 September 2002, al-Najar was "clearly a broken man" and "on the verge of a complete breakdown" as a result of the isolation he had been subjected to.<sup>417</sup> A few weeks after that, at Guantánamo, "in November 2002, FBI agents observed Detainee #63 [Mohamed al-Qahtani] 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>418</sup>

In 2008, the Senate Armed Services Committee (SASC) had disclosed the minutes of a 2 October 2002 meeting held at Guantánamo to discuss interrogation techniques, at which the case of Mohamed al-Qahtani was on the agenda. Among the meeting's participants was Jonathan Fredman, the chief counsel to the CIA's Counterterrorism Center, the office overseeing the secret detention programme. He made numerous interventions at the Guantánamo meeting.<sup>419</sup> His name was not redacted from the SASC report. If it appears in

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<sup>414</sup> See USA: Torture acknowledged, question of accountability remains, 14 January 2009, <http://www.amnesty.org/en/library/info/AMR51/003/2009/en>. Also USA: Where is the accountability? Health concern as charges against Mohamed al-Qahtani dismissed, <http://www.amnesty.org/en/library/info/AMR51/042/2008/en>. See also *CCR v. CIA et al*, US Court of Appeals for the Second Circuit, 2 September 2014 ("we hold that government-released images and videos of one of Guantanamo Bay's most high-profile detainees..., and whose interrogation was publicly deemed 'torture' by a government official, could logically and plausibly be used by anti-American extremists as propaganda..., causing damage to national security. Such threats to national security justify non-disclosure"); Cert. denied by US Supreme Court, 9 March 2015.

<sup>415</sup> See USA: Memorandum to the US Government on the report of the UN Committee Against Torture and the question of closing Guantánamo, 22 June 2006, <http://www.amnesty.org/en/library/info/AMR51/093/2006/en>, and USA: Bringing George W. Bush to justice: International obligations of states to which former US President George W. Bush may travel, November 2011, <http://www.amnesty.org/en/library/info/AMR51/097/2011/en>

<sup>416</sup> FBI OIG Report, October 2009, *op. cit.*, page 81.

<sup>417</sup> SSCI Executive Summary, page 53.

<sup>418</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>419</sup> Fredman advised that the Department of Justice has "provided much guidance" on this issue, and noted that the "CIA is not held to the same rules as the military". He advised that while torture was prohibited under the UN Convention against Torture, US domestic law implementing the treaty was "written vaguely", with what constitutes physical torture "explained as poorly" as what constitutes mental torture. Physical torture, he claimed, would be conduct which causes "severe physical pain causing permanent damage to major organs or body parts" and mental torture would be anything that

the Intelligence Committee's summary, however, it has been redacted, by the executive. As such it is not possible to know to whom the Committee's reference to an official from "CTC Legal" who visited Detention Site Green (Thailand) in 2002 "to observe the use of the CIA's interrogation techniques against Abu Zubaydah" refers.<sup>420</sup> If it was Jonathan Fredman, then the discussion of Mohamed al-Qahtani at the October 2002 meeting was attended by someone who had directly observed the torture or other ill-treatment of Abu Zubaydah.

Jonathan Fredman's "visit" to Guantánamo in October 2002 "took place just a week after the acting CIA General Counsel John Rizzo" visited the base.<sup>421</sup> In his memoirs, Rizzo asserted that his own "fingerprints" were all over the CIA's secret detention and interrogation programme from its outset.<sup>422</sup> Since publication of the Senate Committee's summary, a CIA memorandum for the record cited in the summary has been made public which points to a memorandum from Secretary of Defense Donald Rumsfeld dated 11 October 2002 and received by the CIA on or about 26 November 2002 "regarding the transfer of an individual from the Department of Defense (DoD) control to the control of the CIA". The memorandum was addressed to CIA Director George Tenet and asked him to confirm that the detainee would be returned to DoD control "at an appropriate time".<sup>423</sup> The timing of the memorandum suggests that the detainee in question was Mohamed al Qahtani.<sup>424</sup>

Meanwhile at Detention Site Blue (Poland), an interrogation plan developed in February 2003 for **Ramzi bin al-Shibh** – including that he would be subjected to "sensory dislocation" immediately upon arrival at the secret facility, through shaving of head and face, exposure to loud noise in a white room with white lights, subjection to nudity, low temperatures, and shackling "hand and foot with arms outstretched over his head" – became a template for other interrogation plans.<sup>425</sup> He was then "immediately subjected to the CIA's enhanced interrogation techniques at Detention Site Blue".<sup>426</sup>

Subsequent requests to CIA headquarters for authorization to use enhanced interrogation

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caused "permanent, profound damage to the senses or personality". He noted that the USA "did not sign up to" the international prohibition of cruel, inhuman or degrading treatment, giving it "more license to use more controversial techniques". He said that "if the detainee dies you're doing it wrong". He described waterboarding, and suggested that it is "effective to identify phobias" such as claustrophobia and fear of insects and snakes, and use them against the detainee. Death threats, he said, should be "handled on a case by case basis". Counter Resistance strategy meeting minutes, 2 October 2002. Comments attributed to individuals are paraphrased in the record of this meeting.

<sup>420</sup> SSCI Executive Summary, footnote 751.

<sup>421</sup> Inquiry into the treatment of detainees in US custody. Report of the Committee on Armed Services, United States Senate, 20 November 2008, page 53-54.

<sup>422</sup> See 'Thanks for the memoirs, now for truth and justice', in USA: Time for truth and justice: Reflections and recommendations on truth, remedy and accountability as declassification of Senate Committee summary report on CIA secret detentions awaited, 23 June 2014, <http://www.amnesty.org/en/library/info/AMR51/035/2014/en>. Except for a period in 2002-2003 when Scott Muller was in post, Rizzo served as the CIA Acting General Counsel from late 2001 through 2009.

<sup>423</sup> Memorandum for the record. 'Humane' treatment of CIA detainees. Scott W. Muller, CIA General Counsel. 12 February 2003. SSCI Executive Summary, footnote 685.

<sup>424</sup> Among the interrogation plans for Mohamed al Qahtani developed in late 2002 had been to transfer him off Guantánamo, temporarily or permanently to "either Jordan, Egypt or another third country to allow those countries to employ interrogation techniques that will enable them to obtain the requisite information". Another proposal, advanced by "US government officials", "involved subjecting Al-Qahtani to interrogation using the same [redacted] used on Zubaydah", although due to redactions it is not clear whether this plan would have meant his transfer to the CIA secret detention programme. FBI OIG report, October 2009 version, *op. cit.*, page 88 and 92.

<sup>425</sup> SSCI Executive Summary, pages 76-77.

<sup>426</sup> SSCI Executive Summary, footnote 430.

techniques “relied upon near identical language” to that in the Ramzi bin al Shibh template.<sup>427</sup> Over the years, “multiple interrogation plans for CIA detainees called for ‘uncomfortably’ cool temperatures along with sleep deprivation.”<sup>428</sup>

The Ramzi bin-al Shibh interrogation plan itself included “near constant interrogations, as well as continued sensory deprivation, a liquid diet and sleep deprivation”. It would also incorporate techniques such as “attention grasp, walling, the facial hold, the facial slap, the abdominal slap, cramped confinement, wall standing, stress positions, sleep deprivation beyond 72 hours, and the waterboard”, which would be used “as appropriate to [bin al-Shibh’s level of resistance]”.<sup>429</sup> At least six other detainees faced interrogations modelled on this plan, and were “stripped and shackled nude, placed in the standing position for sleep deprivation or subjected to other CIA enhanced interrogation techniques prior to being questioned by an interrogator”.<sup>430</sup>

A recommendation of the then classified CIA Inspector General’s 2004 review of the secret detention programme was that the CIA should conduct a study of the effectiveness of the interrogation techniques.<sup>431</sup> The CIA’s Office of Medical Services (OMS) raised a concern that such a study would amount to “human experimentation”. The Inspector General responded that the idea behind this recommendation was not to conduct “additional, guinea pig research on human beings”, but rather a “careful review” of the CIA’s “experience to date” with the various techniques to “guide CIA officers as we move ahead”, and:

“We make this recommendation because we have found that the Agency over the decades has continued to get itself in messes related to interrogation programs for one overriding reason: we do not document and learn from our experience”.<sup>432</sup>

Responding to the Senate Committee’s summary 12 years after he had been the recipient of an email linked to Abu Zubaydah’s case and outlining Ridha al-Najar’s interrogation plan, the current CIA Director John Brennan did not use the words torture or other cruel, inhuman or degrading treatment, only that “certain detainees were subjected to enhanced interrogation techniques (EITs), which the Department of Justice determined at the time to be lawful and which were duly authorized by the Bush Administration.” He asserted that “in many respects, the program was uncharted territory for the CIA, and we were not prepared. We had little experience housing detainees, and precious few of our officers were trained interrogators.”<sup>433</sup>

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<sup>427</sup> SSCI Executive Summary, page 76. Subsequent cases included Khaled Sheikh Mohammed (March 2003), Hambali (September 2003), Abu Yasir al-Jaza’iri (date redacted), Abd al-Latif al-Barq (date redacted), Hambali and Lillie (August 2003), Hassan Ghul (January 2004), and Adnan al-Libi (date redacted). SSCI Executive Summary, footnote 403. It is not clear why the date in Adnan al-Libi’s case has been redacted. In Libya in 2011, Adnan al-Libi told Amnesty International that he had been arrested in Peshawar in Pakistan on 14 November 2003, and had spent 39 days in custody there and a few days in Islamabad before being transferred to secret CIA custody in Afghanistan, around 1 January 2004. He was sent back to Libya on 22 August 2004. The SSCI gives his time in CIA custody as 240-249 days (post-publication revision, originally gave 230-239 days), which is consistent with this.

<sup>428</sup> SSCI Executive Summary, footnote 2355.

<sup>429</sup> SSCI Executive Summary, page 77.

<sup>430</sup> SSCI Executive Summary, page 77. They included Asadallah, Abu Yasir al-Jaza’iri, Suleiman Abdullah, Abu Hudhaifa, Hambali and Majid Khan. Footnote 409 and see also footnote 2639, referring to “numerous” detainees.

<sup>431</sup> SSCI Executive Summary, page 124.

<sup>432</sup> SSCI Executive Summary, page 126.

<sup>433</sup> Remarks as Prepared for Delivery CIA Director John O. Brennan Response to SSCI Study on the Former Detention and Interrogation Program, 11 December 2014, <https://www.cia.gov/news-information/speeches-testimony/2014-speeches-testimony/remarks-as-prepared-for-delivery-cia-director-john-o-brennan-response-to-ssci-study-on-the-former-detention-and-interrogation-program.html>

Was President Bush negligent for failing to consider more carefully, when he authorized the CIA to conduct detentions, whether the agency was a singularly unsuitable candidate to operate a detention regime? While having limited experience in detaining individuals, it also had a history of “using coercive interrogations” in the 1960s, and interrogation training in such methods in Latin America in the 1980s.<sup>434</sup> The President could have weighed giving “unprecedented” detention authority to an agency that “thrives through deception”,<sup>435</sup> against the fact that secrecy and deception are anathema to lawful detentions.

Meanwhile, four years after the torture of Abu Zubaydah, the office of CTC Legal was still seeking to justify treatment that clearly violated international law. In a letter to the Department of Justice about “security measures” in secret detention facilities, dated 18 May 2006, “[redacted] CTC Legal [redacted]” at the CIA wrote that “some of these conditions provide the additional benefit of setting a detention condition atmosphere conducive to continued intelligence collection from the detainee.” The letter referenced “constant light in the cells, use of white noise, use of shackles, hooding, and shaving/barbering”.<sup>436</sup>

## 2.2C INJUSTICE COMPOUNDED: A QUARTER OF CIA DETAINEES STILL AT GUANTÁNAMO

At least 29 of those now held at Guantánamo were at some point in CIA custody prior to being transferred there, according to the list of 119 detainees published by the Senate Intelligence Committee. The detainees in order of original arrest date, are:<sup>437</sup>

1. **Tawfiq Nasir Awad al-Bihani** – Arrested in late 2001 or early 2002 by Iranian police and held in Iranian custody until mid-March 2002, when he was transferred to Afghan custody. According to a leaked Guantánamo assessment “he remained in Afghan custody until he was transferred to US custody at the Bagram Collection Point in approximately mid-December 2002.” He was in secret CIA custody for 50-59 days. Subjected to 72 hours of sleep deprivation between his arrival at Detention Site Cobalt and his interrogation in October 2002.<sup>438</sup> Guantánamo transfer, 6 February 2003. His “final disposition” as of 22 January 2010 was “at this time, given the current security situation in Yemen conditional detention pursuant to the Authorization for Use of Military Force”. Held without charge.
2. **Sharqawi Ali Abdu al-Hajj**, aka Riyadh the Facilitator.<sup>439</sup> Taken into custody on 7 February 2002, and transferred to custody of “a foreign government” (believed to be Jordan) later that month.<sup>440</sup> Nearly two years later, in January 2004, he was “rendered into the CIA’s Detention and Interrogation Program”.<sup>441</sup> He was in CIA custody for between 120 and 129 days before being transferred to US military custody in May 2004. On 19 September 2004, he was transferred from US military custody in Afghanistan to Guantánamo. His “final disposition” as of 22 January 2010, was “referred for prosecution”. Still held without charge in April 2015.
3. **Zayn al Abidin Muhammad Husayn, also known as Abu Zubaydah** – Arrested, 28 March 2002, Pakistan. In CIA custody for 1,610-1619 days. Placed in isolation for 47 days from 18 June

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<sup>434</sup> See Section 1.3 of USA: Human dignity denied: Torture and accountability in the ‘war on terror’, October 2004, <http://www.amnesty.org/en/library/info/AMR51/145/2004/en> (“history repeats itself”).

<sup>435</sup> The CIA is “an organization that thrives through deception”. John Hamre, Quoted in *Legacy of Ashes: The History of the CIA*, by Tim Weiner. First Anchor Books Edition, May 2008, p. 578. From an interview by the author. John Hamre was US Deputy Secretary of Defense from 1997 to 2000.

<sup>436</sup> SSCI Executive Summary, page 429.

<sup>437</sup> The number of days recorded for the detainees having been in CIA custody are as provided in early 2015 by the SSCI to revise the figures given in the summary report as published on 9 December 2014. The “final dispositions” are those made by the Guantánamo Review Task Force in January 2010. See also Pentagon envisions up to 7 more Guantánamo trials, *Miami Herald*, 26 March 2015.

<sup>438</sup> SSCI Executive Summary, footnote 592.

<sup>439</sup> SSCI Executive Summary, footnote 2185.

<sup>440</sup> SSCI Executive Summary, page 382 and footnote 2185.

<sup>441</sup> SSCI Executive Summary, footnote 2160.



2002 to 4 August 2002, at which point “CIA interrogators re-established contact with Abu Zubaydah and immediately began to subject Abu Zubaydah to the non-stop use of the CIA’s enhanced interrogation techniques for 17 days, which included at least 83 applications of the waterboard interrogation technique”.<sup>442</sup> This was in Detention Site Green (Thailand). Then held in Detention Site Blue (Poland). Nudity, cramped confinement, walling, sleep deprivation, prolonged isolation, prioritization of interrogation over medical care, subjected to “rectal fluid resuscitation” for “partially refusing liquids”.<sup>443</sup> Guantánamo transfer, presumably from Detention Site Brown (Afghanistan), 4 September 2006. His “final disposition” as of 22 January 2010, was “referred for prosecution”. Still held without charge in April 2015.

4. **Omar Mohammed Ali al-Rammah (Zakaria)** – Detained in Georgia, April 2002. In CIA custody for 370-379 days. Guantánamo transfer, 9 May 2003. His “final disposition” as of 22 January 2010 was “continued detention pursuant to the Authorization for Use of Military Force (2001), as informed by principles of the laws of war, subject to further review by the Principals prior to the detainee’s transfer to a detention facility in the United States”. Held without charge.
5. **Ghulam Rabbani (Abu Badr)** – Arrested in Karachi, Pakistan on 10 September 2002. In secret CIA custody for 550-559 days. Forced standing, attention grasps, and cold temperatures without blankets in November 2002.<sup>444</sup> Subjected to EITs without CIA HQ approval. Guantánamo transfer, 19 September 2004. His “final disposition” as of 22 January 2010, was “referred for prosecution”. By April 2015, still held without charge.
6. **Ramzi bin al Shibh** – Arrested in Karachi, Pakistan, on 11 September 2002. Was rendered to the custody of a “foreign government” for five months. Was rendered to Detention Site Blue in February 2003.<sup>445</sup> Held in CIA secret detention in Guantánamo in 2003 and 2004. In CIA custody for 1,300-1,309 days. Subjected to “multiple” use of facial hold,<sup>446</sup> rectal feeding and threats of rectal hydration.<sup>447</sup> Guantánamo transfer, presumably from Detention Site Brown (Afghanistan), 4 September 2006. Facing death penalty trial by military commission.
7. **Hassan Bin Attash** – Arrested 11 September 2002, Karachi, Pakistan. Was in CIA custody for 120-129 days. Believes he was held in Jordan between September 2002 and January 2004 and has claimed that he was tortured there (see above). Guantánamo transfer, 19 September 2004. His “final disposition” as of 22 January 2010, was “referred for prosecution”. By April 2015, he was still held without charge.
8. **Abd al-Rahim Ghulam Rabbani** – Arrested in Karachi, Pakistan on 11 September 2002. In CIA custody for 550-559 days. Guantánamo transfer, 19 September 2004. His “final disposition” as of 22 January 2010, according to the Guantánamo Review Task Force, was “referred for prosecution”. By April 2015, he was still held without charge.
9. **Sa’id Salih Sa’id** – Arrested in Karachi, Pakistan, 11 September 2002. In CIA custody for 30-39 days. Allegedly “mistreated and beaten by Americans while blindfolded and stripped down to his underwear in [redacted]”.<sup>448</sup> Guantánamo transfer, 28 October 2002. His “final disposition” as of 22 January 2010, was “continued detention pursuant to the Authorization for Use of Military Force, as informed by principles of the laws of war”. Held without charge.
10. **Ha’il Aziz Ahmad al-Mithali** – Arrested, Karachi, 11 September 2002. In CIA custody for 30-39 days. Sleep deprivation indicated.<sup>449</sup> Guantánamo transfer, 28 October 2002. “Final disposition”, 22 January 2010, “continued detention pursuant to the Authorization for Use of Military Force, as informed by principles of the laws of war”. Held without charge.
11. **Musab Umar Ali al-Madhawi** – Arrested in Karachi, Pakistan on 11 September 2002. In CIA custody for 30-39 days. Has alleged torture, allegations which a US federal judge has found

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<sup>442</sup> SSCI Executive Summary, footnote 2190.

<sup>443</sup> SSCI Executive Summary, footnote 584.

<sup>444</sup> SSCI Executive Summary, footnote 595.

<sup>445</sup> SSCI Executive Summary, page 67.

<sup>446</sup> SSCI Executive Summary, footnote 598.

<sup>447</sup> SSCI Executive Summary, footnote 584.

<sup>448</sup> SSCI Executive Summary, footnote 589.

<sup>449</sup> SSCI Executive Summary, footnote 589.

- credible.<sup>450</sup> Guantánamo transfer, 28 October 2002. His “final disposition” as of 22 January 2010, was “continued detention pursuant to the Authorization for Use of Military Force, as informed by principles of the laws of war”. Held without charge.
12. **Shawqi Awad Balzuhair** – Arrested in Karachi, Pakistan on 11 September 2002. In CIA custody for 30-39 days. Guantánamo transfer, 28 October 2002. His “final disposition” as of 22 January 2010, was “continued detention pursuant to the Authorization for Use of Military Force, as informed by principles of the laws of war”. Held without charge.
  13. **Bashir Nasir Ali al-Marwalah** – Arrested in Karachi, Pakistan on 11 September 2002. In secret CIA custody for 30-39 days. Alleged that he was forced to “stand up for five days straight and answer questions” and “was also forced to strip naked and stand in front of a female interrogator”.<sup>451</sup> Guantánamo transfer, 28 October 2002. His “final disposition” as of 22 January 2010, was “continued detention pursuant to the Authorization for Use of Military Force, as informed by principles of the laws of war”. Held without charge.
  14. **Ayub Murshid Ali Salih** – Arrested in Karachi, Pakistan on 11 September 2002. In secret CIA custody for 30-39 days. Sleep deprivation indicated, but poor record-keeping.<sup>452</sup> Guantánamo transfer, 28 October 2002. His “final disposition” as of 22 January 2010, according to the Guantánamo Review Task Force, was “continued detention pursuant to the Authorization for Use of Military Force, as informed by principles of the laws of war”. Held without charge.
  15. **Abd al Salam al Hela** – Seized in or rendered from Egypt in September 2002. In CIA custody for 590-599 days. Has alleged torture or other ill-treatment.<sup>453</sup> Guantánamo transfer, 19 September 2004. His “final disposition” as of 22 January 2010, was “continued detention pursuant to the Authorization for Use of Military Force (2001), as informed by principles of the laws of war, subject to further review by the Principals prior to the detainee’s transfer to a detention facility in the United States”. Held without charge.
  16. **‘Abd al Rahim al-Nashiri**. Arrested United Arab Emirates, October 2002. In CIA custody for 1,390–1,399 days. Taken to Detention Site Cobalt (Afghanistan) in November 2002 and later that month to Detention Site Green (Thailand) and subjected among other things to waterboarding. Taken to Detention Site Blue (Poland), and subjected to “Unapproved nudity and approximately two-and-a-half days of sleep deprivation in December 2002, with his arms shackled over his head for as long as 16 hours”.<sup>454</sup> A January 2003 cable refers to him being held “in the standing position, with hands tied overhead, overnight”.<sup>455</sup> In Detention Site Blue, he was also subjected to mock execution and various other “unauthorized” techniques. From 2003 was held in a “temporary patch” detention arrangement (thought to be in Morocco), and from there taken to secret custody at Guantánamo, in 2004 back to Morocco, and subsequently to Detention Site Black (Romania).<sup>456</sup> In May 2004, while on a hunger-strike, he was subjected to rectal force feeding.<sup>457</sup> Guantánamo transfer, presumably from Detention Site Brown (Afghanistan), 4 September 2006. Facing death penalty trial by military commission.<sup>458</sup>
  17. **Sanad ‘Ali Yislam al-Kazimi** – Arrested in Dubai in January 2003. In CIA custody for 270-279 days. He has alleged torture in UAE and CIA custody.<sup>459</sup> Guantánamo transfer, 19 September 2004. His “final disposition” as of 22 January 2010 was “referred for prosecution”. By April 2015, he was still held without charge.

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<sup>450</sup> See, for example, USA: ‘I have no reason to believe that I will ever leave this prison alive’, 3 May 2013, <http://www.amnesty.org/en/library/info/AMR51/022/2013/en>

<sup>451</sup> SSCI Executive Summary, footnote 589.

<sup>452</sup> SSCI Executive Summary, footnote 589.

<sup>453</sup> USA: Who are the Guantánamo detainees: Case Sheet No. 15: Yemeni national: Abdulsalam al-Hela, 11 January 2006, <http://www.amnesty.org/en/library/info/AMR51/012/2006/en>.

<sup>454</sup> SSCI Executive Summary, footnote 597.

<sup>455</sup> SSCI Executive Summary, footnote 2331.

<sup>456</sup> SSCI Executive Summary, pages 139-141.

<sup>457</sup> SSCI Executive Summary, page 73.

<sup>458</sup> See also Poland seeks US assurances over Guantánamo inmate. Reuters, 31 March 2015.

<sup>459</sup> USA: See no evil: Government turns the other way as judges make findings about torture and other abuse, 3 February 2011, <http://www.amnesty.org/en/library/info/AMR51/005/2011/en>

18. **Khalid Sheikh Mohammed.** Arrested in Pakistan, 1 March 2003. In CIA custody for 1,280-1,289 days. Subjected to water-boarding, nudity, standing sleep deprivation, attention grab and insult slap, facial grab, abdominal slap, kneeling stress position, walling, rectal hydration, threats to his children, water dousing. Was in Detention Site Cobalt in March 2003 from where he was taken to Detention Site Blue (Poland).<sup>460</sup> He was in Detention Site Black (Romania) in November 2003.<sup>461</sup> Transferred to Detention Site [redacted] in 2005 and to Detention Site Brown (Afghanistan) in March 2006.<sup>462</sup> Guantánamo transfer, presumably from Detention Site Brown, 4 September 2006. Facing death penalty trial by military commission.
19. **Mustafa Ahmad al-Hawsawi.** Arrested in Pakistan, 1 March 2003. In CIA custody for 1,280-1,289 days. Was subjected to water-dousing in Detention Site Cobalt (Afghanistan).<sup>463</sup> Excessive force in rectal examination.<sup>464</sup> Had serious medical problems while held in Detention Site Violet (Lithuania). Guantánamo transfer, presumably from Detention Site Brown (Afghanistan), 4 September 2006. Facing death penalty trial by military commission.
20. **Majid Khan** – Arrested on 5 March 2003 in Pakistan and taken into Pakistani custody.<sup>465</sup> In CIA custody for between 1,200 and 1,209 days. For a period in 2003 appears to have been in a CIA “safehouse” in Afghanistan. He was subjected to “enhanced” interrogation immediately upon being taken into CIA custody. The cable referred to is dated 24 May 2003.<sup>466</sup> Subjected to sleep deprivation, nudity, dietary manipulation, immersion in bath ice water bath,<sup>467</sup> rectal feeding. Guantánamo transfer, presumably from Detention Site Brown (Afghanistan), 4 September 2006. Pled guilty before a military commission, sentencing deferred.
21. **Ammar al-Baluchi** – Arrested in Pakistan, 29 April 2003 in a “unilateral operation by Pakistani authorities resulting from criminal leads”.<sup>468</sup> Rendered into CIA custody the following month, around 15 May. In CIA custody for 1,200-1209 days. Was subjected to EITs immediately upon being rendered into CIA custody in May 2003, including sessions from 17 May to 20 May 2003.<sup>469</sup> Guantánamo transfer, presumably from Detention Site Brown (Afghanistan), 4 September 2006. Facing death penalty trial by military commission.
22. **Khallad (Walid) Bin Attash** – Arrested in Pakistan, 29 April 2003 in a “unilateral operation by Pakistani authorities resulting from criminal leads”.<sup>470</sup> Rendered into CIA custody the following month, around 15 May. In CIA custody for 1,200 to 1,209 days. Was subjected to EITs immediately upon being rendered into CIA custody, including from 16 May to 18 May 2003 and then again 18 July to 29 July 2003.<sup>471</sup> Sleep deprivation, facial grabs, facial insult slaps, abdominal slaps, walling, water dousing, threats of rectal hydration.<sup>472</sup> Was held in Detention Site Blue (Poland).<sup>473</sup> Guantánamo transfer, presumably from Detention Site Brown (Afghanistan) 4 September 2006. Facing death penalty trial by military commission.
23. **Zubair, also known as Mohammed Farik Bin Amin,** was taken into custody by the authorities in Thailand on 8 June 2003 and held in Thai custody.<sup>474</sup> He was rendered to CIA custody around

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<sup>460</sup> SSCI Executive Summary, page 84.

<sup>461</sup> SSCI Executive Summary, page 95.

<sup>462</sup> SSCI Executive Summary, page 96.

<sup>463</sup> SSCI Executive Summary, footnote 600.

<sup>464</sup> SSCI Executive Summary, footnote 584.

<sup>465</sup> SSCI Executive Summary, page 280.

<sup>466</sup> SSCI Executive Summary, footnote 2366.

<sup>467</sup> SSCI Executive Summary, footnote 610. Majid Khan claimed that this happened in May 2003.

<sup>468</sup> SSCI Executive Summary, footnote 2190.

<sup>469</sup> SSCI Executive Summary, page 244 and footnote 2246.

<sup>470</sup> SSCI Executive Summary, footnote 2190.

<sup>471</sup> SSCI Executive Summary, page 244 and footnote 2246.

<sup>472</sup> SSCI Executive Summary, footnotes 612 and 584.

<sup>473</sup> SSCI Executive Summary, footnote 724.

<sup>474</sup> SSCI Executive Summary, page 309.

20 June 2003.<sup>475</sup> Upon arrival at Detention Site Cobalt he was immediately subjected to EITs.<sup>476</sup> CIA chief of interrogations “placed a broomstick behind the knees of Zubair when Zubair was in a stress position on his knees on the floor”.<sup>477</sup> He was questioned about a particular topic on 25 June 2003, “days” after his transfer from Thailand to Detention Site Cobalt.<sup>478</sup> Yet, in the list of detainees, it states that he was in CIA custody for 1,170 days – 1,179 days. He was taken to Guantánamo on 4 September 2006 and transferred to military custody. In which case, this would put his rendition to CIA custody as having occurred sometime between 4 and 13 July 2003. Guantánamo transfer, presumably from Detention Site Brown, 4 September 2006. His “final disposition” as of 22 January 2010 was “referred for prosecution”. By April 2015, he was still held without charge.

24. **Lillie, also known as Bashir bin Lap.** Arrested in Thailand, 11 August 2003. “Enhanced” interrogation “almost immediately” upon his arrival at Detention Site Cobalt (Afghanistan) in August 2003. He was “stripped of his clothing”, and “placed in a cell in the standing sleep deprivation position in darkness”.<sup>479</sup> He has said that following three to four days held naked in Thailand, he was held for nine days naked and seven days in the prolonged stress standing position in the secret Afghanistan facility, during which time he was forced to defecate and urinate on himself.<sup>480</sup> In CIA custody for 1,110-1,119 days. Guantánamo transfer, presumably from Detention Site Brown (Afghanistan), 4 September 2006. “Final disposition” as of 22 January 2010 was “referred for prosecution”. By April 2015, he was still held without charge.
25. **Hambali, also known as Riduan bin Isomuddin** – Arrested in Thailand by the Special Branch of the Thai police on 11 August 2003.<sup>481</sup> He has said he was in Thailand, in US custody, for four to five days, before being taken to secret CIA detention in Afghanistan for two months, where he was held naked for most of the time.<sup>482</sup> Rendered to CIA custody in August 2003.<sup>483</sup> He was “almost immediately subjected to the CIA’s enhanced interrogation techniques”.<sup>484</sup> In CIA custody for 1,110-1,119 days. Transfer to Guantánamo, presumably from Detention Site Brown (Afghanistan), on 4 September 2006.<sup>485</sup> His “final disposition” as of 22 January 2010 was “referred for prosecution”. By April 2015, he was still held without charge.
26. **Hassan Guleed** – Taken into custody in Djibouti on 4 March 2004 “based on information from a foreign government and a CIA source”.<sup>486</sup> He was in CIA custody for 900-909 days. Transferred to Guantánamo on 4 September 2006, this would mean that he was transferred to CIA custody between 9 and 18 March 2004. Guantánamo transfer, presumably from Detention Site Brown (Afghanistan), 4 September 2006. His “final disposition” as of 22 January 2010 was “continued detention pursuant to the Authorization for Use of Military Force, as informed by principles of the laws of war, subject to further review by the Principals prior to the detainee’s transfer to a detention facility in the United States”. Held without charge.
27. **Abu Faraj al-Libi** – Taken into custody in Pakistan on 2 May 2005. Was rendered to CIA custody in Detention Site Orange (Afghanistan) later that month, possibly around 23 May, followed by transfer to Detention Site Black (Romania) within days of that, still in May

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<sup>475</sup> SSCI Executive Summary, footnote 1736.

<sup>476</sup> SSCI Executive Summary, page 309.

<sup>477</sup> SSCI Executive Summary, footnote 609.

<sup>478</sup> SSCI Executive Summary, footnote 1736.

<sup>479</sup> SSCI Executive Summary, footnote 628.

<sup>480</sup> ICRC Report on the treatment of fourteen ‘high value detainees’ in CIA custody. February 2007, op. cit., page 11 and page 14.

<sup>481</sup> Ali H. Soufan. *The Black Banners: The inside story of 9/11 and the war against al-Qaeda*. W.W. Norton (2011), page 556.

<sup>482</sup> ICRC Report on the treatment of fourteen ‘high value detainees’ in CIA custody. February 2007, op. cit., pages 19 and 14.

<sup>483</sup> SSCI Executive Summary, page 311.

<sup>484</sup> SSCI Executive Summary, footnote 1440.

<sup>485</sup> SSCI Executive Summary, page 311.

<sup>486</sup> SSCI Executive Summary, page 339.

2005.<sup>487</sup> Subjected to EITs from 28 May to 2 June 2005 and from 17 June to 28 June 2005.<sup>488</sup> In CIA custody for 460-469 days. Guantánamo transfer, presumably from Detention Site Brown (Afghanistan), 4 September 2006. His “final disposition” as of 22 January 2010 was “referred for prosecution”. By April 2015, he was still held without charge.

28. **Abd al-Hadi al-Iraqi** – Rendered to CIA custody in early November 2006.<sup>489</sup> In CIA custody for 170-179 days. Subjected to interrogations in incommunicado detention in November and December 2006 and January 2007. He may have been protected from subjection to “enhanced” techniques because President Bush had not yet signed the post-*Hamdan v. Rumsfeld* executive order that he would eventually sign in July 2007 (see case of Mohammad Rahim al-Afghani). The use of EITs against him was discussed at CIA Headquarters from February 2007.<sup>490</sup> Guantánamo transfer, 27 April 2007. Facing trial by military commission.
29. **Muhammad Rahim al-Afghani** – Arrested on 25 June 2007 in Pakistan. Rendered to Detention Site Brown (Afghanistan) and held in CIA custody for 240-249 days. Subjected to attention grasp, facial hold, abdominal slaps, facial slaps, shackling in standing position for sleep deprivation, use of diapers, liquid diet.<sup>491</sup> Guantánamo transfer, 14 March 2008. “Final disposition” as of 22 January 2010 was “transfer to a country outside the United States that will implement appropriate security measures”. By April 2015, still held without charge.

## 2.2D CIA RETAINS ‘OPERATIONAL CONTROL’ OF DETAINEES AT GUANTÁNAMO IN 2006

The 14 men transferred from CIA custody at (presumably) Detention Site Brown (Afghanistan)<sup>492</sup> to Camp 7 at Guantánamo on 4/5 September 2006 “remained under the operational control of the CIA”.<sup>493</sup> In his speech on 6 September 2006, publicly confirming for the first time the existence of the secret detention program, President Bush, Commander in Chief of the Armed Forces and effective head of the CIA, said that the 14 “are being held in the custody of the Department of Defense”.<sup>494</sup> If they indeed remained under operational control of the CIA, even if in the custody of the military, the CIA were effectively treating the US military as a “liaison” agency, as it had with Afghanistan state personnel. The Senate Committee does not say if or when the CIA relinquished operational control of the 14 men.<sup>495</sup>

Meanwhile, the CIA secret detention programme continued, but not at Guantánamo. CIA “talking points” dated 30 October 2007, entitled “DCIA meeting with Chairman Murtha re Rendition and Detention Programs” stated that this “Presidentially-mandated detention program is critical to our ability to protect the American homeland” and asserted that the CIA could not use Guantánamo for its secret detention programme because “interrogations conducted on US military installations must comply with the Army Field Manual”.<sup>496</sup>

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<sup>487</sup> SSCI Executive Summary, page 147.

<sup>488</sup> SSCI Executive Summary, footnote 2190.

<sup>489</sup> SSCI Executive Summary, page 161. See CIA received recent detainee from Turkey, Al-Qaeda Says, Washington Post, 25 May 2007, <http://www.washingtonpost.com/wp-dyn/content/article/2007/05/24/AR2007052402417.html>

<sup>490</sup> SSCI Executive Summary, pages 161-2.

<sup>491</sup> SSCI Executive Summary, page 165.

<sup>492</sup> SSCI Executive Summary, page 154.

<sup>493</sup> SSCI Executive Summary, page 160.

<sup>494</sup> President George W. Bush. Remarks on the War on Terror, 6 September 2006.

<sup>495</sup> All but one of whom remain at the base (Ahmed Ghailani was transferred to New York in 2009). The SSCI makes its assertion about the CIA retaining control over the detainees by reference to a CIA background memo for a visit to Guantánamo in December 2006 by then CIA Director Michael Hayden.

<sup>496</sup> SSCI Executive Summary, page 337 and footnote 1904. The Director of the CIA (DCIA) at this point was General Hayden. John Murtha was chairperson of the House of Representatives defense appropriations subcommittee. He died in 2010.

## PART 3 – EXECUTIVE POWER AND RESPONSIBILITY

### 3.1 ‘EACH OF US MUST ANSWER FOR WHAT WE HAVE DONE’

*In this war on terror, each of us must answer for what we have done or what we have left undone*

President George W. Bush, United Nations General Assembly, 10 November 2001

In its summary report, the Senate Intelligence Committee quotes from an April 2008 CIA document entitled “Backgrounder: Chronology of Interrogation Approvals, 2001-2003”:

“CIA documentation and discussions with Presidential briefers and individuals involved with the interrogation program at the time suggest that details on enhanced interrogation techniques (EITs) were not shared with the President”.<sup>497</sup>

The Committee also cites an email dated 31 July 2003 from then CIA Senior Deputy General Counsel John Rizzo stating that

“the President will be briefed as part of the regular annual [covert action] review. Briefing (by Rice or VP or Counsel to the President or some combination thereof) will describe the interrogation program, the fact that some aggressive but AG-approved techniques have been used, but will not apparently get into the details of the techniques themselves”.<sup>498</sup>

There were many involved in the CIA programme, but it is clear who was in charge, regardless of what detail he or others decided he should be party to. “The executive power shall be vested in a President of the United States of America”, proclaims Article II of the Constitution. As for the CIA, established under the National Security Act of 1947, it “is more of a presidential service organization than perhaps any other component of the US government.”<sup>499</sup> The Senate Intelligence Committee minority report points out that:

“the CIA’s Detention and Interrogation Program was conducted as a covert action. Covert action is the sole responsibility of the White House, a principle enshrined in law since the National Security Act of 1947. The President, working with his National Security Staff, approves and oversees all covert action programs.”<sup>500</sup>

The CIA explains its relationship to the President, the wider executive, the legislature and the public, in the following manner:

“Only the president can direct the CIA to undertake a covert action. Such actions usually are recommended by the National Security Council (NSC)... Internally, the CIA Office of Inspector General performs independent audits, inspections, investigations, and reviews

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<sup>497</sup> SSCI Executive Summary, footnote 179.

<sup>498</sup> SSCI Executive Summary, footnote 173. “Rice” refers to the President’s National Security Advisor Condoleezza Rice, “VP” to Vice President Dick Cheney, “Counsel to the President” to Alberto Gonzales and “AG” to Attorney General John Ashcroft.

<sup>499</sup> Foreword by David Robarge, Chief Historian, Getting to know the President. Intelligence Briefings of Presidential Candidates, 1952-2004, by John L. Helgerson, Second Edition, May 2012, Government Printing Office, available at <https://www.cia.gov/library/center-for-the-study-of-intelligence/csi-publications/books-and-monographs/getting-to-know-the-president/pdfs/U-%20Book-Getting%20to%20Know%20the%20President.pdf>

<sup>500</sup> SSCI minority views, page 80.

of CIA programs and operations, and seeks to detect and deter fraud, waste, abuse, and mismanagement. External to the CIA, both the Congress and the executive branch oversee the CIA's activities. In addition, the CIA is responsible to the American people through their elected representatives, and, like other government agencies, acts in accordance with US laws and executive orders. In the Executive Branch, the National Security Council – including the president, the vice president, the secretary of state, and the secretary of defense – provides guidance and direction for national foreign intelligence and counterintelligence activities. In Congress, the Senate Select Committee on Intelligence and the House Permanent Select Committee on Intelligence, as well as other committees, closely monitor the Agency's reporting and programs. The CIA is not a policy-making organization; it advises the Director of National Intelligence on matters of foreign intelligence, and it conducts covert actions at the direction of the President."<sup>501</sup>

This is illustrated in the Senate Committee's summary report when it notes that by 2005 the CIA was seeking an "endgame" policy for its secret detainees, as more and more information was leaking into the public domain, creating problems for the agency's relations with host countries. A CIA document dated 12 January 2005 covering "talking points" for the CIA Director for his weekly meeting with the National Security Advisor, made the following appeal about the need for presidential "direction" into the long-term:

"the CIA urgently needs the President of the United States and Principals Committee direction to establish a long-term disposition policy for the 12 High-Value detainees (HVDs) we hold in overseas detention sites. Our liaison partners who host these sites are deeply concerned by [redacted] press leaks..."<sup>502</sup>

Six years before the Senate Select Committee on Intelligence issued its findings, the Senate Armed Services Committee had published its own conclusions on detainee abuse. Responding to that report, Vice President Dick Cheney said that while he and others had "signed off" on the enhanced interrogation programme, "I wasn't the ultimate authority."<sup>503</sup> Responding to the Intelligence Committee's summary, in which his name appears a number of times including as the recipient of briefings on the CIA programme,<sup>504</sup> and as an active opponent of the Detainee Treatment Act cramping the CIA programme,<sup>505</sup> the former Vice President reiterated that President Bush had been "in fact an integral part of the programme, he had to approve it before we went forward with it".<sup>506</sup>

As has long been known and the Senate Select Committee on Intelligence has reconfirmed, the secret detention programme was established under a still classified Memorandum of Notification (MON) which President Bush signed on 17 September 2001. It describes the MON as giving "unprecedented authorities, granting the CIA significant discretion in determining whom to detain, the factual basis for their detention, and the length of the detention."<sup>507</sup> The President was not compelled to sign this memorandum. He could, indeed

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<sup>501</sup> <https://www.cia.gov/about-cia/faqs>

<sup>502</sup> SSCI Executive Review, page 150. Brackets omitted.

<sup>503</sup> Interview with the *Washington Times*, 17 December 2008.

<sup>504</sup> E.g. CIA "Briefing for Vice President Cheney: CIA Detention and Interrogation Program", 4 March 2005. "A document prepared for Vice President Cheney in advance of a March 8, 2005, National Security Council principals meeting states, under a section entitled 'interrogation results', that: use of DOJ-authorized enhanced interrogation techniques...." SSCI Executive Summary, footnote 1283, and page 228.

<sup>505</sup> SSCI Executive Summary, page 443.

<sup>506</sup> Fox News interview, 10 December 2014.

<sup>507</sup> SSCI Executive Summary, page 11.

should, have insisted that the pursuit of justice for the 9/11 attacks be conducted in full compliance with the USA's human rights obligations. Amnesty International was among those who called on him to do so.<sup>508</sup>

The President signed the MON presented to him by the CIA Director George Tenet – the former President himself said in his memoirs “George proposed that I grant broader authority for covert actions, including permission for the CIA to kill or capture al Qaeda operatives without asking for my sign-off each time. I decided to grant the request”.<sup>509</sup> The Senate Intelligence Committee confirms that on 8 October 2001, George Tenet delegated management and oversight of the “capture and detention authorities” granted to CIA deputy director for operations (DDO) James Pavitt and the chief of the CTC, Cofer Black. The Committee reveals that a little over a year later, on 3 December 2002, the “CTC's Renditions Group formally assumed responsibility for the management and maintenance of all CIA detention and interrogation facilities”.<sup>510</sup>

As CIA Director, George Tenet signed off on policies being operated under the presidential MON. In late January 2003 for example, he signed formal guidelines for conditions of confinement, which required only that such conditions be sufficient to meet basic health needs. The Senate Intelligence Committee points out that “even a facility like Detention Site Cobalt, in which detainees were kept shackled in complete darkness and isolation, with a bucket for human waste, and without notable heat during the winter months, met the standard”.<sup>511</sup> Similarly, under the interrogation guidelines Tenet signed off on in January 2003, interrogators could, consistent with the guidelines, and at their discretion, “strip a detainee naked, shackle him in the standing position for up to 72 hours, and douse the detainee repeatedly with cold water”, without CIA HQ approval, if such approval was deemed not “feasible”. In practice, interrogators “routinely” applied such techniques without prior approval.<sup>512</sup>

That the secret detention facilities were being run under the MON through until President Bush confirmed the existence of the programme in September 2006 is illustrated by the title of an audit report dated 14 June 2006 and cited by the Senate Committee: “Report of Audit, CIA-controlled Detention Facilities Operated under the 17 September 2001 Memorandum of Notification”.<sup>513</sup> That interrogations, too, were being conducted under presidential authority, even if the MON had “made no reference to interrogations or interrogation techniques”<sup>514</sup>, is indicated in an email sent in November 2002 by José Rodriguez, the head of the CIA's Counterterrorism Center, the office tasked with managing the secret programme. He wrote to

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<sup>508</sup> “In the wake of a crime of such magnitude, principled leadership becomes crucial to ensure that anger does not give way to retaliatory injustices.... In your address to Congress on 20 September, you stated that the US Government will use ‘every means of diplomacy, every tool of intelligence, every instrument of law enforcement, every financial influence and every necessary weapon of war, to the disruption and defeat of the global terror network’. Amnesty International believes that in any action taken, it is vital to maintain the highest respect for human rights and international human rights standards. This should include using every means available to bring those responsible for the 11 September attacks to justice within the framework of a fair and accountable criminal justice system, and with full respect for international standards for a fair trial. We urge your administration to adhere to such standards every step of the way towards the objective of justice...” Letter to President George W. Bush, 24 September 2001, <http://www.amnesty.org/en/library/info/AMR51/144/2001/en>

<sup>509</sup> George W. Bush, *Decision points*, Virgin Books, 2010, pages 186.

<sup>510</sup> SSCI Executive Summary, page 64.

<sup>511</sup> SSCI Executive Summary, page 62.

<sup>512</sup> SSCI Executive Summary, page 63.

<sup>513</sup> SSCI Executive Summary, footnote 873.

<sup>514</sup> SSCI Executive Summary, page 11.



the CTC's legal office:

"Your job is to tell all what are the acceptable legal standards for conducting interrogations per the authorities obtained from [the Department of] Justice and agreed upon by the White House."<sup>515</sup>

According to a study of US presidents' relations with the CIA, George W. Bush, whose own father was a former Director of Central Intelligence (DCI), "continued to be actively engaged" in the Presidential Daily Brief (PDB) process ("the intelligence summary created exclusively for the president") during his eight years in office. He "almost never missed his daily PDB briefing", which were described as "highly interactive sessions". He apparently insisted on having the Director of the CIA, not just the presidential briefer, present at the sessions:

"The director would also 'pull back the curtain' and explain to the president how CIA and the Intelligence Community [IC] had acquired the intelligence. President Bush undoubtedly became significantly more knowledgeable about the sources and methods of the IC than any previous president, with the exception of his father, George H. W. Bush, who carried into his presidency such knowledge gained during his time as DCI."<sup>516</sup>

The Senate Committee reveals that it was at a PDB session on 29 March 2002 that President Bush approved the transfer to the CIA's first secret detention facility of the first detainee, **Abu Zubaydah**, whom the CIA's CTC considered had high intelligence value (see further below). Whatever the President knew after that, and the Senate Committee points to a White House policy of keeping the location of other secret facilities from him, he had effectively approved the enforced disappearance of a man who would be tortured at that first facility, instead of acting to stop crimes under international law in this programme.

The following day, 30 March 2002, President Bush gave a national radio address: "Justice and cruelty have always been at war", he proclaimed "and God is not neutral between them". Cruelty trumped justice in the treatment of Abu Zubaydah and the detainees who followed him into the secret programme. The summary contains new details of the extent of this cruelty.

There is little further detail of PDB content in the summary report. However, the latter does point to CIA records indicating that President Bush was informed in an October 2002 PDB session that "Abu Zubaydah resisted providing useful information until becoming more cooperative in early August, probably in the hope of improving his living conditions". According to the Senate Committee, this PDB "made no reference to the CIA's enhanced interrogation techniques". If true, and if this President for whom PDBs were "highly interactive" affairs and who acquired "unprecedented knowledge" about intelligence sources and methods, failed to ask further questions about Abu Zubaydah's "living conditions", perhaps it was because he already knew enough about what this detainee had been facing.

After all, in early February 2002 it had been President Bush who had decided not to apply Geneva Convention protections to detainees in the "war on terror" following advice from his White House Counsel and Attorney General that such a decision would protect interrogators from future prosecution for war crimes.<sup>517</sup> The Senate Intelligence Committee has now revealed that in late January 2002, a letter was drafted to the President from the CIA

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<sup>515</sup> SSCI Executive Summary, page 59.

<sup>516</sup> Getting to know the President. Intelligence Briefings of Presidential Candidates, 1952-2004, op. cit.

<sup>517</sup> Decision re application of the Geneva Convention on prisoners of war to the conflict with al Qaeda and the Taliban. Memorandum for the President, From Alberto R. Gonzales, 25 January 2002, Draft, 3.30 pm. And Letter to the President, from John Ashcroft, Attorney General, US Department of Justice, 1 February 2002.

Director to urge that the CIA be exempt from any Geneva Convention protections for detainees, arguing that the Conventions would “significantly hamper the ability of CIA to obtain critical threat information necessary to save American lives”.<sup>518</sup> In his 7 February 2002 memorandum, President Bush betrayed a disturbing position, incompatible with international law, that humane treatment of detainees was a policy choice not a legal requirement.<sup>519</sup> In its 2008 report on detainee abuses, the Senate Armed Services Committee had concluded that this memorandum “open[ed] the door to considering aggressive techniques” and “impacted the treatment of detainees in US custody”.<sup>520</sup>

The Senate Select Committee on Intelligence reveals that in 2003 CIA General Counsel Scott Muller sought to verify with personnel from the Department of Justice and the White House that President Bush’s reference to “humane treatment” (even if only as a matter of policy) in the 7 February 2002 memorandum did not apply to the CIA.<sup>521</sup> In a 12 February 2003 memorandum for the record, cited by the Senate Intelligence Committee and released since publication of its summary, Muller wrote that based on “a number of conversations” in the previous two months, “it is, and has been, the consistent understanding of CIA personnel” that even this policy of “humane treatment” was

“not applicable to, was not intended to, and does not prohibit or limit CIA in the use of the type of interrogation techniques approved for use by CIA... or impose a requirement of ‘humane’ treatment”.<sup>522</sup>

Muller further stated that, after President Bush issued his 7 February 2002 memorandum, the fact that it did not apply to or limit the activities of the CIA was demonstrated by the fact that the administration had approved and knew of the “enhanced” interrogation techniques used against Abu Zubaydah and others.

“the use of enhanced interrogation techniques was approved by the Attorney General through the Office of Legal Counsel and carried on thereafter with the knowledge and concurrence of, among others, the Assistant Attorney General in charge of the Criminal Division, the National Security Adviser, Counsel to the President, Counsel to the National Security Adviser, and Counsel to the Vice President. As of November 2002, others, including the General Counsel to the Department of Defense, were aware generally of the

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<sup>518</sup> Committee Study of the Central Intelligence Agency’s Detention and Interrogation Program, Findings and Conclusions, and Executive Summary, Senate Select Committee on Intelligence, 3 December 2014, p. 20, <http://www.intelligence.senate.gov/study2014.html>, (hereinafter SSCI Executive Summary).

<sup>519</sup> “Of course, our values as a nation, values that we share with many nations in the world, call for us to treat detainees humanely, including those who are not legally entitled to such treatment”. Memorandum re: Humane Treatment of Taliban and al Qaeda Detainees, President George W. Bush, 7 February 2002, [http://www2.gwu.edu/~nsarchiv/NSAEBB/NSAEBB127/02\\_02\\_07.pdf](http://www2.gwu.edu/~nsarchiv/NSAEBB/NSAEBB127/02_02_07.pdf)

<sup>520</sup> The memo stated that “as a matter of policy, the United States Armed Forces shall continue to treat detainees humanely”. The CIA did not consider itself held to the same rules as the US military, as stated by the Chief Counsel to the CIA’s Counter Terrorist Center, and quoted in Counter Resistance strategy meeting minutes, 2 October 2002. (Comments attributed to individuals are paraphrased in the record of this meeting). Neither did the US Department of Justice, which would later maintain that even if it gave legal approval to the CIA to use “enhanced” interrogation techniques, such approval did not necessarily extend to “the requirements of the Uniform Code of Military Justice that governs members of the Armed Forces or to United States obligations under the Geneva Conventions in circumstances where those Conventions would apply”. Re: Application of 18 U.S.C. §§ 2340-2340A to certain techniques that may be used in the interrogation of a high value al Qaeda detainee. Memorandum for John A. Rizzo, Senior Deputy General Counsel, Central Intelligence Agency, from Steven G. Bradbury, Principal Deputy Assistant Attorney General, Office of Legal Counsel, US Department of Justice, 10 May 2005.

<sup>521</sup> SSCI Executive Summary, page 115.

<sup>522</sup> Memorandum for the record. ‘Humane’ treatment of CIA detainees. Scott W. Muller, CIA General Counsel. 12 February 2003. SSCI Executive Summary, footnote 685.

fact that CIA was authorized to conduct interrogations using techniques beyond those permitted under the Geneva Conventions. No one ever suggested that there was any inconsistency between the authorized CIA conduct and the [7] February [2002] memo”.

Muller further asserted that “CIA use of interrogation techniques was authorized by the President”. Among others who confirmed that the “clear understanding” that the 7 February 2002 presidential memorandum “was intended not to be applicable to CIA” but only to the US Armed Forces, was Director of Central Intelligence Chief of Staff John Moseman, Deputy Assistant Attorney General John Yoo, White House Counsel Alberto Gonzales, Counsel to the Vice President David Addington, Department of Defense General Counsel William Haynes, and Counsel to the National Security Council John Bellinger.<sup>523</sup>

Scott Muller also asserted that at a meeting on 16 January 2003, he had pointed out “an arguable inconsistency between what CIA was authorized to do and what at least some in the international community might expect in light of the Administration’s public statements about ‘humane treatment’ of detainees on and after the February memo”. Muller recalled that “everyone in the room” clearly showed their understanding that the “CIA’s past and ongoing use of enhanced techniques was reaffirmed and in no way drawn into question”. Attending the meeting were National Security Adviser Condoleezza Rice, Secretary of Defense Donald Rumsfeld, General Counsel of the Department of Defense William Haynes, Secretary of State Colin Powell, Vice President Dick Cheney, CIA Director George Tenet and Muller.

The Senate Intelligence Committee reveals that official awareness of the inhumane treatment that was being perpetrated in the CIA secret detention programme was such that following discussions between the CIA and the NSC Principals, as well as White House and Department of Justice personnel, in “early 2003, the White House press secretary was advised to avoid using the term ‘humane treatment’ when discussing the detention of al-Qaida and Taliban personnel”.<sup>524</sup>

On 13 April 2002, with Abu Zubaydah still in hospital after emergency surgery – he had sustained life-threatening gunshot wounds on arrest – the CIA implemented its “new interrogation plan”.<sup>525</sup> Abu Zubaydah was moved out of hospital and back to Detention Site Green at about 7pm local time on 15 April 2002. The Senate Intelligence Committee notes that “the months of April and May 2002... included a period during which Abu Zubaydah was on life support and unable to speak”.<sup>526</sup>

On 16 April 2002, President Bush told an audience in the USA: “Just ask Abu Zubaydah what it’s like to be on the wrong side of the United States of America”.<sup>527</sup> Now the Senate Committee has revealed a little more on that subject, including that on the same day that the President said that, a CIA cable between the secret facility and CIA Headquarters asserted that the “objective is to ensure that [Abu Zubaydah] is at his most vulnerable state”.<sup>528</sup> He was kept in a white halogen-lit cell with no natural light or windows. His captors wore black uniforms, boots, gloves, balaclavas and goggles, not only to preserve their anonymity but to heighten the detainee’s isolation. Loud music and noise generators were used to “enhance” his “sense of hopelessness”. He was “typically kept naked and sleep deprived”. He was interrogated repeatedly. The authorities had been told this nearly eight years before the

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<sup>523</sup> Memorandum for the record. ‘Humane’ treatment of CIA detainees, *op. cit.*

<sup>524</sup> SSCI Executive Summary, pages 115-116.

<sup>525</sup> SSCI Executive Summary, page 27.

<sup>526</sup> SSCI Executive Summary, footnote 215.

<sup>527</sup> Remarks to the leaders of the Fiscal Responsibility Coalition, 16 April 2002.

<sup>528</sup> SSCI Executive Summary, page 28

Senate Intelligence Committee issued its summary report.<sup>529</sup>

On 12 April 2002, Amnesty International had sent President Bush and members of his administration a lengthy memorandum on the organization's detainee concerns, including in relation to Abu Zubaydah, his whereabouts then unknown. In fact he was soon to be subjected to torture and other ill-treatment in Detention Site Green (Thailand), before being taken to Detention Site Blue (Poland) in December 2002.<sup>530</sup>

This Amnesty International memorandum was among the materials cited in a 2014 ruling by the European Court of Human Rights on Zubaydah's case. The Court found that by December 2002, given "the emerging widespread public information about ill-treatment and abuse of detained terrorist suspects in the custody of the US authorities, Poland ought to have known that, by enabling the CIA to detain such persons on its territory, it was exposing them to a serious risk of treatment contrary to the [European] Convention [on Human Rights]".

At the same time, in the case of **'Abd Al Nashiri**, transferred to Poland from Detention Site Green at the same time as Abu Zubaydah, the European Court found that "already between January 2002 and August 2003 numerous public sources were consistently reporting ill-treatment and abuse to which captured terrorist suspects were subjected in US custody in different places." There was "abundant and coherent circumstantial evidence, which leads inevitably" to the conclusion that:

"Poland knew of the nature and purposes of the CIA's activities on its territory at the material time and that, by enabling the CIA to use its airspace and the airport, by its complicity in disguising the movements of rendition aircraft and by its provision of logistics and services, including the special security arrangements, the special procedure for landings, the transportation of the CIA teams with detainees on land, and the securing of the Stare Kiejkuty base for the CIA's secret detention, Poland cooperated in the preparation and execution of the CIA rendition, secret detention and interrogation operations on its territory",

and that,

"given that knowledge and the emerging widespread public information about ill-treatment and abuse of detained terrorist suspects in the custody of the US authorities, Poland ought to have known that, by enabling the CIA to detain such persons on its territory, it was exposing them to a serious risk of [torture or other ill-treatment]".

Two years earlier, the European Court had found that when Macedonia handed Khaled El-Masri to the CIA in Skopje in early 2004, there were already "serious reasons to believe that he might be subjected to [torture or other ill-treatment]" in US custody. Sure enough, that is what happened.

If the governments of Macedonia and Poland knew or should have known as early as 2002

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<sup>529</sup> After being brought back from hospital where he had been held for several weeks and had had "several operations", Abu Zubaydah "woke up, naked, strapped to a bed, in a very white room. The room measured approximately 4m x 4m... After some time, I think it was several days, but can't remember exactly, I was transferred to a chair where I was kept, shackled by hands and feet for what I think was the next 2 to 3 weeks. I was only allowed to get up from the chair to go to the toilet, which consisted of a bucket. Water for cleaning myself was provided in a plastic bottle.... The cell and room were air-conditioned and very cold. Very loud, shouting type music was constantly playing. It kept repeating about every fifteen minutes twenty-four hours a day. Sometimes the music stopped and was replaced by a loud hissing or crackling noise. The guards were American, but wore masks to conceal their faces. My interrogators did not wear masks..." ICRC Report on the treatment of fourteen 'high value detainees' in CIA custody. February 2007, op. cit., page 28.

<sup>530</sup> Memorandum to the US Government on the rights of people in US custody in Afghanistan and Guantánamo Bay, 14 April 2002, <http://www.amnesty.org/en/library/info/AMR51/053/2002/en>

enough about what the USA was up to in relation to detainees, the President of the United States – Commander in Chief of the Armed Forces and effective head of the CIA – would surely have known a lot more. In any event, while ignorance may be said to be bliss, it is no defence against criminal liability. What was happening to these detainees was being done under President Bush’s authority.

As the UN Committee against Torture has made clear:

“[...] those exercising superior authority - including public officials - cannot avoid accountability or escape criminal responsibility for torture or ill-treatment committed by subordinates where they knew or should have known that such impermissible conduct was occurring, or was likely to occur, and they failed to take reasonable and necessary preventive measures. The Committee considers it essential that the responsibility of any superior officials, whether for direct instigation or encouragement of torture or ill-treatment or for consent or acquiescence therein, be fully investigated through competent, independent and impartial prosecutorial and judicial authorities”.<sup>531</sup>

### 3.2 ‘SO IT BEGINS’: PRESIDENT APPROVES A DISAPPEARANCE

*The president approved moving forward with the plan to transfer Abu Zubaydah to Country [redacted]...where he was held at the first CIA detention site*  
Senate Committee summary report, December 2014

At the start of the “aggressive phase” of **Abu Zubaydah’s** interrogation at Detention Site Green in August 2002, a CIA medical officer present at the interrogations wrote an email to CIA headquarters as he or she was “heading back for another water board session”. The email was entitled “so it begins”.<sup>532</sup>

President Bush knew where this was beginning, according to the Senate Intelligence Committee. For, on the morning of 29 March 2002, shortly after Abu Zubaydah had been taken into custody in Pakistan,

“the president approved moving forward with the plan to transfer Abu Zubaydah to Country [redacted]... Shortly thereafter, Abu Zubaydah was rendered from Pakistan to Country [redacted] where he was held at the first CIA detention site”.<sup>533</sup>

The Senate Committee cited an internal CIA email indicating that National Security Advisor Condoleezza Rice and Deputy National Security Advisor Stephen Hadley were briefed on the transfer of Abu Zubaydah to secret detention in the country chosen.<sup>534</sup> In its June 2013 response to the Committee’s review, the CIA notes the “Presidential approval for the plan to render Abu Zubaydah on 29 March”. It also points out how the Committee had found that

“once the plan was approved, but *before* Abu Zubaydah was transferred on [redacted] March 2002, CIA notified the Assistant Secretary of State [redacted] who pledged to brief the Secretary and Deputy Secretary, as well as [redacted] host country leaders in Country [redacted]... [N]o one who was briefed on the transfer objected, and several US officials were described as supportive”.

According to the Senate Intelligence Committee, “CIA records indicate that Country [redacted] was the last location of a CIA detention facility known to the president or the vice

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<sup>531</sup> CAT General Comment 2, para. 26.

<sup>532</sup> SSCI Executive Summary, page 41-2.

<sup>533</sup> SSCI Executive Summary, page 23.

<sup>534</sup> SSCI Executive Summary, footnote 71.

president, as subsequent locations were kept from the [National Security Council] principals as a matter of White House policy to avoid inadvertent disclosures of the location of the CIA detention sites." The Senate Committee also notes records in 2004 indicating that it was President Bush himself who "directed" that he not be informed of secret detention site locations.<sup>535</sup> If this was indeed White House policy, it was a policy of turning a blind eye to a programme of enforced disappearance being used to facilitate aggressive interrogations of detainees held entirely incommunicado. It shall be recalled that enforced disappearance not only facilitates acts of torture and other forms of ill-treatment, but is recognized under international law as in itself violating the prohibition of torture and other cruel, inhuman or degrading treatment.<sup>536</sup>

What President Bush was approving on 29 March 2002 was the start of what would become for Abu Zubaydah four and a half years of enforced disappearance. This was being conducted under authority the President had himself granted just six months earlier.

The Senate Intelligence Committee's summary stated that "over the course of four days" in late March 2002, the CIA had settled on the eventual country chosen for this first black site "because of that country's [redacted], and the lack of US court jurisdiction". The CIA was concerned that it would not be a US government-controlled facility and that

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<sup>535</sup> SSCI Executive Summary, page 98.

<sup>536</sup> See, *inter alia*, Human Rights Committee, General Comment 31, *The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, CCPR/C/21/Rev.1/Add.13, para. 18; Human Rights Committee, *Chihoub v Algeria*, Communication No. 1811/2008, para. 8.5; Human Rights Committee, *Aboufaied v Libya*, Communication No. 1782/2008, para. 7.4; Human Rights Committee, *Berzig v Algeria*, Communication No. 1781/2008, para. 8.5; Human Rights Committee, *Zarzi v. Algeria*, Communication No. 1780/2008, para. 7.5; Human Rights Committee, *El Abani v. Libya*, Communication No. 1640/2007, para. 7.3; Human Rights Committee, *Benaziza v. Algeria*, Communication No. 1588/2007, para. 9.3; Human Rights Committee, *El Hassy v. Libya*, Communication No. 1422/2005, para. 6.8; Human Rights Committee, *Cheraitia and Kimouche v. Algeria*, Communication No. 1328/2004, para. 7.6; Human Rights Committee, *El Alwani v. Libya*, Communication No. 1295/2004, para. 6.5; Human Rights Committee, *Boucherf v. Algeria*, Communication No. 1196/2003, para. 9.6; Human Rights Committee, *Bousroual v. Algeria*, Communication No. 992/2001, para. 9.8; Human Rights Committee, *Sarma v. Sri Lanka*, Communication No. 950/2000, para. 9.5; Human Rights Committee, *Celis Laureano v. Peru*, Communication No. 540/1993, para. 8.5; Human Rights Committee, *Rafael Mojica v Dominican Republic*, Communication No. 449/1991, para. 5.7. See also, *inter alia*, UN Declaration on the Protection of all Persons from Enforced Disappearance, UNGA resolution 47/133, article 2; Committee against torture, *Concluding observations on the United States of America*, CAT/C/USA/CO/2, para. 18 ("The State party should adopt all necessary measures to prohibit and prevent enforced disappearance in any territory under its jurisdiction, and prosecute and punish perpetrators, as this practice constitutes, per se, a violation of the Convention."); Committee against torture, *Concluding observations on Rwanda*, CAT/C/RWA/CO/1, para. 14; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, *Report to the UN General Assembly, A/61/259*, paras 55-56; Inter-American Court of Human Rights, *Godínez-Cruz v. Honduras*, paras. 164, 166 and 197; Inter-American Court of Human Rights, *Velasquez Rodriguez v. Honduras*, paras 156 and 187; African Commission on Human and Peoples' Rights, *Mouvement Burkinabe des Droits de l'Homme et des Peuples v Burkina Faso*, 204/97, para. 44; Human Rights Chamber for Bosnia and Herzegovina, *Palic v Republika Srpska*, Case No. CH/99/3196, para. 74. See also, *inter alia*, Human Rights Committee, *El-Megreisi v Libya*, Communication No. 440/1990, para. 5.4; Committee against Torture, *Concluding observations on the United States of America*, CAT/C/USA/CO/2, para. 17 ("The State party should ensure that no one is detained in any secret detention facility under its de facto effective control. Detaining persons in such conditions constitutes, per se, a violation of the Convention."); Committee against Torture, *Concluding observations on Rwanda*, CAT/C/RWA/CO/1, para. 11; UN General Assembly, *Resolution on torture and other cruel, inhuman or degrading treatment or punishment*, A/RES/66/150, para. 22 ("Reminds all States that prolonged incommunicado detention or detention in secret places can facilitate the perpetration of torture and other cruel, inhuman or degrading treatment or punishment and can in itself constitute a form of such treatment, and urges all States to respect the safeguards concerning the liberty, security and dignity of the person and to ensure that secret places of detention and interrogation are abolished").

“diplomatic/policy decisions” would be required, but these were seen as the “only disadvantages”.<sup>537</sup> The fact that enforced disappearance violated the USA’s international obligations appears not to have been viewed as an obstacle.

The precise date of Abu Zubaydah’s rendition from Pakistan to Detention Site Green in late March 2002 is redacted from the summary.<sup>538</sup> According to the then President of Pakistan, Abu Zubaydah was handed over to US custody on 30 March 2002.<sup>539</sup> It seems that Abu Zubaydah himself thought that the first place he was taken was Afghanistan (it is what he told the ICRC in Guantánamo in 2006). It has been alleged that for this rendition, the CIA

“went to extraordinary lengths to cover its tracks in the transport of Zubayda. Rather than flying him directly from Pakistan to the intended ‘black site’, a well-informed source said the Agency flew him around the world for three days. The CIA rotated the pilots so that none would know the whole itinerary. Before the final destination was reached, landings were made on several continents, including Latin America. Finally, after this dizzying trek, the CIA installed Zubayda in a new facility in Thailand. The Thai government’s only stipulation was that there must be absolutely no publicity about its cooperation”.<sup>540</sup>

The European Court of Human Rights noted in its judgment on 24 July 2014 what the application filed on Abu Zubaydah’s case had explained:

“As demonstrated by the CIA declassified material, concerted and meticulous efforts had been made by the CIA to prevent High-Value Detainees from knowing their transfer destinations. On his transfers from one CIA black site to another the applicant had been shackled and blindfolded, with ear muffs restricting his hearing and a hood placed over his head. At the black site, he had been subjected to detention conditions that had included “white noise/loud sounds and interrogations aimed at creating “a state of learned helplessness and dependence” and designed to psychologically “dislocate” him”.

The evidence has continued to point to Detention Site Green having been in Thailand. As a US federal judge noted in 2011, following his close scrutiny of the litigation around the CIA’s destruction in 2005 of the videotapes of Abu Zubaydah’s and Abd al-Nashiri’s interrogations: “news accounts suggest the interrogation sessions took place at a facility in Thailand.”<sup>541</sup>

Vice President Cheney also apparently knew where Zubaydah was being held as he was among those present at the PDB session on the morning of 29 March 2002. At the same session, Secretary of Defense Donald Rumsfeld is reported to have suggested the option of putting Abu Zubaydah on a ship. At a news briefing, three days later, Secretary Rumsfeld refused to confirm or deny whether Abu Zubaydah was in US custody.<sup>542</sup>

The summary notes that upon arrival at Detention Site Green, Abu Zubaydah required “immediate hospitalization”.<sup>543</sup> It gives no detail of this. However an FBI interrogator

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<sup>537</sup> SSCI Executive Summary, page 22.

<sup>538</sup> SSCI Executive Summary, page 24.

<sup>539</sup> Pervez Musharraf, *In the Line of Fire* (2006), Pocket Books, page 238.

<sup>540</sup> Jane Mayer, *The Dark Side: The inside story of how the war on terror turned into a war on American ideals*. First Anchor Books edition, May 2009, page 149.

<sup>541</sup> *ACLU et al v. Department of Defense, et al*. Opinion and order denying motion to hold defendant Central Intelligence Agency in civil contempt. US District Court for the Southern District of New York, 5 October 2011.

<sup>542</sup> US Department of Defense news briefing, 1 April 2002.

<sup>543</sup> SSCI Executive Summary, page 25.

involved in the early weeks of the case had earlier written that Abu Zubaydah had gone into septic shock after his rendition to the secret site and was assessed as having only hours to live unless he was taken to a proper hospital. If Abu Zubaydah's whereabouts were revealed "it would probably cause problems for our host country", so a plan was devised to dress Abu Zubaydah in military uniform, and for the interrogators and others to dress as fellow soldiers, and in that way he was taken to a local hospital where he received emergency surgery.<sup>544</sup>

A CIA document cited by the Senate Intelligence Committee, and released in 2015, asserts:

"The Vice President, National Security Advisor, Deputy National Security Advisor, Counsel to the President, Counsel to the National Security Advisor, and the Attorney General were consulted in August 2002 in advance of implementing use of the techniques with a particular detainee and concurred in its [sic] implementation as a matter of law and policy."<sup>545</sup>

After his case had been discussed at high levels of government over the summer months, beginning on 4 August 2002, Abu Zubaydah was "kept naked, fed a 'bare bones' liquid diet", and subjected to the non-stop use of the CIA's enhanced interrogation techniques".<sup>546</sup>

"After 47 days in isolation, the CIA reinstated contact with Abu Zubaydah at 11:50 AM on August 4, 2002, when CIA personnel entered the cell, shackled and hooded Abu Zubaydah, and removed his towel, leaving Abu Zubaydah naked. Without asking any questions, CIA personnel made a collar around his neck with a towel and used the collar to 'slam him against a concrete wall'. Multiple enhanced interrogation techniques were used non-stop until 6:30 PM, when Abu Zubaydah was strapped to the waterboard and subjected to the waterboard technique 'numerous times' between 6:45 PM and 8:52 PM."<sup>547</sup>

The Senate Intelligence Committee documented that:

"The use of the CIA's enhanced interrogation techniques – including 'walling, attention grasps, slapping, facial hold, stress positions, cramped confinement, white noise and sleep deprivation' – continued in 'varying combinations, 24 hours a day' for 17 straight days, through August 20, 2002. When Abu Zubaydah was left alone during this period, he was placed in a stress position, left on the waterboard with a cloth over his face, or locked in one of two confinement boxes. According to the cables [from the secret facility], Abu Zubaydah was also subjected to the waterboard '2-4 times a day... with multiple iterations of the watering cycle during each application'.<sup>548</sup>

Daily cables sent from the secret facility to CIA Headquarters recorded that Abu Zubaydah frequently "cried", "begged", "pleaded", and "whimpered". At times, he was "hysterical" and "distressed to the level that he was unable to effectively communicate". Water-boarding sessions would result in "hysterical pleas", and on at least one occasion, Abu Zubaydah "became completely unresponsive" until he received medical attention.<sup>549</sup>

The Senate Intelligence Committee notes that Abu Zubaydah and 'Abd al-Nashiri were moved

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<sup>544</sup> Ali H. Soufan. *The Black Banners: The inside story of 9/11 and the war against al-Qaeda*. W.W. Norton (2011), pages 382-3.

<sup>545</sup> Memorandum for National Security Advisor from Director of Central Intelligence. Reaffirmation of the Central Intelligence Agency's Interrogation Program, 3 July 2003. SSCI Executive Summary, note 691.

<sup>546</sup> SSCI Executive Summary, page 111.

<sup>547</sup> SSCI Executive Summary, footnote 1207.

<sup>548</sup> SSCI Executive Summary, page 42.

<sup>549</sup> SSCI Executive Summary, page 43-44.



out of Detention Site Green in December 2002, when it was closed down, and they were “rendered to Detention Site Blue”. More detail was previously in the public domain elsewhere, namely that on 5 December 2002, an aircraft used by the CIA, number N63MU, flew from Bangkok, Thailand, via Dubai, and landed at Szymany airport in Poland. In July 2014, the European Court of Human Rights found “beyond reasonable doubt” that among those on board this “CIA rendition aircraft” was Abu Zubaydah. He was taken to the CIA detention facility at Stare Kiejkuty in Poland codename “Quartz”. Abu Zubaydah was transferred out of Poland on 22 September 2003. The European Court found “beyond reasonable doubt” that Abu Zubaydah was transferred “by the CIA from Poland to another CIA secret detention facility elsewhere on board the rendition aircraft N313P”.

For month after month, turning into years, Abu Zubaydah was held incommunicado in solitary confinement at undisclosed locations in various countries – after Poland it is believed that he was taken to the US naval base at Guantánamo Bay in Cuba (see below). In 2004, he was transferred onward again, perhaps first to Morocco, then back to Eastern Europe – possibly Lithuania (Detention Site Violet) – then to Afghanistan (Detention Site Brown and possibly before that Orange), before being taken to Guantánamo on 4 September 2006 and put into military custody there, and where he remains.

Whether or not the President and Vice President were kept in the dark about precisely where the CIA’s detention facilities after Thailand were located did not necessarily mean they were left out of the programme. For example, Vice President Cheney appears to have been the “go-to” official in 2005 or 2006 when the CIA needed assistance in persuading an unidentified government, possibly Morocco, to support a “more permanent and unilateral CIA detention facility” in its country. The CIA went to the Vice President with the proposal that he make a telephone call to a government official in that country.<sup>550</sup>

This first secret facility, Detention Site Green, was closed down in December 2002 due to its alleged location in Thailand coming under public scrutiny.<sup>551</sup> The Senate Committee states that less than a month after Abu Zubaydah was taken to the secret facility, a “media organization had learned that Abu Zubaydah was in Country [redacted]”. The CIA explained to the media organization the “security implications of revealing the information”. Then in November 2002, when the CIA discovered that a major US newspaper knew where Abu Zubaydah was, “senior CIA officials, as well as Vice President Cheney” urged the paper not to publish the information. The newspaper in question, the New York Times, did not report that the secret facility was in Thailand until December 2003, a year after it was shut down.<sup>552</sup>

The Senate Committee also notes that in 2006, as the administration was working out what the “endgame” for the CIA secret detainees should be (including Abu Zubaydah), the Vice President indicated his opposition to the release of any information about the programme into the public realm, according to a CIA memorandum relating to a 9 March 2006 meeting of the Principals Committee.<sup>553</sup> The enforced disappearances continued.

If Detention Site Green was the first and last time that President Bush knew where a secret

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<sup>550</sup> SSCI Executive Summary, page 142.

<sup>551</sup> The SSCI however refers to earlier tensions between the CIA and the host country which required “continued lobbying by the CIA Chief of Station” there to prevent the secret facility from being closed down, and that these tensions were “unrelated to public revelations about the program”. SSCI Executive Summary, footnote 80.

<sup>552</sup> James Risen, Report Details Effort to Block Article on CIA Prison, 9 December 2014, <http://news.blogs.nytimes.com/2014/12/09/cia-torture-report/#report-details-effort-to-block-article-on-c-i-a-prison>. Hussein Enters Post-9/11 Web of US Prisons, New York Times, 18 December 2003, <http://www.nytimes.com/2003/12/18/international/middleeast/18SADD.html>

<sup>553</sup> SSCI Executive Summary, footnote 910.

facility being operated under his authority was located, Abu Zubaydah was not the last detainee held in this location. On 15 November 2002, as noted above, Abd al Nashiri was rendered to Detention Site Green from Detention Site Cobalt. In Detention Site Green in late November and early December 2002 he was subjected to “the CIA’s enhanced interrogation techniques, including being subjected to the waterboard at least three times”.<sup>554</sup> In a speech on 3 December 2002 in Louisiana, President Bush said:

“We’re making progress on this war against terror. Sometimes you’ll see the progress, and sometimes you won’t. It’s a different kind of war. The other day, we hauled a guy in named al-Nashiri. That’s not a household name here in America. [Laughter]... Let me just put it to you this way: He no longer has the capacity to do what he did in the past... He’s out of action, for the good of the world. Sometimes you’ll see it, and sometimes you won’t. But you’ve got to know that in this war against terror, the doctrine stands that says, ‘Either you’re with us, or you’re with the terrorists.’ And a lot of nations have heard that message, and they’re with us.”<sup>555</sup>

The following day, Abd al-Nashiri was transferred out of secret custody in Thailand and taken to a secret facility in Poland, where he would be subjected to further torture and other ill-treatment, including mock execution, “standing stress position” with “his hands affixed over his head” for approximately two and a half days.<sup>556</sup>

The governments of the countries that “were with the USA” in hosting secret detention sites should make themselves known and carry out the necessary investigations with a view to full accountability.

### 3.3 ‘PLAUSIBLE DENIABILITY’ OR A ‘STAND-UP GUY’?

*Former President Bush has stated in his autobiography that he discussed the program, including the use of enhanced techniques, with DCIA Tenet in 2002, prior to application of the techniques on Abu Zubaydah, and personally approved the techniques... This was a Presidential program, authorized, coordinated, and administered through the President’s National Security Advisor and staff. CIA did not have the unilateral authority to brief individuals or groups independent of Presidential direction as conveyed by the National Security Advisor*

CIA response to Senate Committee report, June 2013<sup>557</sup>

The question of what President George W. Bush knew of the detail of the secret detention programme is not definitively answered in the Senate Intelligence Committee’s summary. Moreover, the CIA told the Committee in 2013 that “Agency records on the subject are admittedly incomplete”, and because it did not conduct interviews of the President or those

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<sup>554</sup> SSCI Executive Summary, page 67.

<sup>555</sup> Remarks in Shreveport, Louisiana, 3 December 2002.

<sup>556</sup> SSCI Executive Summary, pages 68-73. The European Court of Human Rights found “beyond a reasonable doubt” that Abd al Nashiri was “detained in the CIA detention facility in Bangkok from 15 November 2002 to 4 December 2002, that Mr Abu Zubaydah was also held in the same facility at that time and that they were both moved together to ‘another black site’ on 4 December 2002” and that “from 5 December 2002 to 6 June 2003” Abd al Nashiri was held in “the CIA detention facility in Poland identified as having the codename ‘Quartz’ and located in Stare Kiejkuty”. Case of Al Nashiri v. Poland. Judgment. 24 July 2014.

<sup>557</sup> CIA Comments on the Senate Select Committee on Intelligence Report on the Rendition, Detention, and Interrogation Program, 27 June 2013, approved for release 8 December 2014, page 6, [https://www.cia.gov/library/reports/CIA June2013 Response to the SSCI Study on the Former Detention and Interrogation Program.pdf](https://www.cia.gov/library/reports/CIA%20June2013%20Response%20to%20the%20SSCI%20Study%20on%20the%20Former%20Detention%20and%20Interrogation%20Program.pdf)

who had advised him, the Committee was unable to draw further conclusions.<sup>558</sup>

As already indicated, there are a number of references in the summary which appear to suggest a President being kept in the dark, either about the location of “black sites” or what was happening in them. If true, it could indicate an approach of “plausible deniability”, or one of wilful ignorance, either of which would not absolve the President of legal responsibility for a programme he had authorized, and which he had personally set in train six months later by approving the rendition to Detention Site Green of Abu Zubaydah.<sup>559</sup>

There were a number of instances, according to CIA records reviewed by the Senate Committee in which “talking points” or the like were prepared for briefing the president, only for the briefing then either not to occur or at least for there to have been no records on whether it did or did not take place. For example, in early 2006, with administration officials worrying about the “endgame” for the detainees held by the CIA, “CIA officers prepared talking points for [CIA] Director [Porter] Goss to meet with the president on the “Way Forward” on the program on January 12, 2006”. The Committee reports that there are “no records to indicate whether Director Goss made this presentation to the president”.<sup>560</sup>

On 6 September 2006, following an adverse US Supreme Court ruling (from the administration’s perspective) three months earlier, President Bush publicly confirmed for the first time the existence of the secret detention programme in order to seek legislation allowing it to continue.<sup>561</sup> As part of the preparation for this disclosure, media materials were drafted for the NSC Principals. A “Question and Answers” document, for example, asked:

“What role did the President play in authorizing this program? Did he select detainees held by CIA or direct their interrogation? Was he briefed on the interrogation techniques, and if so when?”

To which the proposed answer was:

“In the days after 9/11, the President directed that all the instruments of national power, including the resources of intelligence, military, and law enforcement communities, be employed to fight and win the war against al Qaeda and its affiliates, within the bounds of the law. This included important, new roles for CIA in detaining and questioning terrorists. [He was periodically updated by CIA Directors on significant captures of terrorists, and information obtained that helped stop attacks and led to capture of other terrorists.] [The President was not of course involved in CIA’s day to day operations – including who should be held by CIA and how they should be questioned – these decisions are made or overseen by CIA Directors].”<sup>562</sup>

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<sup>558</sup> *Ibid.*

<sup>559</sup> ‘Plausible deniability’ is a term stemming from a 1948 National Security Council directive to the CIA (NSC 10/2) which defined covert activities as those “which are conducted or sponsored by this Government against hostile foreign states or groups or in support of friendly foreign states or groups but which are so planned and executed that any US Government responsibility for them is not evident to unauthorized persons and that if uncovered the US Government can plausibly disclaim any responsibility for them.” See Office of the Historian, <https://history.state.gov/historicaldocuments/frus1964-68v12/actionsstatement>

<sup>560</sup> SSCI Executive Summary, page 157.

<sup>561</sup> Remarks on the war on terror. President George W. Bush, 6 September 2006.

<sup>562</sup> SSCI Executive Summary, footnote 178. It appears that the SSCI was provided only with a draft version of this Q and A document. Draft Questions and Proposed Answers, attached to Memorandum from National Security Advisor Stephen J. Hadley; for: the Vice President, Secretaries of State and Defense, the Attorney General, Director of National Intelligence and Chairman of the Joint Chiefs of Staff; Copied to: chief of staff to the President, Counsel to the President, Assistant to the President for National Security, White House spokesman, dated 2 September 2006 (brackets in original).

The summary also states that “CIA records indicate that the first CIA briefing for the president on the CIA’s enhanced interrogation techniques occurred on April 8, 2006”, at which time the CIA Director (Porter Goss) briefed him on seven techniques proposed for the CIA to use following passage of the Detainee Treatment Act in late 2005.<sup>563</sup> The summary states:

“In April 2006, the CIA briefed the president on the ‘current status’ of the CIA’s Detention and Interrogation Program. According to an internal CIA review, this was the first time the CIA had briefed the president on the CIA’s enhanced interrogation techniques...[T]he president expressed concern at the April 2006 briefing about the ‘image of a detainee, chained to a ceiling, clothed in a diaper, and forced to go to the bathroom on himself’.”<sup>564</sup>

This description of the President’s unease about detainee treatment and his lack of knowledge about a covert programme being operated under his authority, is at odds with his own memoirs. In that book, and in media interviews promoting it, he asserted personal involvement *in 2002 and 2003* in approving “enhanced interrogation techniques” against specific detainees held in secret CIA custody. The two detainees named in this regard were **Abu Zubaydah** and **Khalid Sheikh Mohammed**, taken into CIA custody and tortured in 2002 and 2003 respectively.

The 2010 memoirs recall, for example, that when asked by CIA Director George Tenet “if he had permission to use enhanced interrogation techniques, including waterboarding, on Khalid Sheikh Mohammed”, the President had replied “Damn right”. No expression of concern there, even in the cold light of day seven years later, about a man in secret detention, strapped to a board, being subjected to mock execution by interrupted drowning.

The Senate Intelligence Committee summary provides some additional detail of Khalid Sheikh Mohammed (KSM)’s treatment, first in Detention Site Cobalt (Afghanistan), and then in Detention Site Blue (Poland). In Afghanistan,

“KSM was subjected to facial and abdominal slaps, the facial grab, stress positions, standing sleep deprivation (with his hands at or above head level), nudity, and water dousing. Chief of Interrogations [name redacted] also ordered the rectal hydration of KSM without a determination of medical need, a procedure that the chief of interrogations would later characterize as illustrative of the interrogator’s ‘total control over the detainee’.”<sup>565</sup>

Upon arrival in Poland in March 2003, the detainee “was immediately stripped and placed in the standing sleep deprivation position”. In the following days, he was subjected to nudity, standing sleep deprivation, and various forms of physical assault. On 15 March 2003, he was subjected to the “first of his 15 separate waterboarding sessions” during which he was waterboarded at least 183 times over a 10-day period, interspersed with many other of the techniques. A medical officer would later write that the detainee was taking in so much water that “we are basically doing a series of near drownings”.<sup>566</sup>

One might also wonder whether the former President is concerned now by the graphic images of Abu Zubaydah’s torture depicted in the Senate Committee’s summary report under techniques he has said he personally authorized (as is well known, actual videotaped images

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<sup>563</sup> SSCI Executive Summary, page 40.

<sup>564</sup> SSCI Executive Summary, page 158.

<sup>565</sup> SSCI Executive Summary, page 82.

<sup>566</sup> SSCI Executive Summary, pages 84-86.

of torture were destroyed on 9 November 2005 by the CIA).<sup>567</sup>

Abu Zubaydah's interrogations were suspended from 18 June to 4 August 2002 while his fate, including the use of "enhanced" techniques against him, was discussed at high-levels of government. The Senate Committee reports that during July 2002, the CIA "anticipated that the president would need to approve the use of the CIA's enhanced interrogation techniques before they could be used". To this end, the agency drafted "talking points for a briefing of the president", including a "brief description of the waterboard interrogation technique", that is, torture. The latter description, the Senate Committee states, was deleted following comments by White House Counsel Alberto Gonzales on 1 August 2002. This was the day on which two memorandums on interrogations, one of which specifically gave legal approval for 10 "enhanced" techniques for use against Abu Zubaydah, were provided to the CIA by the Office of Legal Counsel (OLC) at the Department of Justice.<sup>568</sup>

Alberto Gonzales had been one of those closely engaged in this issue. It is now five and a half years since the Office of Professional Responsibility in the Department of Justice disclosed that an email sent on the morning of 12 July 2002 by the prime author of these legal opinions, Deputy Assistant Attorney General John Yoo, told the Attorney-Adviser working with him: "let's plan on going over [to the White House] at 3:30 to see some other folks about the bad things opinion". The two later that day had a meeting with Alberto Gonzales. A copy of the memorandum was left with him.<sup>569</sup> Alberto Gonzales' (and White House) knowledge of details of the secret detention programme is also indicated in a July 2003 email cited by the Senate Committee in which John Rizzo recalled how in meetings with Gonzales, the latter had said there was great concern in the White House that Secretary of State Colin Powell would "blow his stack if he were to be briefed on what's been going on" in the programme.<sup>570</sup>

The Senate Intelligence Committee summary states that, "CIA records indicate" that "the talking points were not used to brief the president", and that the President's National Security Advisor, Condoleezza Rice, was told that there would be no briefing. However, the minority report quotes from an email dated 31 July 2002 which states

"WH asks DDCI brief POTUS tomorrow at 0800 meeting without any further details about the interrogation techniques than those in the talking points".<sup>571</sup>

Arguing that this shows that it was the White House that was setting the terms of the briefing, the minority report quotes from the content of the talking points, including that: "the techniques incorporate mild physical pressure, while others may place Abu Zubaydah in fear for his life"<sup>572</sup> The minority report also points to a meeting held on 1 August 2002 between the President and the Deputy Director of the CIA concerning the "Next Phase of the Abu Zubaydah Interrogation". This, the minority said, "strongly suggests that the President had been briefed on the interrogation".<sup>573</sup>

A 2004 review of the detention programme by the CIA Inspector General had recommended

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<sup>567</sup> USA: Destruction of CIA interrogation tapes may conceal government crimes, 7 December 2007, <http://www.amnesty.org/en/library/info/AMR51/194/2007/en>

<sup>568</sup> USA: Torture in black and white, but impunity continues, 17 April 2009, <http://www.amnesty.org/en/library/info/AMR51/055/2009/en>

<sup>569</sup> OPR report, *op. cit.*, pages 45-46.

<sup>570</sup> SSCI Executive Summary, pages 118-119.

<sup>571</sup> WH - White House; DDCI - Deputy Director of Central Intelligence; POTUS - President of the US.

<sup>572</sup> Minority views, page 83.

<sup>573</sup> Minority views, page 82.

that the CIA Director “brief the President regarding the implementation of the Agency’s detention and interrogation activities pursuant to the MON of 17 September 2001 or any other authorities, including the use of EITs and the fact that detainees have died”.<sup>574</sup> Director Tenet had responded that he would determine “whether and to what extent the President requires a briefing on the Program”.

The summary report leaves the question hanging, footnoting that both George Tenet and his predecessor Porter Goss “met regularly with the President”. However, the Senate Committee states that more than a year after Abu Zubaydah was taken into secret CIA custody,

“senior CIA personnel believed that the president had still not been briefed on the CIA’s enhanced interrogation techniques. In August 2003, DCI Tenet told the CIA’s Office of Inspector General that ‘he had never spoken to the President regarding the detention or interrogation program or EITs, nor was he aware of whether the President had been briefed by his staff’”.<sup>575</sup>

The Senate Intelligence Committee points to an email dated 31 July 2003 from Rizzo which indicates that Vice President Cheney, National Security Advisor Rice, and White House Counsel Gonzales were more in the know than the President.<sup>576</sup>

According to the Senate Committee, on 30 August 2002, the CIA informed the NSC that the use of “enhanced interrogation techniques” on Abu Zubaydah had been effective in “producing meaningful results”. On that day, a member the CIA’s Counterterrorism Center met with NSC Legal Advisor John Bellinger to discuss the interrogation. According to the CIA records, Bellinger was informed that the techniques used on Abu Zubaydah had included walling, confinement in a box, waterboarding, “along with some of the other methods which also had been approved by the Attorney General [John Ashcroft]”.<sup>577</sup>

That the “aggressive” phase of Abu Zubaydah’s interrogation involved not just personnel in the secret facility, but also individuals back at CIA Headquarters is illustrated in a footnote in the summary. During this phase, or to put it another way, during the period in which a detainee being subjected to enforced disappearance was also subjected to interrogation under torture, a video-conference between Detention Site Green and CIA HQ in Langley, Virginia was held. During this meeting an interrogation video was shown, “described by the interrogation team as ‘quite graphic’ and possibly ‘disturbing to some viewers’”.

Presumably this was one of the videos destroyed by the CIA in November 2005. In his 2012 memoirs, the former head of the CTC, José Rodríguez, confirmed what had already been revealed during freedom of information litigation, namely that it was he who approved the destruction of the tapes, including recordings of “water-boarding”.<sup>578</sup> The destruction of the tapes may have concealed crimes by state agents. Concealing evidence of a crime may constitute criminal complicity. Complicity in torture is expressly recognised as a crime under international law. In 2010, the US Department of Justice announced that no-one would be prosecuted for the destruction of the tapes.<sup>579</sup>

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<sup>574</sup> SSCI Executive Summary, page 39.

<sup>575</sup> SSCI Executive Summary, page 38-39.

<sup>576</sup> See SSCI Executive Summary, Footnote 173.

<sup>577</sup> Footnote 1208.

<sup>578</sup> José A. Rodríguez, Jr., *Hard measures: How aggressive CIA actions after 9/11 saved American lives*. Threshold Editions (2012), pages 183-196.

<sup>579</sup> See USA: Another door closes on accountability. US Justice Department says no prosecutions for CIA destruction of interrogation tapes, 10 November 2010, <http://www.amnesty.org/en/library/info/AMR51/104/2010/en>

Rodriguez himself has asserted that “I was responsible for helping develop and implement the Agency’s techniques for capturing the world’s most dangerous terrorists and collecting intelligence from them, including the use of highly controversial ‘enhanced interrogation techniques’.”<sup>580</sup> After the Senate Committee voted to send its summary for declassification, he publicly reiterated his involvement: “unlike the Committee’s staff, I don’t have to examine the program through a rear-view mirror. I was responsible for administering it”.<sup>581</sup>

Amnesty International has pointed to such memoirs in addition to those of former President Bush in which a number of former officials unapologetically claim leading involvement in the CIA’s programme of secret detention.<sup>582</sup> In his memoirs, former CIA legal counsel John Rizzo questioned the former President’s assertion of personal involvement in approving interrogation techniques. He suggested that George W. Bush, “squarely puts himself up to his neck in the creation and implementation of the most contentious counterterrorist program in the post 9/11 era when, in fact, he wasn’t”. Rather than going for an approach of “plausible deniability”, that is, distancing himself from the controversy, “Bush does the exact opposite”. “Now that’s a stand-up guy”, Rizzo adds.

The Senate Intelligence Committee makes a footnoted reference to the Rizzo memoirs, choosing to quote the following extract:

“The one senior US Government national security official during this time – from August 2002 through 2003 – who I do not believe was knowledgeable about the EITs was President Bush himself. He was not present at any of the Principal Committee meetings... and none of the principals at any of the EIT sessions during this period ever alluded to the President knowing anything about them”.<sup>583</sup>

Perhaps the former President’s memoirs were inaccurate in this regard, perhaps they were not. A thorough investigation would be the best way to clarify that. If President Bush did not know the detail of the programme he had authorized, then he should have. Whether or not he was being a “stand-up guy” in his memoirs by inflating the knowledge he had had at the time, he should stand up and be counted now for any responsibility he may have had in the crimes under international law committed in the programme.

### 3.4 GREEN LIGHT 2003: ‘EXECUTING ADMINISTRATION POLICY’

*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. Until recently, Saddam Hussein used similar means to hide the crimes of his regime*  
President George W. Bush, proclamation against torture, 26 June 2003

The Senate Committee found that, “While the CIA held detainees from 2002 to 2008, early 2003 was the most active period of the CIA’s Detention and Interrogation Program”. Fifty-three of the 119 detainees identified as held by the CIA were brought into its custody in

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<sup>580</sup> José A. Rodriguez, Jr., *Hard measures*, op. cit., Preface, ‘Who I am’.

<sup>581</sup> I ran the CIA interrogation program. Jose A Rodriguez, Jr., *Washington Post*, 4 April 2014, [http://www.washingtonpost.com/opinions/i-ran-the-cia-interrogation-program-no-matter-what-the-senate-report-says-i-know-it-worked/2014/04/04/69dd4fae-bc23-11e3-96ae-f2c36d2b1245\\_story.html](http://www.washingtonpost.com/opinions/i-ran-the-cia-interrogation-program-no-matter-what-the-senate-report-says-i-know-it-worked/2014/04/04/69dd4fae-bc23-11e3-96ae-f2c36d2b1245_story.html)

<sup>582</sup> See ‘Thanks for the memoirs, now for truth and justice’, in *USA: Time for truth and justice: Reflections and recommendations on truth, remedy and accountability as declassification of Senate Committee summary report on CIA secret detentions awaited*, 23 June 2014, <http://www.amnesty.org/en/library/info/AMR51/035/2014/en>

<sup>583</sup> SSCI Executive Summary, Footnote 177.

2003.<sup>584</sup> The primary locations for the use of “enhanced interrogation techniques” in 2003 were Detention Site Cobalt in Afghanistan and Detention Site Blue, believed to be in Poland.<sup>585</sup> Such interrogations also took place at a CIA “safe house” in Afghanistan.<sup>586</sup>

The extent of President Bush’s role after he had authorized the programme has long been in question. On 10 February 2003, Representative Jane Harman, then ranking member of the House Permanent Select Committee on Intelligence, wrote to CIA General Counsel Scott Muller following a briefing the previous week on CIA interrogations. Among other things, she asked specifically whether the “enhanced techniques [have] been authorized and approved by the President”. In his brief response dated 28 February 2003, Muller declined to comment on the question of presidential authorization, stating only that:

“While I do not think it appropriate for me to comment on issues that are a matter of policy, much less the nature and extent of Executive Branch policy deliberations, I think it would be fair to assume that policy as well as legal matters have been addressed within the Executive Branch.”

On several occasions in early 2003, Scott Muller “expressed concern to the National Security Council Principals, White House staff, and Department of Justice personnel that the CIA’s program might be inconsistent with public statements from the Administration that the US government’s treatment of detainees was ‘humane’.”<sup>587</sup>

The Presidential proclamation against torture on 26 June 2003 quoted at the top of this section had caused particular disquiet at the CIA.<sup>588</sup> In it he had not only listed “notorious human rights abusers” who “sought to shield their abuses from the eyes of the world”, but had claimed that the USA was “leading” the struggle against torture “by example”, and called upon all countries to prohibit, investigate and prosecute “all acts of torture”.

Those involved in the CIA programme were aware enough to know not only that the USA was not leading by example, but also that it had no intention of prosecuting those involved in crimes under international law being committed in the programme. The day after President Bush’s proclamation, 27 June 2003, John Rizzo called NSC Legal Advisor John Bellinger to express the CIA’s “surprise and concern” at the President proclamation as well as at a comment by the Deputy White House Press Secretary that all detainees in US custody were being treated “humanely”.<sup>589</sup>

As a result of such statements emanating from the White House, Rizzo advised senior CIA leaders to seek “reaffirmation by some senior White House official that the Agency’s ongoing practices... are to continue”. The CIA Director wrote to National Security Advisor Condoleezza Rice on 3 July 2003 seeking reaffirmation of the administration’s support for the CIA’s interrogation policies and practices.<sup>590</sup> This memorandum has been made public since publication of the Senate Intelligence Committee’s summary.

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<sup>584</sup> SSCI Executive Summary, page 96.

<sup>585</sup> SSCI Executive Summary, page 96 (and see footnote 557 for list of detainees).

<sup>586</sup> SSCI Executive Summary, page 96 and footnote 558.

<sup>587</sup> SSCI Executive Summary, page 115. The SSCI notes that Scott Muller had told the CIA Inspector General in August 2003 that “he could not keep up with cable traffic from CIA detainee interrogations and instead received monthly briefings”. Footnote 698.

<sup>588</sup> SSCI Executive Summary, pages 115-6. Amnesty International had also pointed to this proclamation in USA: The threat of a bad example: Undermining international standards as ‘war on terror’ detentions continue, 18 August 2003, <http://www.amnesty.org/en/library/info/AMR51/114/2003/en>

<sup>589</sup> SSCI Executive Summary, page 183.

<sup>590</sup> SSCI Executive Summary, page 184.



On 29 July 2003, CIA Director Tenet and CIA General Counsel Muller gave a presentation to NSC Principals, including Attorney General Ashcroft, White House Counsel Gonzales, National Security Advisor Rice, Vice President Cheney, Acting Assistant Attorney General Patrick Philbin, and Counsel to the National Security Council John Bellinger.<sup>591</sup> This was the CIA seeking “reaffirmation of its coercive interrogation program”, according to the Senate Committee. The presentation included a list of the CIA’s “standard” and “enhanced” interrogation techniques, and a description of the waterboard technique. Attorney General Ashcroft “forcefully reiterated” that the techniques were and remained legal.<sup>592</sup>

After the presentation, “Vice President Cheney stated, and National Security Advisor Rice agreed, that the CIA was executing Administration policy in carrying out its interrogation program”.<sup>593</sup> A similar briefing was presented to Secretary of State Colin Powell and Secretary of Defense Donald Rumsfeld on 16 September 2003, and to Assistant Attorney General Jack Goldsmith on 7 October 2003.<sup>594</sup>

According to Scott Muller’s memorandum for the record of the 29 July 2003 meeting, there had been a discussion by the participants about a Washington Post article on 27 June 2003, and Vice President Cheney asked how the press could have got the impression that the administration had promised an end to “stress and duress techniques” against detainees. Blame for this misperception was laid at the door of the presidential proclamation of 26 June as well as the White House press officer having “gone off script” and referring to the “humane treatment” of detainees. CIA Director George Tenet said that the White House should stop making such statements because the word “humane” was “easily susceptible to misinterpretation”. Counsel to the National Security Council John Bellinger “undertook to insure that the White House press office ceases to make statements on the subject other than that the US is complying with its obligations under US law”.<sup>595</sup>

The memorandum for the record asserts that Vice President Cheney, National Security Adviser Rice, Attorney General Ashcroft, and CIA Director Tenet agreed that there was no need for a full Principals Committee meeting to reaffirm the CIA programme, and that “some combination of Dr Rice, the Vice President and/or Judge Gonzales would inform the President that the CIA was conducting interrogations [redacted] using techniques that could be controversial”.<sup>596</sup>

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<sup>591</sup> SSCI Executive Summary, footnote 1887. Plus Memorandum for the Record. Review of Interrogation Program on 29 July 2003, Scott Muller General Counsel to the CIA, 5 August 2003.

<sup>592</sup> Memorandum for the Record. Review of Interrogation Program on 29 July 2003, Scott Muller General Counsel to the CIA, 5 August 2003.

<sup>593</sup> SSCI Executive Summary, page 117-118. According to CIA documents seen by the SSCI, during this month-long period of policy approval doubt, CIA Headquarters stopped approving requests from interrogators to use “enhanced interrogation techniques”. Instead, interrogators and headquarters agreed as an alternative repeated use of “standard” interrogation techniques. At the time for example, continuous sleep deprivation under 72 hours was defined as standard, becoming “enhanced” if prolonged beyond that. The SSCI provides the case example of Khallad bin Attash. During July 2003, to avoid using a temporarily unapproved “enhanced” technique, his interrogators subjected him to 70 hours of sleep deprivation in a standing position. They then allowed him four hours sleep, after which they subjected him to another 43 hours of sleep deprivation (divided between sitting and standing position).

<sup>594</sup> SSCI Executive Summary, page 335.

<sup>595</sup> Memorandum for the Record. Review of Interrogation Program on 29 July 2003, Scott Muller General Counsel to the CIA, 5 August 2003.

<sup>596</sup> *Ibid.*

### 3.4A THE CASE OF JANAT GUL

An OLC memorandum dated 10 May 2005 had responded to a CIA request for advice on interrogation techniques “in connection with their use on a specific high value al Qaeda detainee”, whose identity was redacted from the memorandum when it was released in 2009. In another memorandum dated 30 May 2005 and released at the same time, there was a reference to “Gul”, left unredacted apparently by mistake.<sup>597</sup> The case of Janat Gul is detailed publicly for the first time in the Senate Intelligence Committee’s summary report, and provides further insights into the level of involvement of various officials:

- June 2004 - Janat Gul is taken into custody by a “foreign government”, possibly in Pakistan by Pakistani authorities.<sup>598</sup>
- June 2004 – A CIA office (redacted) proposes that Janat Gul be rendered based on information from a CIA source (Asset Y) that Gul has actionable intelligence. While the CIA Station in the country of arrest “has interrogated many al-Qa’ida members” in that country, “our best information is obtained when the detainee is interrogated in a CIA-controlled facility (Detention Site Cobalt [in Afghanistan]) or blacksite”.
- 2 July 2004 – CIA Headquarters approves rendition of Janat Gul to CIA custody.
- 2 July 2004 – CIA officials, including Director Tenet, General Counsel Muller, and CTC/CIA Deputy Director Mudd, meet in the White House Situation Room with National Security Advisor Rice and other NSC officials, NSC legal adviser Bellinger, White House Counsel Gonzales, Attorney General John Ashcroft, and Deputy Attorney General James Comey to seek authorization for the use of enhanced interrogation techniques on Janat Gul.<sup>599</sup>
- 6 July 2004 – National Security Advisor Rice sends a memorandum to Tenet saying that the CIA can “use previously approved enhanced interrogation methods for Janat Gul, with the exception of the waterboard”, and offers to assist the CIA in obtaining “additional guidance from the Attorney General and NSC Principals on an expedited basis”.<sup>600</sup>
- Sometime between 10 and 30 July – Janat Gul is rendered to CIA custody. He is taken to “Detention Site Black” believed to be in Romania, whether via anywhere else is not clear.<sup>601</sup>
- 15 July 2004 – Janat Gul’s detention is discussed at a briefing of the Senate Select Committee on Intelligence leadership, i.e., its Chairperson and Vice-chairperson.<sup>602</sup>
- 20 July 2004 – At a meeting, select NSC Principals, including Vice President Dick Cheney, provide their authorization for the CIA to use enhanced interrogation

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<sup>597</sup> “The interrogation team ‘carefully analyzed Gul’s responsiveness to different areas of inquiry’ during this time and noted that his resistance increased as questioning moved to his ‘knowledge of operational terrorist activities’.” Page 7 of Memorandum for John A. Rizzo, Senior Deputy General Counsel, Central Intelligence Agency, from Steven G. Bradbury, Principal Deputy Assistant Attorney General, Office of Legal Counsel, Re: Application of United States Obligations Under Article 16 of the Convention Against Torture to Certain Techniques That May Be Used in the Interrogation of High Value al Qaeda Detainees, 30 May 2005.

<sup>598</sup> SSCI Executive Summary, page 135.

<sup>599</sup> SSCI Executive Summary, page 135.

<sup>600</sup> SSCI Executive Summary, page 136.

<sup>601</sup> SSCI Executive Summary, footnote 2335.

<sup>602</sup> SSCI Executive Summary, page 441.

techniques, except the waterboard, on Janat Gul.<sup>603</sup> Attorney General Ashcroft, attending along with Patrick Philbin and Daniel Levin from the Department of Justice, stated that the use of all previously approved enhanced interrogation techniques, bar water boarding which required further review, were lawful. The Attorney General was “directed” to prepare a written opinion and the CIA was directed to provide further information relating to its use of the waterboard.

- 22 July 2004 – Attorney General Ashcroft writes to Acting Director John McLaughlin to inform him that the nine interrogation techniques listed for use against Abu Zubaydah in a 1 August 2002 memorandum (all but waterboard) are lawful for use on Janat Gul.<sup>604</sup>
- 30 July 2004 – the CIA provide the Office of Legal Counsel at the DoJ a description of dietary manipulation, nudity, water dousing, the abdominal slap, standing sleep deprivation, and the use of diapers as “supplement” to the techniques outlined in the 1 August 2002 memorandum on Abu Zubaydah, in anticipation of the interrogation of Janat Gul.<sup>605</sup>
- August 2004 – Janat Gul is subjected to “enhanced interrogation” from 3-10 August and 21-25 August. This includes “continuous sleep deprivation, facial holds, attention grasps, facial slaps, stress positions, and walling, until he experienced auditory and visual hallucinations”, including hearing the voices of his children and wife “in the white noise”. He is “not oriented to time or place”. Standing sleep deprivation has caused “significant swelling” in his legs.<sup>606</sup> According to a CIA cable, the detainee “asked to die, or just be killed”. A cable to CIA HQ dated 26 August 2004 states that, after a 47-hour session of standing sleep deprivation, he is returned to his cell, “allowed to remove his diaper”, fed and allowed to sleep.<sup>607</sup>
- 26 August – Acting Assistant Attorney General Dan Levin informs CIA Acting General Counsel John Rizzo that four additional techniques, dietary manipulation, nudity, water dousing and abdominal slap are lawful for use on Janat Gul.
- 31 August – CIA interrogators ask CIA HQ for an extension on all the enhanced interrogation techniques for use on Janat Gul.
- 3 September – CIA HQ extended its approval for sleep deprivation for 30 days. CIA records indicate that neither this nor other EITs used after this point.
- October 2004 – Asset Y admits to fabricating information against Janat Gul.<sup>608</sup>
- 19 December 2004 – Personnel at Detention Site Black write that Janat Gul is “not/not the man [CIA Headquarters] made him out to be.”<sup>609</sup>
- 15 April 2005 – CIA fax about the interrogation of Janat Gul is sent to the Department of Justice Command Center, for the attention of the Office of Legal

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<sup>603</sup> SSCI Executive Summary, page 136. See also footnote 2325.

<sup>604</sup> SSCI Executive Summary, page 136.

<sup>605</sup> SSCI Executive Summary, page 414.

<sup>606</sup> SSCI Executive Summary, page 416.

<sup>607</sup> SSCI Executive Summary, pages 136-137.

<sup>608</sup> SSCI Executive Summary, page 137.

<sup>609</sup> SSCI Executive Summary, page 349.

Counsel, from the Legal Group at the CTC.<sup>610</sup>

- 30 April 2005 – the Chief of base at the secret detention facility writes an email that Janat Gul indicating that there is no justification for “our continued holding” of Gul at a site such as Detention Site Black.<sup>611</sup>
- 30 May 2005 – In a legal memorandum authorizing “enhanced interrogation techniques”, the Office of Legal Counsel at the US Department of Justice describes Janat Gul as “representative of the high value detainees on whom enhanced interrogation techniques have been, or might be used”.<sup>612</sup>

Janat Gul was subsequently transferred to a “foreign government” and later released.<sup>613</sup> Reading between the redactions in the summary report, he was held in CIA custody for between 730 and 739 days.<sup>614</sup> The summary notes that the interrogation of Janat Gul is “detailed” more fully in Volume III of the full report.<sup>615</sup>

### 3.5 NEW CIA DIRECTOR IN 2004, CRIMES CONTINUE

*[CIA Director George] Tenet believes that if the general public were to find out about this program, many would believe we are torturers*  
CIA Office of Inspector General, September 2003<sup>616</sup>

After the resignation in July 2004 of George Tenet as Director of the CIA, President Bush nominated Porter Goss to succeed him. “I’ve given Porter an essential mission to lead the Agency for the challenges and threats of a dangerous new century”, President Bush said on 9 August 2004. “He is well prepared for this mission”. Porter Goss’s preparation for taking on this role clearly did not include an effective training on the USA’s obligations under international law, including the absolute prohibition of enforced disappearance, torture and other ill-treatment at all times. President Bush’s own failure to rescind the authorization being used to subject detainees to enforced disappearance and torture was transmitted into the new directorship of the agency that was carrying them out.

In 2004, according to the Senate Committee, CIA detainees were being held in three countries. One is believed to have been Romania (Detention Site Black). The other appears to have been Morocco, as detailed above. And the third appears to be Afghanistan, where Detention Site Cobalt was replaced by Detention Site Orange during the year.<sup>617</sup>

The Senate approved the appointment of Porter Goss on 22 September 2004 (Deputy Director John McLaughlin had acted up as Director in the three months between Tenet stepping down and Goss taking over). Porter Goss had some knowledge of what he was

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<sup>610</sup> SSCI Executive Summary, footnote 2351.

<sup>611</sup> SSCI Executive Summary, footnote 1967.

<sup>612</sup> Memorandum for John A. Rizzo, Senior Deputy General Counsel, Central Intelligence Agency, from Steven G. Bradbury, Principal Deputy Assistant Attorney General, Office of Legal Counsel, Re: Application of United States Obligations Under Article 16 of the Convention Against Torture to Certain Techniques That May Be Used in the Interrogation of High Value al Qaeda Detainees, 30 May 2005.

<sup>613</sup> SSCI Executive Summary, page 137.

<sup>614</sup> Originally, the SSCI summary recorded his time in CIA custody as having been between 920 and 929 days. This was revised in early 2015.

<sup>615</sup> SSCI Executive Summary, footnote 2323.

<sup>616</sup> SSCI Executive Summary, footnote 727.

<sup>617</sup> SSCI Executive Summary, page 143.

getting into. As President Bush noted in his nomination statement, Porter Goss had been Chairman of the House Permanent Select Committee on Intelligence since 1997. Indeed, in this role, a few days after George Tenet stepped down as CIA Director, Porter Goss was briefed by the CIA Inspector General on his report about the secret detention programme, which included the information that Khaled Sheik Mohammed had been subjected to waterboarding 183 times.

Six months after taking up the post, CIA Director Goss told the Senate Armed Services Committee that “We don’t do torture”.<sup>618</sup> This was repeated in a public statement issued by the agency in response to a New York Times report which, the CIA complained,

“creates the false impression that US Intelligence may have had a policy in the past of using torture against terrorists captured in the war on terror. That is not true. All approved interrogation techniques, both past and present, are lawful and do not constitute torture. The truth is exactly what Director Goss said it was: ‘We don’t do torture.’ CIA policies on interrogation have always followed legal guidance from the Department of Justice. If an individual violates the policy, then he or she will be held accountable.”

The Senate Intelligence Committee’s summary reveals the sort of euphemism that should have been challenged and addressed by the Committee long before it released its summary report. At a briefing on the full Committee on 15 March 2006, Director Goss asserted that detainees held in the secret detention programme were treated “in certain specific ways” so that “they basically become psychologically disadvantaged”. He asserted that the programme was “not a brutality. It’s more of an art or a science that is refined”.<sup>619</sup>

### 3.5A ABU FARAJ AL-LIBI

On 2 May 2005, Abu Faraj al-Libi was taken into custody in Pakistan.<sup>620</sup> In an interview on Estonian television on 4 May, President Bush said that the arrest by the Pakistani authorities had taken place “with our help”. In a speech on the same day, President Bush described the detention as “a critical victory in the war on terror”, asserting that al-Libi was “a major facilitator and a chief planner for the Al Qaida network.” The President “applaud[ed] the Pakistani Government for their strong cooperation in the war on terror... [and] for acting on solid intelligence to bring this man to justice.”

Justice here again meant rendition to enforced disappearance and torture or other ill-treatment in CIA custody. Shortly after the arrest, in meetings on 6 and 7 May 2005, “the CIA began discussing the possibility that Abu Faraj al-Libi might be rendered to US custody”.<sup>621</sup>

Around this time, the then Director of the CIA’s Counterterrorism Center, Robert Grenier,

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<sup>618</sup> Questions Are Left by CIA Chief on the Use of Torture, New York Times, 18 March 2005, [http://www.nytimes.com/2005/03/18/politics/18intel.html?\\_r=0](http://www.nytimes.com/2005/03/18/politics/18intel.html?_r=0)

<sup>619</sup> SSCI Executive Summary, page 445.

<sup>620</sup> SSCI Executive Summary, footnote 2190. In the various references to this detainee in speeches and statements by President Bush, the White House records his arrest date in Pakistan as 30 April 2005.

<sup>621</sup> The report of the ICRC on its interviews of the 14 men at Guantánamo gives, like the SSCI report, the date of his original arrest in Mardan, Pakistan, as 2 May 2005. It reported that the 14 had been held in the original country of arrest for between a few days and a month prior to their transfer to CIA custody. It also states that one of the detainees who wished to remain nameless told the organization that after arrest he had been jointly interrogated by Pakistan and US agents in Pakistan. A leaked Joint Task Force-Guantánamo Detainee Assessment on Abu Faraj al-Libi, dated 10 September 2008, states that he was arrested on 2 May 2005 by Pakistan Special Forces. However, it also states the following: “Pakistan’s Foreign Office confirmed that the detainee was transferred to US custody on 6 June 2005”.

visited a secret detention facility. In August 2014, in anticipation of the forthcoming release of the Senate Intelligence Committee's summary report, Grenier recalled the visit to this "black site" over which "I was ultimately responsible" as CTC Director:

*"On a bright sunny spring day in 2005, in a country I cannot name, I entered a drab, unremarkable building, a gateway to a grim, unaccustomed world. Its spaces were impersonal, antiseptic, institutional. The residents of that alien world, both the guards and the guarded, were never exposed to natural light. They inhabited a claustrophobic universe of their own, a placed suffused with a permanent air of foreboding, in which both time and external reality had been suspended".<sup>622</sup>*

Robert Grenier did not name the country where the detention facility he visited because it is classified Top Secret, and remains so even after publication of the Senate Committee's report. So do does the precise date in late May 2005 of the rendition to CIA custody of Abu Faraj al-Libi. The Senate Committee reports that four days before that secret transfer, Robert Grenier asked the CIA Director Porter Goss to send a memorandum to National Security Advisor Stephen Hadley (appointed by President George W. Bush in January 2005, this is a position that does not require Senate confirmation) and Director of National Intelligence John Negroponte (another George W. Bush appointee who took office only two or three weeks earlier). The memorandum, Grenier said, should inform these two officials of the CIA's intention to take custody of Abu Faraj al-Libi and "to employ interrogation techniques if warranted and medically safe".<sup>623</sup>

On 24 May 2005, the White House informed the CIA, including Robert Grenier, that an NSC Principals Committee meeting would be necessary to discuss the CIA's proposed "enhanced" interrogation of Abu Faraj al-Libi. However, the email indicated that the travel schedule of one of the committee members was causing delays in holding such a meeting. At this point, Director Goss instructed CIA officers to go ahead with their plans, adding that he, Goss, would call each of the NSC Principals to inform them that if Abu Faraj al-Libi was uncooperative, he would approve the use against him of all of the CIA's "enhanced" interrogation techniques, except waterboarding.<sup>624</sup>

In late May 2005, Abu Faraj al-Libi was rendered to CIA custody in Detention Site Orange (Afghanistan) and shortly thereafter transferred to Detention Site Black (Romania).<sup>625</sup> Was this the "black site" visited by Robert Grenier on that "bright sunny spring day in 2005"?

On or around the time Abu Faraj al-Libi was transferred out of Pakistan, CIA Director Goss formally notified Hadley and Negroponte that the detainee would be "rendered to the unilateral custody of the CIA". The Goss memorandum stated:

*"Should Abu Faraj resist cooperating in CIA debriefings, and pending a finding of no medical or psychological contraindications (sic) to interrogation, I will authorize CIA trained and certified interrogators to employ one or more of the thirteen specific interrogation techniques for which CIA recently received two signed legal opinions from the Department of Justice (DOJ), Office of Legal Counsel (OLC) that these techniques, both individually and used collectively, are lawful."<sup>626</sup>*

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<sup>622</sup> Robert Grenier, From Truth and Reconciliation to Lies and Obfuscation: The Senate RDI Report, Huffington Post, 8 August 2014, [http://www.huffingtonpost.com/robert-l-grenier/senate-rdi-report-lies-obfuscation\\_b\\_5663595.html](http://www.huffingtonpost.com/robert-l-grenier/senate-rdi-report-lies-obfuscation_b_5663595.html)

<sup>623</sup> SSCI Executive Summary, page 146.

<sup>624</sup> SSCI Executive Summary, page 146.

<sup>625</sup> SSCI Executive Summary, page 147.

<sup>626</sup> *Ibid.*

These two classified memorandums were released in 2009.<sup>627</sup> Numerous people were involved in reviewing and commenting on them before they were finalized, including a CTC attorney, the Office of the Attorney General, Office of the Deputy Attorney General, lawyers from the Justice Department's National Security and Criminal Divisions. State Department legal advisor John Bellinger and Daniel Levin, then legal advisor at the NSC.<sup>628</sup>

The CIA had asked the OLC to consider the lawfulness under the US anti-torture statute of 13 individual interrogation techniques for use against “a particular al Qaeda operative”, “a specific high value al Qaeda detainee”. The techniques addressed in the memorandum were dietary manipulation; nudity; attention grasp; walling; facial hold; facial slap or insult slap; abdominal slap; cramped confinement; wall standing; stress positions; water dousing; sleep deprivation (up to 180 hours continuous – conducted against a detainee held in a standing, sitting or lying position); and water-boarding. The OLC concluded that the “authorized use of each of these techniques, considered individually”, would not amount to torture under US law. In the second memorandum the OLC gave legal approval for their combined use. It also held that forcing a detainee to wear a diaper was lawful, even if it caused humiliation.<sup>629</sup>

One day after his arrival at Detention Site Black in late May 2005, the CIA interrogators at the secret facility received authorization from CIA Headquarters to use the “enhanced” techniques on Abu Faraj al-Libi. They began using them on 28 May 2005. Two days later, the OLC issued another classified memorandum, advising the CIA that Article 16 of UNCAT was inapplicable to the agency’s interrogation program as the latter was not operated inside the USA or against US nationals.<sup>630</sup> Even if Article 16 were to apply, the OLC continued, because of the reservation the Senate and President attached to the USA’s 1994 ratification of UNCAT (which it has never withdrawn despite repeated calls from the UN Committee Against Torture to do so), the relevant measure as to whether US conduct was unlawful would be the “shocks the conscience” test, a US constitutional standard. The interrogation techniques, in the context of national security, would not shock the conscience, the OLC decided. The memo has apparently been reviewed by the Office of the Attorney General, the Office of the Deputy Attorney General, the State Department, the NSC, the CIA, and the White House Counsel’s Office.<sup>631</sup>

According to the Senate Intelligence Committee, the CIA subjected Abu Faraj al-Libi to more than a month of “enhanced” interrogation. The summary does not provide detail of which techniques were used, and in which combination, and for how long. That information, presumably, is contained in Volume III of the full Senate Committee report, which remains classified Top Secret.

Abu Faraj al-Libi was one of the 14 men transferred to Guantánamo on 4 September 2006,

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<sup>627</sup> (1) Memorandum for John A. Rizzo, Senior Deputy General Counsel, Central Intelligence Agency, from Steven G. Bradbury, Principal Deputy Assistant Attorney General, Office of Legal Counsel, Re: Application of 18 U.S.C. §§ 2340–2340A to Certain Techniques That May Be Used in the Interrogation of a High Value al Qaeda Detainee. (2) Memorandum for John A. Rizzo, Senior Deputy General Counsel, Central Intelligence Agency, from Steven G. Bradbury, Principal Deputy Assistant Attorney General, Office of Legal Counsel, Re: Application of 18 U.S.C. §§ 2340–2340A to the Combined Use of Certain Techniques in the Interrogation of High Value al Qaeda Detainees. Both dated 10 May 2005.

<sup>628</sup> OPR report, *op. cit.*, page 133.

<sup>629</sup> Memorandum for John A. Rizzo, Senior Deputy General Counsel, Central Intelligence Agency, from Steven G. Bradbury, Principal Deputy Assistant Attorney General, Office of Legal Counsel, Re: Application of United States Obligations Under Article 16 of the Convention Against Torture to Certain Techniques That May Be Used in the Interrogation of High Value al Qaeda Detainees, 30 May 2005, page 2, <http://www.justice.gov/sites/default/files/olc/legacy/2013/10/21/memo-bradbury2005.pdf>

<sup>630</sup> *Ibid.*

<sup>631</sup> OPR report, *op. cit.*, page 150.

presumably from Detention Site Brown. He had been in CIA custody for between 460 and 469 days. In Guantánamo, he was fitted with a hearing aid.<sup>632</sup> During interrogations by the CIA he had complained of loss of hearing, but his interrogators considered this was a resistance strategy and so continued with his interrogation regardless.

### 3.6 GHOST TRAIN: MILITARY/CIA DISAPPEARANCES 2005-2006

*DoD is tired of 'taking hits' for CIA 'ghost detainees'....the US government 'should not be in the position of causing people to 'disappear'*

CIA email re Department of Defense position on ICRC notification, 13 September 2004

Under the US Constitution, as President of the USA, George W. Bush was Commander in Chief of the armed forces, as well as effective head of the CIA. It is not only the CIA that was involved or had knowledge of the crimes under international law of enforced disappearances and torture being carried out in this secret programme at the time they were happening. The US military was involved on occasion too.<sup>633</sup>

In 2002, for example, the existence of the secret facility dubbed Detention Site Cobalt, in Afghanistan, was known of within the US military. Indeed, in October 2002, US military officers conducted an interrogation (“debriefing”) of the first detainee to be held there, Tunisian national **Redha al-Najar**. The following month, a US military legal advisor visited the facility.<sup>634</sup> The military advisor was informed about the specific interrogation plan for al-Najar and that it included “isolation in total darkness; lowering the quality of his food; keeping him at an uncomfortable temperature (cold); [playing music] 24 hours a day; and keeping him shackled and hooded”. The detainee was described as being left hanging, with one or both wrists handcuffed to an overhead bar, for 22 hours each day over a two day period in order to “break his resistance”. It was also noted that he was being made to wear a diaper and had no access to toilet facilities.<sup>635</sup>

The military legal advisor concluded that Redha al-Najar’s treatment, and the fact that the detention facility was being concealed from the ICRC, would pose legal risks if US military personnel were involved. The advisor recommended that the combatant command authorities be briefed on the CIA’s detention and interrogation activities so as to alert them to these risks. The Senate Committee does not state whether this briefing took place.<sup>636</sup>

One of the crimes under international law committed by US forces in Iraq was that of enforced disappearance.<sup>637</sup> In 2003 and 2004, an unknown number of individuals in US custody became “ghost detainees”, in military parlance. These individuals were in military custody but were kept off prison registers and hidden from the ICRC at the request of the CIA. The practice apparently occurred in Afghanistan also – “these detainees were not assigned Internment Serial Numbers (ISN), and DOD [Department of Defense] personnel held

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<sup>632</sup> SSCI Executive Summary, page 148.

<sup>633</sup> The SSCI notes that it did not have access to “US military detainee reporting”. Footnote 1509.

<sup>634</sup> The Office of Inspector General’s report into FBI involvement in interrogations also states that “one agent told us that he reported concerns about detainee treatment in Afghanistan to the MLDU Unit Chief at FBI Headquarters. The agent reported in his survey response that during a tour of [redacted] in November 2002, he was told that the CIA used loud music to deprive detainees of sleep”. FBI OIG report, October 2009 version, *op. cit*, page 233.

<sup>635</sup> SSCI Executive Summary, page 53.

<sup>636</sup> SSCI Executive Summary, pages 53-54.

<sup>637</sup> USA: ‘Judge us by our actions’: A reflection on accountability for US detainee abuses 10 years after the invasion of Iraq, 15 March 2013, <http://www.amnesty.org/en/library/info/AMR51/012/2013/en>



them without accounting for them, obtaining biometric information from them, or knowing their identities or the reasons for their detention”.<sup>638</sup>

The military investigation conducted by US Army Major General Antonio Taguba into US abuses in Iraq found that the holding of “ghost detainees” was “deceptive, contrary to Army Doctrine, and in violation of international law”.<sup>639</sup> While details of most cases of “ghost detainees” remains unknown, it is known that in November 2003, Secretary of Defense Rumsfeld, acting on the request of the CIA Director Tenet, ordered the military in Iraq to keep a particular detainee, an Iraqi national, off any prison register.<sup>640</sup> In June 2004, after seven months, the unidentified detainee had still not been registered with the ICRC. On 9 September 2004, General Paul Kern told the Senate Armed Services Committee that there might have been as many as 100 “ghost detainees” in US military custody in Iraq.<sup>641</sup>

The summary report notes that in late 2004, tensions rose between the CIA and the Department of Defense about the hiding of detainees from the ICRC. In advance of an NSC Principals Committee meeting on 14 September 2004, Pentagon officials contacted the CIA to inform it that the Department of Defense believed there should be “full disclosure to the ICRC, unless there were compelling reasons of military necessity or national security”. An email to John Rizzo, copied among others to José Rodriguez, described the Department of Defense as “tired of taking hits for CIA ‘ghost detainees’” and taking the position that the US government “should not be in the position of causing people to ‘disappear’.”<sup>642</sup>

### 3.6A ABU JA'FAR AL-IRAQI AND IBRAHIM JAN

The Senate Intelligence Committee reveals that CIA/military collaboration in enforced disappearances continued into 2005 and 2006. In September 2005, the CIA and the Department of Defense (DOD) signed a Memorandum of Understanding “Concerning DOD Support to CIA with Sensitive Capture and Detention Operations in the War on Terrorism”.<sup>643</sup> According to the Senate Committee, the US military agreed to transfer two detainees, Ibrahim Jan and Abu Ja’far al-Iraqi to CIA custody. Pending this transfer, the military did not give them internment serial numbers (ISNs) and did not register them with the ICRC.

In October 2005, a CIA email was transmitted (the sender and recipients have been redacted) in relation to a request by the Department of Defense for the CIA to provide it with a list of HVTs (High Value Targets) to be kept unregistered. The email stated:

“In conjunction with discussions between CIA and DoD over the weekend regarding our request to have the military render Ibrahim Jan to our custody and NOT issuing him an ISN number, DoD has requested CIA provide a list of HVTs to whom, if captured, the

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<sup>638</sup> FBI OIG report, October 2009 version, op. cit., page 226. This section is heavily redacted.

<sup>639</sup> Article 15-6 investigation of the 800<sup>th</sup> Military Police Brigade, 2004 (the Taguba report).

<sup>640</sup> Secretary Rumsfeld himself acknowledged the case. “With respect to the detainee you’re talking about, I’m not an expert on this, but I was requested by the Director of Central Intelligence to take custody of an Iraqi national who was believed to be a high-ranking member of *Ansar al-Islam*. And we did so. We were asked to not immediately register the individual. And we did that. It would – it was – he was brought to the attention of the Department, the senior level of the Department I think late last month. And we’re in the process of registering him with the ICRC at the present time... What I can say is that I think it’s broadly understood that people do not have to be registered in 15 minutes when they come in. What the appropriate period of time is I don’t know. It may very well be a lot less than seven months, but it may be a month or more.” Defense Department regular briefing, US Department of Defense transcript, 17 June 2004, <http://www.defense.gov/transcripts/transcript.aspx?transcriptid=3347>

<sup>641</sup> See, e.g., Army says CIA hid more Iraqis than it claimed. New York Times, 10 September 2004.

<sup>642</sup> SSCI Executive Summary, pages 120-121.

<sup>643</sup> SSCI Executive Summary, footnote 897 and accompanying text.

military should NOT issue ISN numbers.”<sup>644</sup>

In December 2005, “during the period the US Senate was debating the Detainee Treatment Act barring ‘cruel, inhuman, or degrading treatment of punishment’, the CIA subjected Abu Ja’far al-Iraqi to “its enhanced interrogation techniques”.<sup>645</sup> They included the following:

“nudity, dietary manipulation, insult slaps, abdominal slaps, attention grasps, facial holds, walling, stress positions, and water dousing with 44 degree Fahrenheit [6.7 degrees Celsius]. He was shackled in the standing position for 54 hours as part of sleep deprivation, and experienced swelling in his lower legs requiring blood thinner and spiral ace bandages. He was moved to a sitting position, and his sleep deprivation was extended to 78 hours. After the swelling subsided, he was provided to with more blood thinner and was returned to the standing position. The sleep deprivation was extended to 102 hours. After four hours of sleep, Abu Ja’far al-Iraqi was subjected to an additional 52 hours of sleep deprivation, after which CIA Headquarters informed interrogators that eight hours was the minimum rest period between sleep deprivation sessions exceeding 48 hours. In addition, to the swelling, Abu Ja’far al-Iraqi also experienced an edema on his head due to walling, abrasions on his neck, and blisters on his ankles from shackles.”<sup>646</sup>

A Presidential Daily Brief was drafted on the interrogation of this detainee, although it is not clear whether or to whom this went. In a 1 December 2005 Memorandum to the President’s National Security Advisor Stephen Hadley, CIA Director Porter Goss said that he had authorized the use of enhanced techniques on Abu Ja’far al-Iraqi for the purpose of obtaining information about Abu Mu’sab al-Zarqawi. Two weeks later the draft PDB was revised to delete a reference to that assertion that this detainee provided little or no actionable intelligence. The interrogator who urged this revision argued that

“If we allow the Director to give this PDB, as it is written, to the President, I would imagine the President would say, ‘You asked me to risk my presidency on your interrogations, and now you give me this that implies the interrogations are not working. Why do we bother?’ We think the tone of the PDB should be tweaked. Some of the conclusions, based on our experts’ observations, should be amended. The glass is half full, not half empty, and is getting more full every day”.<sup>647</sup>

Abu Ja’far al-Iraqi remained in secret CIA custody for another nine months, subjected to an enforced disappearance in which the military as well as the CIA were implicated. He was transferred back to US military custody in Iraq in early September 2006, presumably around the same time 14 detainees were transferred from secret CIA custody to military detention at Guantánamo Bay. Donald Rumsfeld was Secretary of Defense during this entire time.

Ibrahim Jan was also held in CIA custody, transferred from military detention. There is no detail on his case in the Senate Committee’s summary report apart from his inclusion in the list of detainees at the end of the report. The year he was taken into custody has been redacted from the declassified version of the list, although it appears in a footnote in the report – 2005.<sup>648</sup> He was subjected held in CIA custody for between 10 and 11 months.

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<sup>644</sup> SSCI Executive Summary, footnote 898.

<sup>645</sup> SSCI Executive Summary, page 149.

<sup>646</sup> SSCI Executive Summary, footnote 901.

<sup>647</sup> SSCI Executive Summary, footnote 903.

<sup>648</sup> SSCI Executive Summary, footnote 869.

### 3.6B ALI JAN AND HASSAN GHUL

Ali Jan was held in CIA custody for between 280 and 289 days.<sup>649</sup> He was taken into military custody in or around early August 2003 during a US military operation, possibly Operation Warrior Sweep (name redacted) in Zormat Valley, Paktia Province, Afghanistan, during which a number of individuals were taken into military custody. Ali Jan was transferred from military to CIA custody, apparently after his phone rang and an interpreter said the caller was speaking in Arabic. He was transferred back to the US military and released in July 2004.<sup>650</sup> The Senate Intelligence Committee summary indicates that Ali Jan was one of 18 detainees transferred from CIA to military custody in March 2004.

Another case in the summary is that of Hassan Ghul, who was taken into custody in Iraq on 23 January 2004. He was handed over to the US military by “foreign authorities” and was then rendered from US military custody to CIA custody at Detention Site Cobalt (Afghanistan). He was held there for two days and then transferred to Detention Site Black, believed to be in Romania.<sup>651</sup> Upon arrival at Detention Site Black, he was

“shaved and barbered, stripped and placed in the standing position against the wall with his hands above his head, with plans to lower his hands after two hours... Following 59 hours of sleep deprivation, Hassan Ghul experienced hallucinations, but was told by a psychologist that his reactions were ‘consistent with what many others experience in his condition’... The sleep deprivation, as well as other enhanced interrogations continued, as did Ghul’s hallucinations. Ghul also complained of back pain and asked to see a doctor, but interrogators responded that the ‘pain was normal and would stop when Ghul was confirmed as telling the truth’... A CIA physician assistant later observed that Hassan Ghul was experiencing ‘notable physiological fatigue’, including ‘abdominal and back muscle pain/spasm, ‘heaviness’ and mild paralysis of arms, legs and feet that are secondary to his hanging position and extreme degree of sleep deprivation...”<sup>652</sup>

The interrogators at Detention Site Black had requested permission to use “enhanced interrogation techniques” shortly after his arrival at the secret detention facility. In their cable request, the interrogators noted that during 40 minutes that Hassan Ghul was subjected to the standing position against the wall, naked, with his hands above his head, he “did not provide any new information, did not show the fear that was typical of other recent captures, and was ‘somewhat arrogant and self-important’.” The cable suggested that perhaps Hassan Ghul’s “earlier experiences with US military interrogators have convinced him that there are limits to the physical contact interrogators can have with him.”<sup>653</sup>

The CIA Headquarters on that same day approved the use of “enhanced interrogation techniques” on Hassan Ghul, in order to “sufficiently shift [Ghul’s] paradigm of what he can expect from the interrogation process, and to increase base’s capability to collect critical and reliable threat information in a timely manner”.<sup>654</sup>

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<sup>649</sup> Originally this was given in the SSCI summary as 340-349 days. It was revised in early 2015.

<sup>650</sup> SSCI Executive Summary, page 120.

<sup>651</sup> SSCI Executive Summary, page 370.

<sup>652</sup> SSCI Executive Summary, pages 132-133.

<sup>653</sup> SSCI Executive Summary, page 396-7.

<sup>654</sup> SSCI Executive Summary, page 376.

### 3.7 FAILURE TO END PROGRAMME AFTER APRIL 2006 BRIEFING

*[O]ur military and intelligence personnel involved in capturing and questioning terrorists could now be at risk of prosecution... This is unacceptable*  
President George W. Bush, 6 September 2006

In her memoirs, Condoleezza Rice asserted that the CIA's "so-called black sites had been established in the chaotic aftermath of 9/11".<sup>655</sup> This familiar excuse for the crimes under international law falls apart as one considers the planning and resources that went into this programme of enforced disappearance and that five years after 9/11, the USA was still planning for further secret detentions and "enhanced" interrogations.

Two days after Abu Zubaydah and 13 other men were transferred from years of enforced disappearance to military detention at Guantánamo, President Bush confirmed the existence of the secret detention programme for the first time. This step, according to the CIA materials reviewed by the Senate Committee, came only five months after the President had had his "first" briefing on the interrogation techniques in the programme at which he had allegedly displayed concern about the treatment of a detainee forced to urinate and defecate on himself while chained to the ceiling, possibly as part of a sleep deprivation session. As well as President Bush receiving that briefing on the interrogation techniques in early April 2006, his Chief of Staff received such a briefing early the following month.<sup>656</sup>

Even if one were to accept as true that President Bush was in the dark on the detail of a covert programme being operated under his authority, he failed to shut down the programme immediately upon learning that torture and enforced disappearances were an integral part of it. He had the power to do so, as was made clear when his successor ordered the programme's termination on his second full day in office in January 2009. Neither did President Bush do anything to meet the USA's international legal obligations to ensure accountability and redress for these crimes. Instead, he defended the programme, sought legislation to allow it and the impunity to continue, and then in July 2007, as described further below, issued an executive order re-authorizing the programme. At the same time, he had said in his 6 September 2006 address:

"I want to be absolutely clear with our people and the world: The United States does not torture. It's against our laws, and it's against our values. I have not authorized it, and I will not authorize it. Last year, my administration worked with Senator John McCain, and I signed into law the Detainee Treatment Act, which established the legal standard for treatment of detainees wherever they are held. I support this act."

Within a year, another detainee was being held in secret CIA custody in a facility in Afghanistan, shackled in a standing position to keep him awake, forced to wear diapers on grounds that allowing him to go to the toilet would interfere with this "enhanced" interrogation technique.

In his speech on 6 September 2006, President Bush explained that he was confirming the existence of the programme because, first and foremost, he wanted legislation to allow it to continue. The administration decided this because three months earlier, the US Supreme Court had ruled, contrary to the President's determination in February 2002, that article 3 common to the Geneva Conventions applied to "our war with al Qa'ida", as the President put it. Common article 3, he noted, prohibits "outrages upon personal dignity" and "humiliating

<sup>655</sup> No Higher Honor. A memoir of my years in Washington. Condoleezza Rice, Crown Publishers, New York (2011), page 498.

<sup>656</sup> SSCI Executive Summary, footnote 1225. The Chief of Staff was Josh Bolten.

and degrading treatment”, as well as torture and other cruelty. Some people, he continued “believe our military and intelligence personnel involved in capturing and questioning terrorists could now be at risk of prosecution under the War Crimes Act, simply for doing their jobs in a thorough and professional way. This is unacceptable.”

When the US Supreme Court overturned this presidential decision against applying Geneva Convention protections, including of Common Article 3, the administration went into a flurry of activity to, among other things, get the War Crimes Act retroactively amended to limit its scope, and the CIA's secret detention programme approved, by passage of a bill sent to Congress for its approval. This was the Military Commissions Act (MCA) of 2006.

Signing the MCA into law on 17 October 2006, President Bush emphasised that “This bill will allow the Central Intelligence Agency to continue its program for questioning key terrorist leaders and operatives”. If release of the Senate Intelligence Committee's summary was a positive landmark in the history of the US Senate, passage of the MCA was a distinctly low point in the congressional record from an international human rights perspective.

In October 2006, as President Bush was signing the MCA into law while making it clear that the main reason he was doing so was to allow the CIA to continue its secret detention programme, the ICRC was given access to the 14 men, including Abu Zubaydah, who had been transferred to Guantánamo the previous month. On 8 November 2006, ICRC delegates met with US officials to raise the organization's concerns with what they had found. The following day, John Rizzo emailed the CIA Director and other senior CIA officials:

“As described to us, albeit in summary form, what the detainees allege actually does not sound that far removed from reality.... The ICRC, for its part, seem to find their stories largely credible, having put much stock in the fact that the story each detainee has told about his transfer, treatment and conditions of confinement was basically consistent, even though they had been incommunicado with each other throughout their detention by us”.

At about the same time, Abd Hadi al-Iraqi was taken into CIA custody to begin what would become six months of enforced disappearance in the CIA programme before being transferred in late April 2007 to Guantánamo where he remains today.

### **3.8 EXECUTIVE ORDER TIMED FOR ‘ENHANCED’ INTERROGATION**

*I hereby determine that a program of detention and interrogation approved by the Director of the Central Intelligence Agency fully complies with the obligations of the United States under Common Article 3*

President George W. Bush, Executive Order, 22 July 2007

In February 2007, the ICRC submitted its confidential final report to the US authorities on its findings from its interviews of the 14 men transferred from secret CIA custody to Guantánamo. Among other things, the ICRC concluded that US agents were responsible for enforced disappearance, torture and other ill-treatment, and called on the USA to bring the perpetrators to justice.<sup>657</sup>

The Senate Committee found the ICRC report to be “largely consistent with information contained in CIA interrogation records”.<sup>658</sup> The Acting CIA General Counsel John Rizzo, a recipient of the report, had said that “what the detainees allege”, as described in a US/ICRC

<sup>657</sup> ICRC Report on treatment of fourteen ‘high value detainees’ in CIA custody. February 2007, op. cit.

<sup>658</sup> SSCI Executive Summary, page 161.

meeting in November 2006, “actually does not sound that far removed from the reality”.<sup>659</sup>

In its damning report, which would be leaked into the public domain in 2009, the ICRC noted President Bush’s speech of 6 September 2006, in which he had “made clear that the CIA detention program had not been discontinued and could again be used in the future”. The ICRC expressed its concern at this prospect, particularly given what it had learned during the detainee interviews, and “urge[d] the US authorities to end the practice of undisclosed detention”.<sup>660</sup> This ICRC’s plea fell on deaf ears. The secret detention programme, and the impunity associated with it continued.

Three months after the ICRC submitted its report to the US government, Muhammad Rahim al Afghani was taken into custody in Pakistan. In its 2011 memorandum on the investigative obligations of other countries in relation to former President Bush, Amnesty International pointed to the case of Muhammad Rahim, whom the US Department of Defense announced on 14 March 2008 had been transferred to military detention in Guantánamo after an unidentified period in CIA custody.<sup>661</sup> The Senate Committee now adds some case detail.

Before considering what the Committee reveals about Muhammad Rahim’s treatment in secret detention and the involvement of the former President in authorizing it, it is worth recalling the latter’s reported concern at his “first” briefing on the interrogation programme on 8 April 2006. He was concerned, CIA records suggest, at “the image of a detainee, chained to the ceiling, clothed in a diaper, and forced to go to the bathroom on himself”.<sup>662</sup>

To be added to this reported presidential concern was that expressed by the president’s former National Security Advisor, now Secretary of State, Condoleezza Rice. At a briefing on the CIA programme given by the two CIA contractor psychologists “Swigert” and “Dunbar” in June 2007, Secretary Rice is said to have expressed concern about “the use of nudity and a detainee being shackled in the standing position for the purpose of sleep deprivation”.<sup>663</sup>

It is not clear when the belated and similar Rice and Bush sensitivity emerged.<sup>664</sup> Regardless of how many briefings they had received from the CIA until this point, by then it was public knowledge the sorts of torture and other ill-treatment that had been going on in US military and CIA custody in Iraq, Afghanistan, and elsewhere.<sup>665</sup> In any event, the sensitivity resulted

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<sup>659</sup> SSCI Executive Summary, page 160.

<sup>660</sup> ICRC Report on the treatment of fourteen ‘high value detainees’ in CIA custody. February 2007, *op. cit.*, page 26.

<sup>661</sup> USA: The assault on international law continues – another secret detainee transferred to Guantánamo, 17 March 2008, <http://www.amnesty.org/en/library/info/AMR51/021/2008/en>

<sup>662</sup> Four of the 14 detainees interviewed by the ICRC at Guantánamo in September 2006 said that they had been forced to defecate and urinate on themselves while shackled in the prolonged stress standing position and to “remain standing in their own bodily fluids”. ICRC Report on the treatment of fourteen ‘high value detainees’ in CIA custody. February 2007, *op. cit.*, page 12. The report was received by the US authorities three months before Muhammad Rahim was taken into custody.

<sup>663</sup> SSCI Executive Summary, page 163.

<sup>664</sup> See Memorandum for the Record. Meeting with National Security Adviser Rice in White House Situation Room, Re Interrogations and Detainee [redacted], John Mudd, Deputy Director, DCI Counterterrorist Center [date redacted] 2004. (“At varying points Rice indicated that any perceived disparity [between administration public statements on detainee treatment and the CIA programme] would be dealt with later, that there was no disparity, that the techniques were humane in her view”).

<sup>665</sup> USA: The threat of a bad example: Undermining international standards as ‘war on terror’ detentions continue, August 2003, <http://www.amnesty.org/en/library/info/AMR51/114/2003/en>; Human dignity denied, *op. cit.*, October 2004, <http://www.amnesty.org/en/library/info/AMR51/145/2004/en>; Guantánamo and beyond: The continuing pursuit of unchecked executive power, May 2005, <http://www.amnesty.org/en/library/info/AMR51/063/2005/en>; US detentions in Afghanistan: an aide-mémoire for continued action, June 2005, <http://www.amnesty.org/en/library/info/AMR51/093/2005/en>

in little change. According to an email to John Rizzo and Jose Rodriguez from a redacted sender, Secretary Rice said that she would not object to the programme if nudity was dropped from the CIA's list of seven proposed techniques – the other six were sleep deprivation, dietary manipulation, facial grasp, facial slap, abdominal slap, and the attention grab – to be used against detainees being subjected to enforced disappearance.<sup>666</sup>

### 3.8A MUHAMMAD RAHIM AL AFGHANI

According to the Senate Intelligence Committee, Muhammad Rahim was taken into custody in Pakistan on 25 June 2007, three days after the Rice briefing. On 3 July 2007, Acting CIA General Counsel John Rizzo informed Acting Assistant Attorney General Steven Bradbury that the CIA was expecting a “new guest” and needed a new legal opinion about the use of enhanced interrogation techniques on him, with the lawfulness of such use assessed against the provisions of the War Crimes Act (as amended by the MCA of 2006), the Detainee Treatment Act of 2005, and Common Article 3 of the Geneva Conventions.

Muhammad Rahim was rendered to Detention Site Brown, believed to be in Afghanistan.<sup>667</sup> The precise date in July 2007 of Muhammad Rahim's transfer to CIA custody is redacted from the summary report.<sup>668</sup> It appears to have taken place around 13 July, as the summary states that he remained in his cell for a week before being interrogated, as the interrogators waited for clearance to use “enhanced” techniques. For they had determined (apparently on the basis of a single “discussion” with the detainee upon his “arrival” at the secret facility) that he would be “uncooperative”.<sup>669</sup>

CIA Director Michael Hayden – who replaced Porter Goss in May 2006 – wrote to President Bush to request that he issue an “executive order interpreting the Geneva Conventions in a manner to allow the CIA to interrogate Rahim using the CIA's enhanced interrogation techniques”.<sup>670</sup> The Department of Justice provided a then secret memorandum for the CIA on 20 July 2007, signed by Stephen Bradbury, giving legal clearance for the techniques.<sup>671</sup>

Involved in the drafting process of this 79-page memorandum were the Offices of the Attorney General and Deputy Attorney General, the Criminal and National Security Divisions of the Department of Justice, the State Department, the National Security Council, and the CIA. The CIA had specifically asked whether six techniques could lawfully be used. The six techniques fell into two categories, “conditioning techniques” and “corrective techniques”. The two “conditioning” interrogation techniques were dietary manipulation and extended sleep deprivation (up to 96 hours continuous, and then restarted only after eight hours uninterrupted sleep). The detainee would be kept awake by the use of “physical restraints”, that is, by being shackled in a position that would prevent him from falling asleep. This could be in a standing position with hands shackled around shoulder height, or in a sitting position on a small stool of “insufficient width for him to keep his balance during rest”. Sleep deprivation would frequently be combined with “diapering”: that is, the detainee was made

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<sup>666</sup> SSCI Executive Summary, page 163.

<sup>667</sup> SSCI Executive Summary, page 163.

<sup>668</sup> SSCI Executive Summary, footnote 2388 (“Rahim entered CIA custody on July [redacted], 2007”).

<sup>669</sup> SSCI Executive summary, page 163.

<sup>670</sup> SSC Executive Summary, page 164.

<sup>671</sup> Memorandum for John A. Rizzo, Acting General Counsel, Central Intelligence Agency, from Steven G. Bradbury, Principal Deputy Assistant Attorney General, Re: Application of the War Crimes Act, the Detainee Treatment Act, and Common Article 3 of the Geneva Conventions to Certain Techniques That May Be Used by the CIA in the Interrogation of High Value al Qaeda Detainees, 20 July 2007, <http://www.justice.gov/sites/default/files/olc/legacy/2009/08/24/memo-warcrimesact.pdf>

to wear a diaper: “because releasing a detainee from the shackles to utilize toilet facilities would... interfere with the effectiveness of the technique, a detainee undergoing extended sleep deprivation frequently wears a disposable undergarment designed for adults with incontinence or enuresis.” The CIA had told the OLC that the agency particularly favoured the use of sleep deprivation, as it is used to bring the detainee to a “baseline state”.<sup>672</sup>

The OLC concluded that the CIA's use of the six techniques, singly or in combination, would not violate the War Crimes Act, the Detainee Treatment Act, or Common Article 3. The memo was provided to the CIA on 20 July 2007. President Bush issued his executive order on the same day, as requested by the CIA Director.<sup>673</sup> The very next day, 21 July 2007, the “enhanced interrogation” of this Muhammad Rahim began.

According to the Senate Committee, the interrogators first used the variety of authorized physical assaults – facial slap, abdominal slap, and facial hold. He was also subjected to “eight extensive sleep deprivation sessions” which included 104.5 hours of sleep deprivation over four days at the beginning of the interrogation period. After the detainee described having visual and auditory hallucinations, he was allowed eight hours of sleep, but was then subjected to another 62 hours of sleep deprivation after a psychologist decided that he had faked his symptoms. After another 13 hours without sleep, the technique was stopped as the authorized limit of 180 hours of sleep deprivation in a 30-day period had been reached. The following month, beginning on 20 August, he was subjected to 104 hours of sleep deprivation, and then between 28 August and 2 September 2007, he was subjected to three more sleep deprivation sessions of 32.5 hours, 12 hours and 12 hours.<sup>674</sup>

On 8 September 2007, CIA Director Hayden authorized another 60 days of detention, and soon afterwards the “enhanced interrogation” was suspended and Muhammad Rahim was “left in his cell with minimal contact with CIA personnel for approximately six weeks” – that is, another six weeks of incommunicado, secret detention in solitary confinement. His interrogation resumed on 2 November 2007, from which point he was subjected to an eighth session of sleep deprivation lasting 138.5 hours, finishing on 8 November.<sup>675</sup>

What this also reveals is that Muhammad Rahim al Afghani was the detainee whose name was redacted as the subject of two letters, dated 6 and 7 November 2007, transmitted between the OLC to the CIA, both signed by Principal Deputy Assistant Attorney General Steven Bradbury. Each gave legal approval for sleep deprivation to be extended.<sup>676</sup> During the sleep deprivation sessions, “Rahim was usually shackled in a standing position, wearing a diaper and a pair of shorts”. His interrogators “would provide Rahim with a cloth to further cover himself as an incentive to cooperate. On 27 July 2007, for example, he was provided a towel to “cover his torso” as a “subtle reward” when he showed some willingness to cooperate. During the entire period, Muhammad Rahim was also subjected to “dietary manipulation”, his diet “almost entirely limited to water and liquid Ensure meals”.<sup>677</sup>

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<sup>672</sup> *Ibid.*

<sup>673</sup> Executive Order 13440 of 20 July 2007. Interpretation of the Geneva Conventions Common Article 3 as Applied to a Program of Detention and Interrogation Operated by the Central Intelligence Agency, <http://www.fas.org/irp/offdocs/eo/eo-13440.htm>

<sup>674</sup> SSCI Executive Summary, footnote 1008.

<sup>675</sup> SSCI Executive Summary, page 166.

<sup>676</sup> Letter for Associate General Counsel, Central Intelligence Agency, from Steven Bradbury, Principal Deputy Assistant Attorney General, Office of Legal Counsel, 6 November 2007, <http://www.justice.gov/sites/default/files/olc/legacy/2009/08/24/memo-bradbury2007-2.pdf>; 7 November 2007, <http://www.justice.gov/sites/default/files/olc/legacy/2009/08/24/memo-bradbury2007-3.pdf>

<sup>677</sup> SSCI Executive Summary, pages 165-6.



The CIA continued to interrogate Muhammad Rahim on an intermittent basis after his last sleep deprivation session ended on 8 November 2007, until 9 December 2007 when questioning stopped for three weeks. Then in March 2008, after nine months of enforced disappearance Muhammad Rahim was taken by the CIA somewhere (details redacted), where another government (also redacted) took custody of him. That government promptly transferred him to the custody of another authority (redacted), at which point the CIA took him back into custody and rendered him to US military custody at Guantánamo.<sup>678</sup> This latter transfer was on 13 March 2008.<sup>679</sup> He had been held in CIA custody for 240-249 days.

In August 2007, Amnesty International said that when President Bush had publicly acknowledged the existence of the secret detention programme on 6 September 2006, he was, “in effect, admitting to having authorized enforced disappearance, a crime under international law.” The organization further stated that

“His executive order compounds the wrongdoing, and if the program receives detainees as before – with their fate and whereabouts concealed – President Bush will have re-authorized the practice of enforced disappearance.”<sup>680</sup>

Muhammad Rahim al Afghani was that detainee. According to the Senate Committee, he was the last detainee held in the CIA programme. Presidential support for the programme continued, however. On 8 March 2008, President Bush vetoed the Intelligence Authorization Act for Fiscal Year 2008, which sought to ban “enhanced interrogation techniques”, on the grounds that the legislation would end the CIA secret detention programme. He said he remained committed to a programme that “complies with our legal obligations and our basic values as a people”. Amnesty International suggested at the time that

“Perhaps the US administration is today working with the notion that if something is repeated often enough people may come to believe it. Deny enough times that waterboarding and other ‘enhanced’ interrogation techniques are torture, repeatedly call them ‘lawful’, reiterate at every possible opportunity that their use has ‘saved innocent lives’, and perhaps people may be persuaded that their government is on the right side of morality and legality.”<sup>681</sup>

The Obama administration has broken from the interrogation policies pursued by the USA during the Bush years. But questions remain as to whether this is a permanent break. Just as it was presidential orders that set the policy lead on detainee treatment in the years after 9/11, so far today also the policy has been set by presidential order. While interrogation policy now more closely approaches international law on detainee treatment, the question as to what happens when a president with a different approach takes office remains an open one. The door to US torture remains far from being firmly closed and bolted shut.

President Obama has made a number of proclamations on or around 26 June in a number of years of his presidency asserting the USA’s commitment to UNCAT and the struggle against torture. Notable by its absence has been any explicit reference by the President to UNCAT’s requirements on accountability for torture and other ill-treatment.<sup>682</sup>

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<sup>678</sup> SSCI Executive Summary, page 167.

<sup>679</sup> SSCI Executive Summary, footnote 2469.

<sup>680</sup> USA: Law and executive disorder: President gives green light to secret detention program, 17 August 2007, <http://www.amnesty.org/en/library/info/AMR51/135/2007/en>

<sup>681</sup> USA: Torture in the name of ‘civilization’: President Bush vetoes anti-torture legislation, 10 March 2008, <http://www.amnesty.org/en/library/info/AMR51/016/2008/en>

<sup>682</sup> 26 June 2014, <http://www.whitehouse.gov/the-press-office/2014/06/26/statement-press-secretary-international-day-support-victims-torture>; 26 June 2012, <http://www.whitehouse.gov/the-press->

## PART 4 – FAR FROM TRUTH AND JUSTICE

### 4.1 LIMITS OF SENATE INTELLIGENCE COMMITTEE LANDMARK

In 2005 Senator Carl Levin proposed an independent commission of inquiry into US detention policies and allegations of detainee abuse. What the Senate Intelligence Committee reveals is that the Levin proposal generated concern within the CIA, specifically that such a commission would lead to discovery of the videotapes of interrogations of Abu Zubaydah and Abd al Nashiri recorded during their period of secret detention in 2002 in Detention Site Green (Thailand).<sup>683</sup> These videotapes included recordings of water-boarding sessions.<sup>684</sup> In an email sent on 31 October 2005, CIA General Counsel John Rizzo wrote:

“Sen. Levin’s legislative proposal for a 9/11-type outside Commission to be established on detainees seems to be gaining some traction, which obviously would serve to surface the tapes’ existence... I think I need to be the skunk at the party again and see if the Director is willing to let us try one more time to get the right people downtown on board with the notion of our destroying the tapes”.<sup>685</sup>

A “senior CIA attorney” who had personally reviewed the tapes responded to Rizzo, “You are correct. The sooner we resolve this the better”. Someone in CTC’s legal office agreed by email that approaching the CIA Director<sup>686</sup> was a “good idea”, adding that commissions

“tend to make very broad document demands, which might call for these videotapes that should have been destroyed in the normal course of business two years ago”.<sup>687</sup>

The Levin proposal for a commission failed by some dozen votes on 8 November 2005. The interrogation videotapes were destroyed the following day.

The Senate Intelligence Committee’s review is a landmark work of oversight, and welcome for

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[office/2012/06/26/statement-press-secretary-international-day-support-victims-torture](http://www.whitehouse.gov/the-press-office/2012/06/26/statement-press-secretary-international-day-support-victims-torture); 24 June 2011, <http://www.whitehouse.gov/the-press-office/2011/06/24/statement-president-international-day-support-victims-torture>; 26 June 2010, <http://www.whitehouse.gov/the-press-office/statement-president-international-day-support-victims-torture>; 26 June 2009, <http://www.whitehouse.gov/the-press-office/Statement-by-President-Barack-Obama-on-United-Nations-International-Day-in-Support-of-Torture-Victims/>

<sup>683</sup> SSCI Executive Summary, page 443.

<sup>684</sup> The CIA Inspector General “examined a total of 92 videotapes, twelve of which recorded the use of EITs. Those twelve tapes included a total of 83 waterboard applications, the majority of which lasted less than ten seconds... On one of the interrogation videotapes, CIA OIG investigators noted that a [redacted] interrogator verbally threatened Abu Zubaydah by stating, ‘If one child dies in America, and I find out you knew something about it, I will personally cut your mother’s throat’.” OPR report, *op. cit.*, page 83.

<sup>685</sup> SSCI Executive Summary, footnote 2488.

<sup>686</sup> A “short backgrounder” email sent to CIA Executive Director Kyle Foggo, at 5.48pm on 10 November, not cited by the SSCI, but which had earlier come into the public domain, provided an update on the destruction of the “Abu Zubaydah tapes”. It stated: “Jose raised with Porter and myself and [redacted] after G-7 and explained that he (jose) felt it was extremely important to destroy the tapes and that if there was any heat he would take it. (PG laughed and said that actually, it would be he, PG, who would take the heat). PG, however, agreed with the decision. As Jose said, the heat from destroying is nothing compared to what it would be if the tapes ever got into public domain – he said that out of context, they would make us look terrible; it would be ‘devastating’ to us.” (Jose refers to José Rodriguez and Porter and PG to Porter Goss, CIA Director at that time).

<sup>687</sup> *Ibid.*

that, but it is no commission of inquiry. It does not nearly satisfy the USA's international obligations on truth, accountability and remedy.

The Committee devoted a substantial focus in its review on whether the secret detention programme was "effective" in obtaining intelligence – something that does not alter the unlawfulness of the programme or excuse the crimes that were committed in it. It also addressed whether the CIA was less than honest or forthcoming with policy-makers, Department of Justice lawyers, or legislators about the operational details of the programme during its lifetime. Again, oversight after the event should not be conducted to the exclusion of full accountability and redress.<sup>688</sup>

The Senate Intelligence Committee's examination of the CIA programme was never aimed at accountability in the sense of meeting the USA's obligations under international law to ensure justice for the crimes under international law committed in the programme. This was not a criminal investigation, or one that aimed to feed into any such investigation, but a review of documentation undertaken with a forward-looking orientation. When the review was announced in March 2009, then CIA Director Leon Panetta emphasized that the Chair and Vice Chair of the Senate Select Committee on Intelligence had assured him that its goal was to inform "future policy decisions", rather than "to punish those who followed guidance from the Department of Justice."<sup>689</sup>

Amnesty International first called for a full independent commission of inquiry into the USA's post-9/11 rendition, detention and interrogation policies and practices in May 2004.<sup>690</sup> It renewed the call in late 2008 following the election of President Obama.<sup>691</sup> In his fifth month in office, President Obama rejected a commission of inquiry on the basis that it would "distract" from future challenges and because "our existing democratic institutions are strong enough to deliver accountability".<sup>692</sup> Accountability remains absent six years later. His response to the Senate Committee's report so far indicates that his future-leaning orientation comes at the expense of any resolve to see accountability for these past crimes.

#### **4.1A WHAT ABOUT 'THE DARK SIDE'? RENDITION TO 'LIAISON' CUSTODY**

Five days after the 9/11 attacks, then Vice President Cheney suggested that the USA's response would include working on "the dark side" of intelligence gathering. "A lot of what needs to be done here", he said "will have to be done quietly, without any discussion, using sources and methods that are available to our intelligence agencies". This would involve the USA having "on the payroll some very unsavoury characters", and "we need to make certain

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<sup>688</sup> The SSCI describes its mission thus: "The Committee was created by the Senate in 1976 to 'oversee and make continuing studies of the intelligence activities and programs of the United States Government,' to 'submit to the Senate appropriate proposals for legislation and report to the Senate concerning such intelligence activities and programs,' and to 'provide vigilant legislative oversight over the intelligence activities of the United States to assure that such activities are in conformity with the Constitution and laws of the United States'." <http://www.intelligence.senate.gov/about.html>

<sup>689</sup> Statement to Employees by Director of the Central Intelligence Agency Leon E. Panetta on the Senate Review of CIA's Interrogation Program, 5 March 2009, <https://www.cia.gov/news-information/press-releases-statements/senate-review-of-cia-interrogation-program.html>; and on the New Review Group on Rendition, Detention, and Interrogation, 16 March 2009, <https://www.cia.gov/news-information/press-releases-statements/new-review-group-on-rendition-detention-and-interrogation.html>

<sup>690</sup> See USA: Call for commission of inquiry into 'war on terror' detentions, 18 May 2004, <http://www.amnesty.org/en/library/info/AMR51/088/2004/en>.

<sup>691</sup> USA: Investigation, prosecution, remedy: Accountability for human rights violations in the 'war on terror', 4 December 2008, <http://www.amnesty.org/en/library/info/AMR51/151/2008/en>

<sup>692</sup> Remarks by the President on National Security, 21 May 2009, op. cit.

that we have not tied the hands, if you will, of our intelligence communities”.<sup>693</sup>

What the former Vice-President was alluding to was what the USA calls “foreign liaison services”, allied or co-opted intelligence personnel from other countries. One of the sections of the Memorandum of Notification signed by President Bush for the CIA on 17 September 2001 was reportedly headed “Heavily Subsidize Arab Liaison Services”. Under the proposal, the CIA would “buy” certain foreign intelligence services, which would act as surrogates for the USA.<sup>694</sup> The summary reveals in a footnote, in relation to (presumably) Afghanistan, that

“by June 2002 the CIA had taken custody of five detainees who were captured outside of Country [redacted] and placed these CIA detainees in Country [redacted] detention facilities. The detainees were held at the Country [redacted] facilities at the request of the CIA and the CIA had unlimited access to them”.<sup>695</sup>

As noted in Part 2, the Senate Intelligence Committee reveals that payments of “a few hundred bucks a month” were also made to “officers of Country [redacted]”, believed to be Afghanistan, to hold detainees who “for one reason or another” could not be held in the CIA black site there, but who “still need[ed] to be kept isolated and held in secret detention”.<sup>696</sup> The CIA was paying “liaison” agents to commit human rights violations. The email in question was sent on 14 March 2003.

The CIA Director reported in 2004 that throughout 2003 the agency had “continued to expand critical liaison relationships to counter al-Qa’ida and other terrorist organizations”, and among other things had “employed foreign liaison services to assist with interrogation of DoD [US Department of Defense] detainees”.<sup>697</sup> In 2010, the CIA asserted that although the secret detention program had been “discontinued”, among the many details that remained classified was the “assistance of foreign liaison services in any aspect of the program”.<sup>698</sup> This remains the case today.

An account written by a former CIA interrogator has asserted that, in a case in which he was involved – that of a detainee “rendered” from “a country in the Middle East”, abducted “as he walked along a sidewalk” – from time to time the detainee was “sent away” by the liaison service. The former interrogator writes that “I did not know what liaison did to [the detainee] during these interludes. But liaison controlled the asset, and the case, and allowed us to interrogate [the detainee], whom they were holding for us. This was their soil, we were there on sufferance, and they had ultimate control, so long as we kept him in their country”. The detainee, the CIA interrogator reported, was subsequently rendered to a CIA “black site”.<sup>699</sup>

As the Senate Intelligence Committee itself points out, the scope of its review was focussed on individuals in CIA custody – and so it did not look at “CIA renditions of individuals who were not ultimately detained by the CIA, CIA interrogation of detainees in US military custody, or the treatment of detainees in the custody of foreign governments”.<sup>700</sup> In other

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<sup>693</sup> NBC, Meet the Press with Tim Russert, 16 September 2001.

<sup>694</sup> Bob Woodward, *Bush at War*, Pocket Books (2003), pages 76-77 and 97.

<sup>695</sup> SSCI Executive Summary, footnote 235.

<sup>696</sup> SSCI Executive Summary, page 61.

<sup>697</sup> Director of Central Intelligence Annual Report for the United States Intelligence Community, 2003, July 2004. (Section: “Support to the War on Terrorism and Homeland Security”).

<sup>698</sup> *ACLU v DOD et al*, US District Court, Southern District of New York, Declaration of Wendy M. Hilton, Information Review Officer for Detainee-Related matters, Central Intelligence Agency, 8 January 2010.

<sup>699</sup> Glenn L. Carle, *The Interrogator: an education*, Nation Books (2011), pages 72 and 114.

<sup>700</sup> SSCI Executive Summary, footnote 5.

words, although the Committee has published a list of 119 names of individuals it says were in CIA custody, a full list of those interrogated by, transferred by, or subjected to detention at the behest of the CIA would be far longer. The Committee acknowledges this, and notes the example of Hamid Aich, who is not included on the list of CIA detainees although the CIA had sought to put him in “Country [redacted] custody where the CIA could still debrief him”.<sup>701</sup>

Another individual not included on the Senate Committee’s list of 119 CIA detainees is **Walid Muhammad Shahir Muhammad al-Qadasi**, who spoke to Amnesty International in 2004 shortly after he was taken from Guantánamo to two more years of detention without trial in Yemen. In May 2004 Amnesty International sent President Bush a letter in which it included allegations made by Walid al-Qadasi, who recalled his time in 2002 in a secret detention facility in Kabul, interrogated by US agents. He said that the first night of interrogation had been coined by the detainees as “the black night”. He told Amnesty International that:

“They cut our clothes with scissors, left us naked and took photos of us, before they gave us Afghan clothes to wear. They then handcuffed our hands behind our backs, blindfolded us and started interrogating us...They threatened me with death, accusing me of belonging to al-Qa’ida. They put us in an underground cell measuring approximately two metres by three metres. There were ten of us in the cell. We spent three months in the cell”.

Walid al-Qadasi said that the detainees had been subjected to sleep deprivation, including by the use of loud music.<sup>702</sup> While Walid al-Qadasi is not listed in the summary report (either because of poor CIA record-keeping, or because he was in an Afghan detention facility to which the CIA had unfettered access rather than being in a unilateral CIA facility), **Khaled el-Masri** is listed, even though he appears to have been held in the same facility, albeit two years later. As already noted, this German citizen had been arrested in Macedonia in December 2003 and rendered to Afghanistan, where he spent some four months in a prison he said was run by Afghans but controlled by US officials. The Senate Intelligence Committee asserts that Khaled el-Masri was rendered not to Detention Site Cobalt, but to “a Country [redacted] facility used by the CIA for detention purposes”.<sup>703</sup>

Khaled el-Masri drew a detailed floor map of his Afghan facility; the map was immediately recognizable to Walid al-Qadasi when shown it by Amnesty International in 2006 after he was released in Yemen.<sup>704</sup> Amnesty International was the first organization to interview both of these detainees, and after it had done so in the case of Khaled el-Masri, it wrote to the Acting Director of the CIA, John McLaughlin, in August 2004:

“Of his period in Afghanistan, Khaled El Masri states that he believes the prison was in Kabul. He said that the guards were all Afghans. Although held in different cells, he states that he was always held in solitary confinement for 24 hours a day apart from when he was taken to the toilet three times a day. He says there were other detainees held at the prison, Afghans as well as individuals from Pakistan, Saudi Arabia, Tanzania,

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<sup>701</sup> SSCI Executive Summary, footnote 35. It further states that Hamid Aich was “transferred to Country [redacted] custody on April [redacted], 2003, and transferred to [redacted][another country’s] custody more than a month later”.

<sup>702</sup> An open letter to President George W. Bush on the question of torture and cruel, inhuman or degrading treatment, 7 May 2004, <http://www.amnesty.org/en/library/info/AMR51/078/2004/en>

<sup>703</sup> SSCI Executive Summary, page 128. Cobalt was intended to be “owned and operated by the Country [redacted] government”, but was “controlled and overseen by the CIA and its officers from the day it became operational in September 2002”. Footnote 250.

<sup>704</sup> USA: Below the radar: Secret flights to torture and 'disappearance', 4 April 2006, <http://www.amnesty.org/en/library/info/AMR51/051/2006/en>

and Yemen. Other inmates told him that 10 minutes away there was another prison with about 200 detainees, including 10 Arab prisoners who “belonged” to the United States. He was told that the International Committee of the Red Cross visited this prison each month, but that the US agents took the Arabs to another location when such visits occurred. Prisoners who were held there apparently told of being kept in dark cells with loud music playing all the time.”

A rare reference in the Senate Committee’s summary report to possible US complicity in torture or other ill-treatment of detainees in “foreign government” custody after they were rendered there by the CIA or before they were rendered into CIA custody comes in the case of **Khalid Sheikh Mohammed**. The summary states that he was held in Pakistani custody “from the time of his capture on March 1, 2003, to March [redacted], 2003”. According to CIA records, Khalid Sheikh Mohammed was “subjected to some sleep deprivation” at this time, a period during which he was “interrogated by CIA officers and Pakistani officials”.<sup>705</sup> In fact, the US authorities have known of this allegation, and more, for more than eight years. In its report transmitted to them on 14 February 2007, the ICRC noted that

“during the two days [Khalid Sheikh Mohammed] was detained at Rawalpindi he was questioned by a CIA agent who allegedly punched him several times in the stomach, chest and face. The same agent reportedly threw him on the floor and trod on his face three times. He was not allowed to sleep during his detention in Pakistan”.<sup>706</sup>

Another of the individuals on the list of 119 is **Musa’ab Omar al Madhwani**. No details on his case appear in the summary, but elsewhere he has alleged that he was whipped, beaten and threatened in Pakistani custody and his allegations indicate that US personnel were aware of this at the time.<sup>707</sup> Such allegations were not part of the Senate Committee’s review.

When the detainee in question was rendered by the CIA to another government for interrogation and detention, and was then transferred back to CIA custody, not only does the Senate Intelligence Committee not address the time in foreign government custody, but it does not count that period towards the length of time the Committee considered that the detainee was in CIA custody.<sup>708</sup>

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<sup>705</sup> SSCI Executive Summary, page 81.

<sup>706</sup> ICRC Report on the treatment of fourteen ‘high value detainees’ in CIA custody. February 2007, op. cit., pages 33-34.

<sup>707</sup> According to an appeal brief, after allegedly being subjected to torture and other ill-treatment by Pakistani authorities, “Al-Madhwani was eventually brought into an office full of Americans. When his blindfold and hood were removed, the Americans could see that he was bleeding all over. The Americans took Al-Madhwani’s photograph and fingerprints. Americans then interrogated Al Madhwani, who agreed to whatever they asked. Al-Madhwani was returned to the Pakistanis. Later the Americans took Al-Madhwani for a long interrogation session... Under the coercion of the Pakistanis, Al-Madhwani admitted everything the Americans wanted him to admit.” After five days in Pakistani custody, Al-Madhwani was taken by bus to an airport and “he and others were handed over to Americans... Al-Madhwani was sent to the ‘Dark Prison’, where he was received by Americans.” *Al-Madhwani v. Obama*, Brief for petitioner-appellant Musa’ab Al-Madhwani, In the US Court of Appeals for the DC Circuit, 15 November 2010.

<sup>708</sup> Some detainees were never in CIA custody, even if the CIA had access to them or the information that they were said to be providing. The SSCI notes the case of Malaysian national Masran bin Arshad, and that he had been arrested in January 2002. It does not say where he was arrested, although a leaked Guantánamo document indicates that it was in Sri Lanka. The SSCI notes that “After bin Arshad was rendered from [redacted] [Country 1] to [redacted] [Country 2] for questioning, [redacted] [Country 2 officials] acquired a ‘negligible amount of intelligence’ from bin Arshad”. It was said that “[redacted] [country 1 authorities] indicated that [Masran bin Arshad] was the toughest subject they had ever interrogated, including [redacted] terrorists”. Masran bin Arshad “was eventually [redacted] to [redacted] [Country 3].” Country 3 is likely to be Malaysia, where a leaked US embassy cable from Kuala Lumpur reporting on “growing political pressure against the ISA” (the Internal Security Act, a law allowing for detention without trial), listed Masran bin Arshad as having been released from ISA detention in May

This under-reporting ignores what, for example, was said in the ICRC report of its interviews with 14 former CIA detainees transferred to Guantánamo in September 2006. The ICRC noted that not only were “US agents” present at the time of the arrest of some of them, but in “nearly all cases” interrogation was conducted by US agents. Their transfer out of the country of arrest took place within a few days to a month, and “during their subsequent detention, detainees sometimes reported the presence of non-US personnel (believed to be personnel of the country in which they were held), even though the overall control of the facility appeared to remain under the control of the US authorities”.<sup>709</sup>

UK resident **Binyam Mohamed** is recorded in the summary as having been in CIA custody for between 110 and 119 days. Yet as a US federal judge would note in 2009 his ordeal in or at the behest of the USA lasted for “two long years”. The Senate Intelligence Committee says nothing about his treatment, just the fact of his various transfers.

“After being detained in Pakistan,... Binyam Mohammad was rendered by the CIA [redacted] on July [redacted], 2002, where he was held by the [redacted] government. On January [redacted], 2004, Binyam Mohammad was rendered to CIA custody. On May [redacted], 2004, Binyam Mohammad was transferred to the custody of the US military in Bagram, Afghanistan. On September 21, 2004, he was transferred to Guantanamo Bay, Cuba. Binyam Mohammad was then transferred from US military custody to the United Kingdom on February 23, 2009.”<sup>710</sup>

He claimed that he was subjected to torture and other ill-treatment in Pakistan, Morocco and the Dark Prison. All this was known prior to release of the Senate Committee’s summary. Indeed in 2009, five years before the summary was published, a federal judge wrote:

“Binyam Mohamed’s trauma lasted for two long years. During that time, he was physically and psychologically tortured. His genitals were mutilated. He was deprived of sleep and food. He was summarily transported from one foreign prison to another. Captors held him in stress positions for days at a time. He was forced to listen to piercingly loud music and the screams of other prisoners while locked in a pitch-black cell. All the while, he was forced to inculcate himself and others in various plots to imperil Americans. The Government does not dispute this evidence.

“[E]ven though the identity of the individual interrogators changed (from nameless Pakistanis, to Moroccans, to Americans, and to Special Agent [redacted], there is no question that throughout his ordeal Binyam Mohamed was being held at the behest of the United States. Captors changed the sites of his detention, and frequently changed his location within each detention facility. He was shuttled from country to country, and interrogated and beaten without having access to counsel until arriving at Guantánamo Bay...”<sup>711</sup>

Yet in the summary, the name of the country to which Binyam Mohammed was rendered by the CIA from Pakistan in July 2002 (Morocco) has been redacted, as has the identity of the government (Moroccan) in whose custody he was. It confirms, although the specific dates are redacted, that in January 2004 he was “rendered to CIA custody” and in May 2004 was “transferred to the custody of the US military in Bagram, Afghanistan”. As his transfer to Guantánamo did not involve the CIA, the precise date, 21 September 2004, is given.<sup>712</sup>

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2008. See SSCI Executive Summary, page 252 and footnote 1416.

<sup>709</sup> ICRC Report on the treatment of fourteen ‘high value detainees’ in CIA custody. 2007, *op. cit.*

<sup>710</sup> SSCI Executive Summary, page 238.

<sup>711</sup> *Mohammed v. Obama*, Memorandum opinion, US District Court for DC, 19 November 2009.

<sup>712</sup> SSCI Executive Summary, page 238-9.

His treatment in Morocco – to and from which he was taken by the CIA and where he was “held at the behest of the United States” – is not part of the Senate Committee’s review. Yet such transfers by US agents were conducted under presidential authority.<sup>713</sup>

**Mohamedou Ould Slahi** is a name that does not appear in the summary, despite apparent CIA involvement in his case, and how what the CIA was up to in relation to secret detentions influenced military interrogations at the base (as illustrated above in the Mohamed al Qahtani case described in Part 1). Mohamedou Ould Slahi was arrested in Mauritania in November 2001 “at the request of the United States”.<sup>714</sup> After a week he was subjected to rendition to Jordan, “at the direction of the US” according to his lawyers.<sup>715</sup> After eight months in Jordan, he was transferred to Afghanistan, possibly aboard a CIA-leased jet that made that journey on 19 July 2002, taken to Bagram and thereafter transferred to Guantánamo on 4 August 2002. In addition to being subjected to enforced disappearance, Mohamedou Slahi was allegedly subjected to torture or other cruel, inhuman or degrading treatment in Jordan, in Bagram, and in Guantánamo, as well as during his transfers.<sup>716</sup>

The treatment of detainees during transfers to and between CIA black sites is relegated to a single footnote in the summary and with, again, reference to the still classified Volume III of the full Senate Intelligence Committee report:

“There are also few CIA records detailing the rendition process for detainees and their transportation to or between detention sites. CIA records do include detainee comments on their rendition experiences and photographs of detainees in the process of being transported. Based on a review of the photographs, detainees transported by the CIA by aircraft were typically hooded with their hands and feet shackled. The detainees wore large headsets to eliminate their ability to hear, and these headsets were typically affixed to a detainee’s head with duct tape that ran the circumference of the detainee’s head. CIA detainees were placed in diapers and not permitted to use the lavatory on the aircraft. Depending on the aircraft, detainees were either strapped into seats during the flights, or laid down and strapped to the floor of the plane horizontally like cargo. See CIA photographs of renditions among CIA materials provided to the Committee pursuant

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<sup>713</sup> In 2002 the US Department of Justice advised that “the President has full discretion to transfer al Qaeda and Taliban prisoners captured overseas and detained outside the territorial jurisdiction of the United States to third countries”. Neither the Geneva Conventions nor UNCAT posed any obstacle to such transfers. The memo added that “to fully shield our personnel from criminal liability, it is important that the United States not enter into an agreement with a foreign country, explicitly or implicitly, to transfer a detainee to that country for the purpose of having the individual tortured... So long as the United States does not intend for a detainee to be tortured post-transfer, however, no criminal liability will attach to a transfer, even if the foreign country receiving the detainee does torture him... Thus, so long as the United States personnel who agree to transfer a detainee do not intend to effectuate the criminal object that is forbidden by the [USA’s] criminal torture statute – here, the torturing of the detainee – they cannot be prosecuted under the statute”. The President’s power as Commander in Chief to transfer captured terrorists to the control and custody of foreign nations. Memorandum for William J. Haynes, General Counsel, Department of Defense, from Jay S. Bybee, Assistant Attorney General, Office of Legal Counsel, US Department of Justice, 13 March 2002. While this memo was directed at the Pentagon, it is clear that the CIA was held to operate under even looser standards than the US military, under the Memorandum of Notification signed by President Bush on 17 September 2001.

<sup>714</sup> FBI Inspector General Report, *op. cit.* As a transliteration, both Mohammedou Salahi and Mohamedou Slahi have been used for this detainee in court and other documents in English.

<sup>715</sup> *Salahi v. Obama*. Brief for appellee, In the US Court of Appeals for the DC Circuit, 9 June 2010. The US government has never publicly admitted that it rendered Mohamedou Ould Slahi to Jordan.

<sup>716</sup> See USA: Guantánamo: A decade of damage to human rights, 16 December 2011, <http://www.amnesty.org/en/library/info/AMR51/103/2011/en>; USA: Rendition – torture – trial? The case of Guantánamo detainee Mohamedou Ould Slahi, 20 September 2006, <http://www.amnesty.org/en/library/info/AMR51/149/2006/en>.



to the Committee's document requests, as well as CIA detainee reviews in Volume III for additional information on the transport of CIA detainees."<sup>717</sup>

The manner in which detainees were treated during transfers by the CIA itself amounted to torture or other ill-treatment, as was made clear in the ICRC report following its interviews of the 14 CIA detainees to Guantánamo in 2006. For example, the Senate Intelligence Committee indicates that **Khallad bin Attash** was rendered to CIA custody about two weeks after he was taken into Pakistan custody at the end of April 2003. This is consistent with what he told the ICRC at Guantánamo in 2006, when he said that he had been rendered to Afghanistan in mid-May 2003 and after three weeks there, taken to "another place":

"After approximately three weeks in Afghanistan I was transferred to another place. I was blindfolded and earphones were placed over my ears. I was transported in a sitting position, shackled by my ankles and by the wrists with my hands in front of my body. I think that the flight lasted probably more than eight hours. On this occasion the transfer was done using a military plane. If I shifted my position too much during the journey somebody hit me by hand on the head".<sup>718</sup>

In 2012 the European Court of Human Rights specifically found that **Khaled El-Masri** had been subjected to torture during his transfer to CIA custody and the agency's preparation of the detainee for rendition.<sup>719</sup> Many such transfers took place over the years – with some detainees being subjected to multiple transfers during their enforced disappearance.

The Senate Intelligence Committee noted CIA claims that it had conducted four investigations into detainee allegations that they had been "subjected to abuse in transit from CIA custody to US military custody at Guantánamo Bay".<sup>720</sup> No detail or dates are provided, and the absence of any reference to investigations into any other transfers apart from these four suggests there were none, despite the fact that they systematically breached international law on the treatment of detainees.

Although the summary reveals that the phenomenon of military personnel hiding detainees for the CIA continued in 2005 and 2006, it only examines those cases where the detainees ended up in exclusive CIA custody. One "ghost detainee" passed over by the Senate Committee was **Manadel al-Jamadi**, who died in US custody in Abu Ghraib prison in Iraq on 4 November 2003. He had just been brought into the prison by US Navy Seals and the CIA (which had already interrogated him at a detention facility at Baghdad International Airport), but was kept off the prison register. He was subsequently taken to a shower room for interrogation, and on the orders of the CIA interrogator, who "did not want the prisoner to sit down", was secured to the window bars with "leg irons".<sup>721</sup> The CIA personnel then resumed the interrogation. Later al-Jamadi was found "slouched in the corner on his knees", till shackled to the window, with no pulse. The cause of death was "homicide".

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<sup>717</sup> SSCI Executive Summary, footnote 318.

<sup>718</sup> ICRC Report on the treatment of fourteen 'high value detainees' in CIA custody. 2007, op. cit., p32.

<sup>719</sup> The case of El-Masri v. Former Yugoslav Republic of Macedonia, 13 December 2012.

<sup>720</sup> SSCI Executive Summary, footnote 608.

<sup>721</sup> Materials at [http://www.thetorturedatabase.org/files/foia\\_subsite/pdfs/DODDOACID009482.pdf](http://www.thetorturedatabase.org/files/foia_subsite/pdfs/DODDOACID009482.pdf)

### **SOME LIMITS OF THE SENATE INTELLIGENCE COMMITTEE REVIEW**

*The Senate Select Committee on Intelligence review is not (and does not pretend to be) the thorough, independent and impartial investigation required of the USA into the human rights violations, including crimes under international law, committed in and around the secret detention programme. While release of the full Senate Intelligence Committee report is required, its publication alone would not fulfil the USA's obligations on truth, accountability and remedy. Since publication of the summary report, the USA has not taken any action to meet these obligations.*

- The Committee did not assess the secret detention programme against the USA's international human rights obligations. There is, for example, an almost total absence of any reference to the fact that most, if not all of the detainees were subjected to enforced disappearance, a crime under international law, regardless of the conditions of detention, including interrogation techniques, they faced.
- On interrogation the summary maintains a general focus on techniques the USA defined as "enhanced" rather than assessing whether, regardless of euphemisms, treatment was lawful and humane. The case of Musa'ab al-Madhwani – whose torture allegations had already been found credible by a US federal judge, but who the Committee lists as not having been subjected to "enhanced interrogation techniques" – is a case in point. Without access to Volume III of the full report, however, it is not possible to see what the Committee found on that case. In any event, the USA has failed to properly investigate his allegations.
- The review seriously overlooks the extent of the CIA's involvement in and the USA's responsibility for the unlawful treatment of detainees. The Committee did "not review CIA renditions of individuals who were not ultimately detained by the CIA, CIA interrogation of detainees in US military custody, or the treatment of detainees in the custody of foreign governments". This excludes scores if not hundreds of detainees, including those whose unlawful custody was apparently conducted by "liaison" partners at the behest of the USA, for example, in the cases of Binyam Mohamed and Hassan bin Attash.
- Secret detainee transfers were an integral part of the programme and themselves violated international law, yet treatment of individuals during such transfers, including to CIA custody, is relegated to a single footnote. Without seeing Volume III of the full report, it is not possible to say how limited the review was, but the USA remains in breach of its accountability obligations on this issue. The Committee notes the paucity of CIA records "detailing the rendition process for detainees and their transportation to or between detention sites." Interviews of detainees and personnel involved would be necessary to fill this unexplained gap.
- The Committee conducted no interviews of those held in the CIA detention programme, even those still in US custody today. These individuals were victims of enforced disappearance and other forms of arbitrary detention, as well as of conditions of detention and transfer that violated the prohibition of torture and other cruel, inhuman or degrading treatment. The fact that the Committee had access to third party accounts – such as the 2007 report of the ICRC following its interviews with 14 Guantánamo detainees previously held in CIA custody – in no way fills this gap.
- The Committee was unable to or did not conduct any interviews of those involved in authorizing or carrying out the programme, or of foreign officials and personnel involved at secret sites and during transfers. The fact that it had access to transcripts of interviews of some CIA officials conducted by the CIA Office of Inspector General or others, while helpful, is not enough. The authorities must do more.
- The Committee's leadership made clear from the outset that its review was not aimed at accountability for past violations, but only at informing future policy. In particular, the review did not examine the exact role and involvement of senior US government personnel, up to and including the President, in a programme in which crimes under international law and other human rights violations were committed.
- The Committee relied upon the CIA to provide it with documentation about its covert detention activities. Given the recognition within the CIA leadership of the time that the activities in the detention programme were potentially criminal, and exhortation to CIA personnel not to discuss matters of legality in written communications, there can be little confidence that the CIA materials provided by the agency fully or accurately described those activities.
- Nearly 10,000 CIA documents (documents, not pages) were withheld by the Obama administration on grounds of "executive privilege". Concerns can legitimately be raised about such an extensive non-disclosure being possibly one additional aspect of the administration's refusal to ensure accountability and its prior invocation of state secrecy to block remedy for human rights violations.
- For the sort of criteria a full independent commission of inquiry should meet, see USA: Investigation, prosecution, remedy: Accountability for human rights violations in the 'war on terror', 4 December 2008, <http://www.amnesty.org/en/library/info/AMR51/151/2008/en>

#### 4.1B BASED ON CIA DOCUMENTS PROVIDED BY CIA, NO INTERVIEWS

The Senate Intelligence Committee noted that its report was “based primarily on a review of [CIA] documents” provided to it by the CIA. It stressed that it was given access to more than six million pages of documentation by the CIA. While that was a huge quantity of material for the Committee to trawl through, it is also the case that this was a programme lasting more than six years, involved more than a hundred detainees, many legal memorandums, medical and psychological reports, intelligence outputs, NSC or CIA briefings, emails, letters, transcripts and so on. In that regard, six million pages might seem not so many.

The Senate Committee notes that determining how many detainees were held in CIA custody was a tall order and its finding that there were 119 is a “conservative” number.<sup>722</sup> It also points to inadequate record keeping by the CIA, or indeed by the Committee itself. For example, as the CIA continued to brief the Committee’s leadership about “aspects” of the secret detention programme in 2004, “there are no transcripts of these briefings”.<sup>723</sup>

Inadequate record keeping also emphasises the gap left by the absence of any interviews by the Senate Committee. Indeed, a year after the CIA began detention operations at Detention Site Cobalt in Afghanistan, a cable to CIA HQ from the CIA Station in the country admitted to having made “the unsettling discovery that we are holding a number of detainees about whom we know very little”. The majority of the 44 CIA detainees then being held in Afghanistan had “not been debriefed for months and, in some cases, for over a year”. All of them had been held in solitary confinement.<sup>724</sup> The absence of detainee interviews for detail is also likely to be felt by the fact that as time went on, CIA interrogators provided less reporting on interrogations. According to the CIA, this “decline in reporting over time on the use of enhanced techniques... actually reflects the maturation of the program”.<sup>725</sup>

The summary notes that between September and December 2002, 16 detainees were held at Detention Site Cobalt. However, the extent of their “exposure to the CIA’s enhanced interrogation techniques such as sleep deprivation and nudity cannot be determined based on the lack of details in CIA cables and related documents”.<sup>726</sup> More generally,

“the CIA maintained such poor records of its detainees in Country [Redacted] during this period that the CIA remains unable to determine the number and identity of the individuals it detained. The full details of the CIA interrogations remains largely unknown, as Detention Site Cobalt was later found not to have reported multiple uses of sleep deprivation, required standing, loud music, sensory deprivation, extended isolation, reduced quantity and quality of food, nudity, and ‘rough treatment’ of CIA detainees”.<sup>727</sup>

In specific cases at Detention Site Cobalt, record keeping was poor. For example, ‘**Abd al-Rahim al-Nashiri**’ was taken there after about a month in the custody of “a foreign government”.<sup>728</sup> He was held at the secret facility in Afghanistan for several days in November 2002 before being transferred to Detention Site Green (believed to be Thailand)

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<sup>722</sup> SSCI Executive Summary, footnote 25.

<sup>723</sup> SSCI Executive Summary, page 441.

<sup>724</sup> SSCI Executive Summary, pages 110-111.

<sup>725</sup> SSCI Executive Summary, footnote 317.

<sup>726</sup> SSCI Executive Summary, footnote 610.

<sup>727</sup> SSCI Executive Summary, page 51.

<sup>728</sup> Dubai, United Arab Emirates. See ICRC Report on the treatment of fourteen ‘high value detainees’ in CIA custody. February 2007, *op. cit.*

and to Detention Site Blue (Poland) in December 2002.<sup>729</sup> According to the Senate Committee, “Al-Nashiri’s time at Detention Site Cobalt is not well documented in CIA records”, although standard operating procedure at the time he was there included “total light deprivation, loud continuous music, isolation, and dietary manipulation”.<sup>730</sup>

Perhaps the Committee should have pointed to Abd al-Nashiri’s own allegations about his treatment during this period of poor CIA record keeping, even if the Committee itself did not interview him or anyone involved. At Guantánamo in October 2006, he had told the ICRC that for at least two days in secret detention in Afghanistan, he had continuously been subjected to “prolonged stress standing”, his wrists shackled above his head, while naked.<sup>731</sup>

The Senate Committee did not interview CIA personnel, although it did review reports and transcripts of previous interviews of CIA personnel by the CIA. It did not interview officials from other governments which hosted secret CIA facilities or transferred detainees to the CIA. It did not interview detainees or former detainees. It did not interview members of the former administration, including former President Bush.<sup>732</sup>

#### 4.1C EMPHASIS ON ‘ENHANCED’ INTERROGATION TECHNIQUES

The Senate Committee maintains a particular focus on “enhanced interrogation techniques” without paying equivalent attention to any “standard” techniques and conditions of detention which were incompatible with the international prohibition of torture and other ill-treatment. So when the summary notes at one point that “no CIA detainees were subjected to the CIA’s enhanced interrogation techniques between the issuance of the December 2004 memorandum and May 2005, when the OLC opined on the application of the federal prohibition on torture to the techniques”,<sup>733</sup> it should not be taken as suggesting that the detainees enjoyed a five-month respite while the US authorities took stock following publication of the Abu Ghraib photographs. They were still being subjected to unlawful conditions of detention, and possibly “standard” interrogation techniques which contravened international standards. They were also being subjected to enforced disappearance.

Detainee number 11 on the list of 119 “CIA detainees from 2002-2008” is “Musab Umar Ali al-Mudwani”. This is Yemeni national **Musa’ab Omar al Madhwani**, who remains in US custody today, at Guantánamo, without charge or trial more than 12 years after he was first transferred from Pakistani to CIA custody. There is no information on his case in the text of the executive summary. His name only appears in the list in Appendix 2, as an individual against whom the CIA did **not** use “enhanced interrogation techniques”.

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<sup>729</sup> SSCI Executive Summary, pages 66-67.

<sup>730</sup> SSCI Executive Summary, footnote 338.

<sup>731</sup> ICRC Report on the treatment of fourteen ‘high value detainees’ in CIA custody. February 2007, op. cit., page 11.

<sup>732</sup> “While we could not conduct new interviews of individuals, we did utilize transcripts or summaries of interviews of those directly engaged in detention and interrogation operations. These interviews occurred at the time the program was operational and covered the exact topics we would have asked about had we conducted interviews ourselves. Those interview reports and transcripts included, but were not limited to, the following: George Tenet, director of the CIA when the agency took custody and interrogated the majority of its detainees; Jose Rodriguez, director of the CIA Counterterrorism Center, a key player in the program; CIA General Counsel Scott Muller; CIA Deputy Director of Operations James Pavitt; CIA Acting General Counsel John Rizzo; CIA Deputy Director John McLaughlin; and a variety of interrogators, lawyers, medical personnel, senior counterterrorism analysts and managers of the detention and interrogation program.” Senator Feinstein: Fact Check, 10 December 2014, <http://www.feinstein.senate.gov/public/index.cfm/press-releases?ID=6a8f9372-a8a4-425c-9f79-32f30a9dd4f9>

<sup>733</sup> SSCI Executive Summary, footnote 1069.

Is the Senate Intelligence Committee mistaken, or was he “merely” subjected to “standard” interrogation techniques and conditions of detention? In 2010, a federal judge found “credible” his detailed allegations of torture and other ill-treatment.<sup>734</sup> After five days in Pakistani custody following his arrest on 11 September 2002 in an apartment in Karachi, Musa’ab al Madhwani was handed over to US custody and flown to Afghanistan. He says he was taken to a secret CIA-operated facility in or near Kabul, where he was held for about a month. His time in CIA custody is recorded as having lasted between 30 and 39 days.<sup>735</sup>

According to what had earlier been presented in federal court, in the CIA secret facility, “he suffered the worst period of torture and interrogation, treatment so terrible that it made him miss his time with the Pakistani forces”.<sup>736</sup> He was held “in darkness so complete that he could not see his hand in front of his face”; “not allowed to sleep for more than a few minutes at a time”; “was fed only about every 2½ days, in very small portions”; and “twenty-four hours a day, obnoxious music blared at a deafening volume”. For most of his detention at this facility, he has said that he was

“suspended from a wall by one hand, feet shackled, in a stress position that allowed him neither to sit nor stand fully. Al-Madhwani was shackled in this way night and day, without relief except during interrogation sessions. During these sessions, Al-Madhwani’s hands were shackled to the floor... On one occasion, two men took Al-Madhwani, hooded and shackled, stripped him naked, and attached electrical wires to his genitals. As the men discussed whether to turn on the electricity, Al-Madhwani began screaming with fear. The men laughed and then repeatedly drenched Al-Madhwani in water so cold that Al-Madhwani could not move his fingers or his mouth...

Day after day, Al-Madhwani hung from the wall by his hand, in complete and total darkness, loud music blaring. Disoriented, he heard noises of mice and doors and thought they were ghosts. Thinking that he must be hallucinating, Al-Madhwani tried to calm himself by imagining mountains. Then he would hear a small noise, and as he turned toward it, five or more men would jump on him, remove his chains from the wall, and beat, kick, and throw him to the ground. Pointing a gun to Al-Madhwani’s head, guards threatened him with the worst acts, including electrocution. For Al-Madhwani, these surprise attacks were the worst part of the Dark Prison, making him feel like his heart was tearing apart or his heart and brain were being extracted from his body.”<sup>737</sup>

In a hearing in federal court in 2009, the judge noted that the administration had “made no attempt” to refute Al Madhwani’s allegations. He added that the allegations were corroborated by “uncontested government medical records describing his debilitating physical and medical condition during those approximately 40 days in Pakistan and Afghanistan, confirming his claims of these coercive conditions.” The judge described his testimony about his treatment as “credible” and that “the United States was involved in the prisons where he was held, and believed to have orchestrated the interrogation techniques, the harsh ones to which he was subject”.

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<sup>734</sup> *Anam v. Obama*, Memorandum opinion, US District Court for DC, 6 January 2010. For further information see USA: Still failing human rights in the name of global ‘war’, 20 January 2010, <http://www.amnesty.org/en/library/info/AMR51/006/2010/en>

<sup>735</sup> The SSCI summary originally recorded this as 40-49 days, but this was revised in early 2015.

<sup>736</sup> *Al-Madhwani v. Obama*, Brief for petitioner-appellant Musa’ab Al-Madhwani, In the US Court of Appeals for the DC Circuit, 15 November 2010.

<sup>737</sup> *Ibid.*

In the unclassified version of its brief to the Court of Appeals in January 2011, the Obama administration noted that the District Court had “acknowledg[ed] Madhwani’s claims of severe mistreatment in September and October 2002 prior to his transfer to Guantánamo”.<sup>738</sup> The US administration has failed to take the necessary investigative steps.

#### 4.1D FOCUS ON ‘EFFECTIVENESS’ DISTRACTS FROM HUMAN RIGHTS

The USA’s descent into enforced disappearance and torture as part of its response to the 9/11 attacks is something of a textbook case, both in how it began and in the government’s continuing failure to ensure accountability and redress. The Commander in Chief of the Armed Forces and effective head of the intelligence agency he authorized to carry out detentions engaged the country in what he labelled a “global war on terror” as well as a “monumental struggle of good versus evil”.<sup>739</sup> In a central memorandum, he betrayed a position that there were detainees who were “not legally entitled” to humane treatment.

In its first major report on torture published four decades ago, Amnesty International wrote:

“Those who consciously justify torture...rely essentially on the philosophic argument of a lesser evil for a greater good. They reinforce this with an appeal to the doctrine of necessity – the existential situation forces them to make a choice between two evils... The usual justification posits a situation where the ‘good’ people and the ‘good’ values are being threatened by persons who do not respect ‘the rules of the game’, but use ruthless, barbaric, and illegal means to achieve their ‘evil’ ends.”<sup>740</sup>

In similar vein, Amnesty International’s second global report on torture in 1984 stated that:

“Apologists for torture generally concentrate on the classical argument of expediency: the authorities are obliged to defeat terrorists or insurgents who have put innocent lives at risk and who endanger both civil society and the state itself... The accumulated evidence also gives a clear picture of the ‘preconditions’ for torture... Incommunicado detention, secret detention and ‘disappearance’ increase the latitude of security agents over the lives and wellbeing of people in custody.”<sup>741</sup>

In its 1973 report, the organization had pointed to contemporaneous justifications of torture:

“The most effective presentation of the argument justifying torture today is given in the form of a concrete dilemma. The classic case is the French general in Algiers who greeted visiting dignitaries from the metropolis with: ‘Gentlemen, we have in our hands a man who has planted a bomb somewhere out in that city. It will go off within four hours. Would you not use every means to save the lives of innocent people?’”<sup>742</sup>

Four decades later, on 6 September 2006, President George W. Bush confirmed publicly for

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<sup>738</sup> *Al Madhwani v. Obama*, Brief for respondents-appellees, In the US Court of Appeals for the DC Circuit, December 2010.

<sup>739</sup> Remarks by the President in Photo Opportunity with the National Security Team, 12 September 2001. In an address to troops in Alaska on 16 February 2002, President Bush described the “war on terror” as “this incredibly important crusade to defend freedom”. At the West Point Military Academy in New York on 1 June 2002 he said that: “We are in a conflict between good and evil, and America will call evil by its name”. At the US Army War College in Pennsylvania on 24 May 2004, he said: “Our terrorist enemies...seek control of every person, and mind, and soul.”

<sup>740</sup> Amnesty International, Report on Torture, 1973, <http://www.amnesty.org/en/library/info/ACT40/OO1/1973/en>

<sup>741</sup> Torture in the Eighties. Amnesty International Publications, 1984, pages 4-6. <http://www.amnesty.org/en/library/info/ACT40/OO1/1984/en>

<sup>742</sup> Amnesty International, Report on Torture, 1973, pages 19-20.

the first time that the CIA had been using secret detention and interrogation using “alternative procedures”, and gave the case of Abu Zubaydah as an example:

“In addition to the terrorists held at Guantánamo, a small number of suspected terrorist leaders and operatives captured during the war have been held and questioned outside the United States, in a separate program operated by the Central Intelligence Agency... These are dangerous men with unparalleled knowledge about terrorist networks and their plans of new attacks. The security of our Nation and the lives of our citizens depend on our ability to learn what these terrorists know....

We knew that Zubaydah had more information that could save innocent lives, but he stopped talking. As his questioning proceeded, it became clear that he had received training on how to resist interrogation. And so the CIA used an alternative set of procedures... I want to be absolutely clear with our people and the world: The United States does not torture. It's against our laws, and it's against our values. I have not authorized it, and I will not authorize it.”

In his memoirs published a few years later, President Bush asserted that he had personally authorized the use of waterboarding against Abu Zubaydah and Khaled Sheikh Mohammed. Waterboarding constitutes torture, as both Attorney General Eric Holder and President Obama have acknowledged.<sup>743</sup>

For its part, the Senate Intelligence Committee quotes the CIA's Deputy Director of Operations, James Pavitt, from a briefing to the Committee held on 7 November 2001:

“We're not going to engage in torture. But, that said, how do I deal with somebody I know may know right now that there is a nuclear weapon somewhere in the United States that is going to be detonated tomorrow, and I've got the guy who I know built it and hid it? I don't know the answer to that”.<sup>744</sup>

In March 2003, Detention Site Blue “reportedly received a phone call from CIA Headquarters, conveying the views of the CIA's Deputy Director of Operations James Pavitt on the interrogation of KSM [Khaled Sheikh Mohammed]”. The summary notes that Pavitt later told the CIA Inspector General that he “did not recall specifically ordering that a detainee be waterboarded right away,” but that he “did not discount that possibility.”<sup>745</sup> KSM was subsequently waterboarded at least 183 times, and his “reporting” included “significant fabricated information”.<sup>746</sup> With this focus on effectiveness, the Senate Committee does not state that the detainee was tortured, or that torture is a crime, or that the USA has an

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<sup>743</sup> “Waterboarding is torture.” News Conference by President Obama, JW Marriott Ihilani Resort & Spa, Kapolei, Hawaii, 14 November 2011, transcript available at <http://www.whitehouse.gov/the-press-office/2011/11/14/news-conference-president-obama>. Also, US Attorney General Eric Holder at the Jewish Council for Public Affairs Plenum, Washington, DC, 2 March 2009 (“water-boarding is torture”). See also Evan Wallach, ‘Drop by drop: Forgetting the history of water torture in US courts’, Columbia Journal of Transnational Law, Volume 45 (2006-2007), pages 468 to 506. Judgment of 26 July 2010, the Trial Chamber of the Extraordinary Chambers in the Courts of Cambodia (“ECCC”) in the case against Kiang Guek Eav (alias ‘Duch’)(“Case 001”), <http://www.eccc.gov.kh/en/documents/court/judgement-case-001> paragraphs 241 and 360.

<sup>744</sup> SSCI Executive Summary, footnote 2447.

<sup>745</sup> SSCI Executive Summary, page 85. The SSCI also reveals that in an interview on 21 September 2003 with the CIA Office of Inspector General, James Pavitt described possible public revelations about the secret detention programme as “the CIA's worst nightmare”. Footnote 727.

<sup>746</sup> SSCI Executive Summary, page 85. As on other cases, the dissenting SSCI views argue that waterboarding led to intelligence (“CIA, FBI, and Department of Justice documents show that information obtained from KSM after he was waterboarded led directly to [Lyman] Faris's arrest and was key in his prosecution.”)

obligation under international law to bring those responsible to justice.

More than 20 pages of the summary is devoted to the question of whether intelligence gained from the CIA secret detention and interrogation programme led to the locating (and then subjection to what may have been an extrajudicial execution by US forces in Pakistan in 2011) of Osama bin Laden.<sup>747</sup> Indeed, the overarching focus of this review was whether the programme was effective in obtaining actionable intelligence and whether the CIA had misrepresented operational details of the programme or its intelligence outputs. This begs the question, if the Committee had found that torture and enforced disappearance had been effective would it have been less critical of the programme? For it would have made it no less unlawful and ensuring accountability no less of an obligation on the USA. Justice and redress for criminal conduct, now how effective that criminal conduct was, is what matters.

In its report on torture published in 1973, Amnesty International wrote:

“One argument that has been presented in the past and is often heard today is that torture is inefficient... This line of argumentation based on inefficiency is totally inadmissible. To place the debate on such grounds is to give the argument away; in effect it means that if it can be shown to be efficient it is permissible”.<sup>748</sup>

The Senate Intelligence Committee’s focus on whether the secret detention programme was effective or whether the CIA was economical with the truth means that the struggle for real and enduring human rights change threatens to be more drawn out than if the Committee had at least recognized the USA’s obligations under international law to ensure accountability and redress. These obligations adhere to all branches of the US government, whether or not they were directly implicated in the original violations.

That this focus threatens to turn the review into a political football rather than a driver for real human rights change is illustrated in the minority (that is, dissenting) views filed separately from the main summary. There is the unedifying spectacle of Senators effectively arguing that the statistics show a better intelligence return as a result of a programme of enforced disappearance and torture than the majority report claims. For example, the minority Senators point to the majority’s conclusion that “seven of the 39 CIA detainees known to have been subjected to enhanced interrogation produced no intelligence while in CIA custody”. Instead of addressing the human rights violations, including crimes under international law, committed in the programme, the battle becomes one of statistics, with the minority challenging this conclusion with:

“This 18 per cent ‘failure rate’ statistic may encourage some readers to jump to the hasty judgment that enhanced interrogation techniques were not an effective means of acquiring intelligence, because they failed to produce intelligence from every detainee against whom they were used. Such a judgment seems unreasonable, given that, in most human endeavours, 100 percent success rates are pretty rare, especially in complex processes like the ones involved here. If the Study’s statistic is true, then it is just as true that 32 of the 39 detainees subjected to enhanced interrogation techniques did produce some intelligence while in CIA custody.”<sup>749</sup>

In any event, the minority asserts, the “true test of effectiveness” should be one not of

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<sup>747</sup> See USA: A reflection on justice, 16 May 2011, <http://www.amnesty.org/en/library/info/AMR51/038/2011/en>

<sup>748</sup> Amnesty International, Report on Torture, 1973, <http://www.amnesty.org/en/library/info/ACT40/001/1973/en>

<sup>749</sup> SSCI Executive Summary, Minority views, available at <http://www.intelligence.senate.gov/study2014.html>



quantity of intelligence, but quality. Page after page of the minority report challenges the majority's assertions about effectiveness, while raising no concerns about the fact that the CIA was engaging in enforced disappearance, torture and other ill-treatment.

The Senate Committee minority attack on the majority's claim that **Abu Zubaydah** provided intelligence to FBI interrogators prior to CIA involvement at the secret facility and that "enhanced" techniques played no role in obtaining this information is another illustration. The minority proceed not to question the legality of this alleged use of sleep deprivation, but to endorse it. Abu Zubaydah, they assert, was deprived of sleep for "a total of 126.5 hours (5.27 days) over a 136 hours (5.6 day) period" during mid-April 2002. They point to the use of sensory deprivation, dietary manipulation and nudity during this period. The minority berates the majority's conclusion for giving the "false impression that enhanced interrogation techniques played no role in obtaining important threat information." The summary report itself footnotes reference to this controversy, stating that "the sleep deprivation and nudity implemented" against Abu Zubaydah in April 2002 after he was returned from hospital "differed from how sleep deprivation and nudity were implemented after August 2002".<sup>750</sup>

Again, the fact that this detainee was subjected to enforced disappearance and to torture and other ill-treatment is overlooked in this debate or division over effectiveness. The question of accountability for crimes under international law does not get a look in.

#### 4.1E NO REFERENCE TO A SYSTEMATIC CRIME, ENFORCED DISAPPEARANCE

Enforced disappearances are crimes under international law. A rare recognition that what the CIA programme involved was enforced disappearance came from Condoleezza Rice, who from 2001 to 2005, the main years of the detention programme, was National Security Advisor. In her 2011 memoirs she recalled that by 2006, by which time she was Secretary of State, she believed "the time had come to acknowledge that we were holding Khalid Sheikh Mohammed and other notorious terrorists. We couldn't allow them to remain 'disappeared' any longer."<sup>751</sup>

Except for a passing reference to a Department of Defence viewpoint in a CIA document from September 2004 that the USA should not be in the business of "causing people to disappear", the Senate Committee entirely fails to address the fact that most or all those held in CIA custody were subjected to enforced disappearance.<sup>752</sup> Moreover, the Committee underreports on this issue in terms of the length of time individuals were in secret custody.

From what can be gleaned through the redactions, about four dozen of the 119 detainees were held in secret custody by the CIA for more than a year. The real picture is worse as the actual time that many of these detainees were subjected to enforced disappearance was longer if they were already being held in secret detention by a "foreign government" prior to their rendition to CIA custody. As already noted, **Ramzi bin al Shibh** was rendered to "foreign government" custody for five months in 2002 or 2003 prior to being taken into secret CIA custody. As also noted, the original version of the summary published on 9 December 2014 recorded **Hassan bin Attash** as having been in CIA custody for between 590 and 599 days. It has subsequently revised this to 120-129 days because of a "technical error". This "error" appears to have been that the Senate Intelligence Committee originally recorded the more than a year that Hassan bin Attash says he was in custody in Jordan as having been in CIA custody, but it has now excluded this period of enforced disappearance even if he was taken

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<sup>750</sup> SSCI Executive Summary, footnote 1315 ("Rather than being placed in a stress position during sleep deprivation, Abu Zubaydah was kept awake by being questioned nearly non-stop by CIA and FBI interrogators". See also footnote 1335.

<sup>751</sup> No Higher Honor. A memoir of my years in Washington. Condoleezza Rice, Crown Publishers, New York (2011), page 502.

<sup>752</sup> SSCI Executive Summary, page 121.

there by the CIA and held at its behest. As also noted above, **Binyam Mohamed** was held for “two long years” in secret detention, including the 110-119 days the summary lists him as having been in CIA custody. Yet those other 600-plus days in detention were, according to the federal judge cited above, conducted at the behest of the USA.

Time in secret CIA custody	No. of detainees
Under a month <sup>753</sup>	9
Three months or more	87
Six months or more	67
A year or more	48
Two years or more	24
Three years or more	13
Four years or more	1

#### 4.1F LITTLE OR NO REFERENCE TO USA'S INTERNATIONAL OBLIGATIONS

References to international law in the Senate Committee summary are notable by their rarity. The summary points to a CIA email, dated 28 March 2002, the day Abu Zubaydah was taken into detention in Pakistan. The email from a lawyer in the CIA's Counterterrorism Center had the title “Torture update” and listed “without commentary, the restrictions on interrogations in the Geneva Conventions, the Convention Against Torture, and the criminal prohibition on torture”.<sup>754</sup> Years later, the US authorities were preparing for “anticipated foreign reactions” to public confirmation of the existence of the secret detention programme (eventually made in a speech by President Bush on 6 September 2006). The Senate Committee apparently points to a foreign intelligence agency and country when it footnotes that “[redacted] had begun raising legal and policy concerns related to support and assistance to the CIA in rendition, detention, and interrogation operations in March 2005. [Redacted] officers indicated that they believed the International Covenant on Civil and Political Rights and the [redacted]<sup>755</sup> prohibited [redacted] from aiding or assisting in these CIA operations”.<sup>756</sup>

The terms of reference for the Senate Committee's review of the secret detention programme made no mention of international law or the USA's international obligations. In terms of “compliance”, the Committee restricted itself to establishing if the programme complied with “(a) the authorizations in any relevant Presidential Findings and Memoranda of Notification; (b) all relevant policy and legal guidance provided by the CIA; and (c) the opinions issued by the OLC in relation to the EITs”.

This was surely a missed opportunity for a body in Congress to bring international law into the equation. It is a particularly stark omission if one considers that it was the Senate, together with the President at the time, which ratified the International Covenant on Civil and Political Rights (ICCPR) and the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) with a series of “reservations, understandings

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<sup>753</sup> Including Gul Rahman who died after less than three weeks in custody in the Salt Pit, Afghanistan in 2002. The use of redactions in the SSCI summary report make any precise calculations impossible

<sup>754</sup> SSCI Executive Summary, page 22.

<sup>755</sup> Possibly bilateral or regional extradition treaty.

<sup>756</sup> SSCI Executive Summary, footnote 924.

and declarations” which effectively said that the US Constitution, not these treaties, were the deciding factor in protecting detainees from torture or other ill-treatment.

That these RUDs had an impact on the treatment of detainees in what the USA called the “war on terror” is clear from the various materials that have emerged over the years. At a meeting in Guantánamo on 2 October 2002, the Chief Counsel in the CIA’s CTC, the office responsible for overseeing the secret detention programme said among other things that,

“Under the Torture Convention, torture has been prohibited by international law, but the language of the statutes is written vaguely.... The Torture Convention prohibits torture and cruel, inhumane and degrading treatment. The US did not sign up on the second part... This gives us more license to use more controversial techniques.”<sup>757</sup>

Amnesty International has repeatedly pointed out that the USA’s reservation to the ICCPR article 7 and UNCAT article 16 prohibition of cruel, inhuman or degrading treatment – in which the USA holds that it considers itself only bound to this prohibition to the extent that it is deemed to match US constitutional protections – riddled the various legal memorandums on interrogations provided to the CIA and Pentagon by the Department of Justice under the Bush administration.<sup>758</sup> Just before the Senate Committee issued its summary, the UN Committee Against Torture issued its findings on the USA’s compliance with UNCAT. It said:

“the Committee is dismayed that the State party’s reservation to article 16 of the Convention features in various declassified memoranda, which contain legal interpretations of the extraterritorial applicability of United States obligations under the Convention, issued by the Department of Justice Office of Legal Counsel between 2001 and 2009, as part of deeply flawed legal arguments used to advise that interrogation techniques, which amounted to torture, could be authorized and used lawfully. While noting that those memoranda were revoked by Presidential Executive Order 13491 to the extent of their inconsistency with that order, the Committee remains concerned that the State party has not yet withdrawn its reservation to article 16 which could permit interpretations incompatible with the absolute prohibition of torture and ill-treatment.”

Even now, and despite such treaty body findings, the Obama administration continues to assert that the USA’s reservations, including to the Convention against Torture, are harmless:

“We do not believe that any reservations, understandings, and declarations accompanying our ratification of international instruments undermine our obligations, or the treaty’s object or purpose.”<sup>759</sup>

The secret detention programme violated a range of international instruments, as treaty monitoring bodies and other UN experts have made clear. For example,

- May 2006 – The UN Committee against Torture called on the USA to ensure that: “no one is detained in any secret detention facility under its de facto effective control. Detaining persons in such conditions constitutes, per se, a violation of the Convention. The State party should investigate and disclose the existence of any

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<sup>757</sup> Counter Resistance Strategy Meeting Minutes, 2 October 2002. Quotes are paraphrased in these minutes. Minutes available within those made available by Senate Armed Services Committee at <http://levin.senate.gov/imo/media/doc/supporting/2008/Documents.SASC.061708.pdf>

<sup>758</sup> See also, for example, Letter to Senator Patrick Leahy from General Counsel of the US Department of Defense, William Haynes, dated 25 July 2003, asserting detainee treatment consistent with the reservation to Article 16. This letter was written was “fully coordinated with CIA and DoJ” (Memorandum for National Security Advisor from Director of Central Intelligence. Reaffirmation of the Central Intelligence Agency’s Interrogation Program, 3 July 2003).

<sup>759</sup> Report of the USA to the UN High Commissioner for Human Rights for the Universal Periodic Review, 6 February 2015, Annex 4, Section 10, <http://www.state.gov/j/drl/upr/2015/237250.htm>

such facilities and the authority under which they have been established and the manner in which detainees are treated. The State party should publicly condemn any policy of secret detention." The Committee also pointed to the question of enforced disappearance, and expressed regret at the USA's view that "such acts do not constitute a form of torture to be regrettable". It called 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, as this practice constitutes, per se, a violation of the Convention."<sup>760</sup>

- July 2006 – The UN Human Rights Committee called on the USA to "immediately cease its practice of secret detention and close all secret detention facilities", bring all interrogation techniques into conformity with "the international understanding of the scope of the prohibition contained in article 7 of the Covenant", and to conduct "prompt and independent investigations into all allegations concerning suspicious deaths, torture or cruel, inhuman or degrading treatment or punishment inflicted by its personnel (including commanders) as well as contract employees, in detention facilities in Guantanamo Bay, Afghanistan, Iraq and other overseas locations" and to "ensure that those responsible are prosecuted and punished in accordance with the gravity of the crime."<sup>761</sup>

The USA is required by international law to respect and ensure human rights, to thoroughly investigate evidence of violation of rights, such as those which occurred during the CIA secret detention programme, and to bring perpetrators to justice, no matter their level of office or former level of office. The obligation to take such steps derives in part from the USA's obligations under international law. The USA has been party to the ICCPR since 1992 and to the UNCAT since 1994. Under these treaties:

- Torture and other forms of cruel, inhuman or degrading treatment or punishment is prohibited in all circumstances.
- All suspected violations must be promptly, thoroughly and effectively investigated through independent and impartial bodies.<sup>762</sup>
- Where torture or other ill-treatment or enforced disappearance are revealed, states must ensure that "those responsible are brought to justice".<sup>763</sup> This includes not only those who directly perpetrated the acts, but also those who encouraged, ordered or tolerated them.<sup>764</sup> States may not relieve those responsible for such violations from personal responsibility through general amnesties, legal immunities or indemnities or other similar measures. Impediments such as immunities arising from official statutes, defences of obedience to superior orders or unreasonably short periods of statutory limitation must accordingly be removed.<sup>765</sup>
- UNCAT specifically requires that each state ensure that "all acts of torture",<sup>766</sup> any

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<sup>760</sup> Conclusions and recommendations of the Committee Against Torture: United States of America. UN Doc.: CAT/C/USA/CO/2, 25 July 2006.

<sup>761</sup> UN Doc.: CCPR/C/USA/CO/3/Rev.1, 18 December 2006, paras 12-14.

<sup>762</sup> Human Rights Committee, General Comment no. 31 (2004), para. 15. See also General Comments no. 7 (1982) and 20 (1992). UNCAT, articles 12 and 13.

<sup>763</sup> Human Rights Committee, General Comment no. 31 para. 18.

<sup>764</sup> Human Rights Committee, General Comment no. 20 (1992), para. 13. UNCAT, articles 1 and 4. Committee against Torture, General Comment no. 2 (2008), para. 26.

<sup>765</sup> Human Rights Committee, General Comment no. 31 para. 18; Committee against Torture, General Comment no. 2 para 5.

<sup>766</sup> Torture is defined in article 1 of the treaty as "any act by which severe pain or suffering, whether

attempt to commit torture, and any “act by any person which constitutes complicity or participation in torture” are offences under its criminal law.<sup>767</sup> Any state party to UNCAT where a person alleged to have committed any of these offences (anywhere in the world) is found must “submit the case to its competent authorities for the purpose of prosecution” unless it extradites him or her to another state for prosecution.<sup>768</sup> The UNCAT expressly precludes defences such as “exceptional circumstances”, superior orders, or public authority from ever being capable of being invoked in justification of acts of torture.<sup>769</sup>

Victims of violations have the right under international law to effective access to remedy and reparation. The struggle against impunity is linked to this too. In its General Comment on article 14 of UNCAT issued in 2012, for example, the UN Committee against Torture stated:

“When impunity is allowed by law or exists de facto, it bars victims from seeking full redress as it allows the violators to go unpunished and denies victims full assurance of their rights under article 14”.<sup>770</sup>

The Committee against Torture affirmed that “under no circumstances may arguments of national security be used to deny redress for victims”.<sup>771</sup> International law requires the USA to provide the victims of violations with remedies that are not only available in law, but are accessible and effective in practice.<sup>772</sup> Victims are entitled to equal and effective access to justice; adequate, effective and prompt reparation for harm suffered; and access to relevant information concerning violations and reparation mechanisms. Full and effective reparation includes restitution, compensation, rehabilitation, satisfaction and non-repetition guarantees.

In addition, there is a collective and individual right to the truth about violations. The United Nations, among others, has formally recognised “the importance of respecting and ensuring the right to the truth so as to contribute to ending impunity and to promote and protect human rights”, referring in part to “the right of victims of gross violations of human rights and serious violations of international humanitarian law, and their families and society as a whole, to know the truth regarding such violations, to the fullest extent practicable, in particular, the identity of the perpetrators, the causes and facts of such violations, and the circumstances under which they occurred”.<sup>773</sup>

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physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity”.

<sup>767</sup> UNCAT article 4.

<sup>768</sup> UNCAT articles 5-7.

<sup>769</sup> UNCAT article 2; Committee against Torture, General Comment no. 2 (2008), para. 5.

<sup>770</sup> UN Doc.: CAT/C/GC/3, Committee against Torture, General Comment 3, Implementation of article 14 by States parties. 13 December 2012, para. 42. Article 14 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.”

<sup>771</sup> *Ibid.*

<sup>772</sup> See UN General Assembly, “Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law”, Resolution A/RES/60/147 (21 March 2006); ICCPR, article 2(3); Human Rights Committee, General Comment no. 31 (2004), paras. 15 & 16; UNCAT, article 14; Committee against Torture, *Dzemajl v Yugoslavia* (161/2000), 21 Nov. 2002, para. 9.6.

<sup>773</sup> UN Human Rights Council, res. 9/11 ‘Right to the truth’, A/HRC/RES/9/11, 24 September 2008,

## 4.2 WHERE WAS CONGRESS?

On 16 March 2006 – almost four years after Abu Zubaydah was taken into CIA custody and the CIA secret detention programme began in earnest – then CIA Director Porter Goss briefed the full Senate Select Committee on Intelligence about the secret detention programme. The summary asserts that Goss “did not provide the locations of the CIA’s detention facilities, or a list or briefing on the CIA’s enhanced interrogation techniques”.<sup>774</sup> By then, of course, there was much in the public domain about the sort of techniques, including waterboarding that the CIA was using. The summary acknowledges this, and footnotes that one of the Committee’s members had asked the CIA Director whether the CIA had undertaken a “technique by technique” analysis of the effectiveness of the programme. Director Goss had responded that the difficulty with any such analysis was that the techniques were used “in combination”, while adding that “waterboarding is not used in conjunction with anything else”.<sup>775</sup> The summary condemns the CIA Director’s response as inaccurate – waterboarding, for example, was used in conjunction with other techniques such as sleep deprivation.

The Senate Committee goes on to disclose that on 16 November 2006, Porter Goss’s successor, Michael Hayden, briefed it on CIA detentions and interrogations. The summary again asserts that the CIA Director provided “inaccurate information”, including on the CIA’s use of dietary manipulation and nudity, and the effects of sleep deprivation.<sup>776</sup> The summary recalls that Director Hayden had briefed the Committee on the case of the “CIA’s newest detainee”, Abd al-Hadi al-Iraqi, “who was not subjected to the CIA’s enhanced interrogation techniques”. The CIA Director’s focus on this case, it said, prevented “what was expected to be an in-depth discussion of the CIA’s enhanced interrogation techniques”.<sup>777</sup>

Abd al-Hadi al-Iraqi was at that point in the first month of what would become six months of enforced disappearance, held incommunicado in (presumably) solitary confinement, and repeatedly interrogated in a secret CIA facility (presumably Detention Site Brown in Afghanistan). His treatment flouted international law, whether or not he was subjected to “enhanced” interrogation, and whether or not the CIA Director was less than forthcoming about the precise details of his or other cases.

While this Senate Committee review of the CIA programme is a welcome act of oversight, it should not be ignored that for many years Congress itself systematically failed to address what became increasingly obvious – that the USA had embarked upon a programme of secret detention. Even without any information about the sort of interrogations that were being used, legislators should have met their obligations under international law to work to close the programme down and bring the detentions and any abuses into the open.

As a UN expert study on secret detention affirmed in 2010,

“Secret detention is irreconcilable with international human rights law and international humanitarian law. It amounts to a manifold human rights violation that cannot be justified under any circumstances”<sup>778</sup>

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para. 1 and preamble; see also Human Rights Commission, res. 2005/66 ‘Right to the truth’, E/EN.4/RES/2005/66, 20 April 2005.

<sup>774</sup> SSCI Executive Summary, pages 444-445.

<sup>775</sup> SSCI Executive Summary, footnote 2493.

<sup>776</sup> SSCI Executive Summary, page 447.

<sup>777</sup> SSCI Executive Summary, page 448.

<sup>778</sup> UN experts issue extensive global study on secret detention linked to counter-terrorism 26 January 2010, (with link to full report)

Where were legislators during the lifetime of the programme? The Senate Intelligence Committee concludes that the CIA “actively avoided or impeded congressional oversight of the program”, including by:

- Not briefing the Committee’s leadership on “enhanced interrogation techniques” until September 2002, “after the techniques had been approved and used”.<sup>779</sup>
- Withholding from the Committee information about the locations of detention facilities.
- Restricting access to information about the programme from members of the Committee until 6 September 2006, when President Bush publicly confirmed the existence of the programme for the first time.

Human rights organizations and others were raising concerns about detainee abuse and secret detentions and renditions from early 2002.<sup>780</sup>

Under international law, internal laws or structure of government may not be invoked to justify a country’s failure to meet its international obligations.<sup>781</sup> Just as it is not a legitimate excuse for the executive to blame the legislature for the fact that the Guantánamo detention facility is still open five years after the date by which the current President said it would be closed down, it is no excuse for the legislature to say that this was an executive programme of detention about which the legislature was kept too much in the dark. It knew enough to know that the USA was violating international law. For example, the fact that the administration did not tell oversight committee members where the CIA was holding detainees was an admission in itself that the agency was engaged in secret detention and possible enforced disappearance – a crime under international law.

This is not to deny that individual legislators had concerns, or that they faced obstacles in taking action on those concerns. The summary, for example, notes that on 4 September 2002 the CIA had briefed the leadership of the House Permanent Select Committee on Intelligence (HPSCI) on the use of “enhanced” interrogation techniques in the secret detention programme. Two days later, someone at the CTC Legal office of the CIA (their name and position redacted),

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<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=9777&LangID=E>

<sup>779</sup> The SSCI reports that “according to CIA records, on September 27, 2002, the CIA briefed the chairman and the vice chairman of the [SSCI]. Senators Graham and Shelby, as well as the Committee staff directors, on Abu Zubaydah’s interrogation. The CIA’s memorandum of the briefing indicates that the chairman and vice chairman were briefed on the ‘enhanced interrogation techniques that had been employed’.” SSCI Executive Summary, footnote 216. The SSCI also reports that “on September 4, 2003, CIA records indicate that CIA officials may have provided [SSCI] Chairman Roberts, Vice Chairman Rockefeller, and their staff directors a briefing regarding the Administration’s reaffirmation of the program. Neither the CIA nor the Committee has a contemporaneous report on the content of the briefing or any confirmation that the briefing occurred.” SSCI Executive Summary, page 119.

<sup>780</sup> E.g., Memorandum to the US Government on the rights of people in US custody in Afghanistan and Guantánamo Bay, 14 April 2002, <http://www.amnesty.org/en/library/info/AMR51/053/2002/en>

<sup>781</sup> E.g., See Human Rights Committee General Comment No. 31, The Nature of the General Legal Obligation Imposed on States Parties to the [International] Covenant [on Civil and Political Rights], March 2004, para. 4 (“All branches of government (executive, legislative and judicial), and other public or governmental authorities, at whatever level - national, regional or local – are in a position to engage the responsibility of the State Party. The executive branch that usually represents the State Party internationally, including before the Committee, may not point to the fact that an action incompatible with the provisions of the Covenant was carried out by another branch of government as a means of seeking to relieve the State Party from responsibility for the action and consequent incompatibility. This understanding flows directly from the principle contained in article 27 of the Vienna Convention on the Law of Treaties, according to which a State Party ‘may not invoke the provisions of its internal law as justification for its failure to perform a treaty’.”)

“excised from a draft memorandum memorializing the briefing indications that the HPSCI leadership questioned the legality of the program by deleting the sentence: ‘HPSCI attendees also questioned the legality of those techniques if other countries would use them’.”<sup>782</sup>

Congress did pass legislation during the lifetime of the programme, but it was either insufficient or even turned bad policy into bad law. For example,

- In late 2005, it passed the Detainee Treatment Act. But it did so with a “good faith impunity clause.”<sup>783</sup>
- In 2006, it passed the Military Commissions Act, a law that was incompatible with international law in numerous ways, and which the administration asked for while exploiting the cases of 14 detainees who had been subjected to up to four and a half years of enforced disappearance in CIA custody.<sup>784</sup> Signing it into law in October 2006, President Bush noted that “When I proposed this legislation, I explained that I would have one test for the bill Congress introduced: Will it allow the CIA program to continue? This bill meets that test.” The Office of Legal Counsel (OLC) at the US Department of Justice subsequently justified continued use of “enhanced interrogation techniques” by the CIA, in part, by pointing to the fact that the passage of the MCA could be seen as an indicator of “support within contemporary community standards for the CIA interrogation program”. Indeed, the OLC asserted, the MCA “was proposed, debated, and enacted in no small part on the assumption that it would allow the CIA program to go forward”.<sup>785</sup>

The Senate Committee’s summary has an 18-page section on the CIA’s representations to the Congress, in which the case is put forward of an agency, through presentation of limited or inaccurate facts about a secret detention programme and its effectiveness, undermined the oversight function of the US Congress. The case for the point being made is undoubtedly compelling. Nevertheless, the summary fails to recognize the failure of either the Committee itself, or the rest of Congress, to recognize and ensure that the USA complied with its international obligations after the crime against humanity committed on 9/11.<sup>786</sup>

The Senate Committee summary is an important document. Its publication should not be seen as rendering declassification and publication of the full report unnecessary.

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<sup>782</sup> SSCI Executive Summary, page 438.

<sup>783</sup> Section 1004 of the DTA provides that in any civil or criminal case against any US agent “engaging in specific operational practices, that involved detention and interrogation of aliens who the President or his designees have determined are believed to be engaged in or associated with international terrorist activity that poses a serious, continuing threat to the United States, its interests, or its allies, and that were officially authorized and determined to be lawful at the time that they were conducted”, such an agent can offer as a defence that they “did not know that the practices were unlawful and a person of ordinary sense and understanding would not know the practices were unlawful.” “Good faith reliance on advice of counsel should be an important factor, among others, to consider in assessing whether a person of ordinary sense and understanding would have known the practices to be unlawful.”

<sup>784</sup> USA: Military Commissions Act of 2006 - Turning bad policy into bad law, 28 September 2006, <http://www.amnesty.org/en/library/info/AMR51/154/2006/en>

<sup>785</sup> Re: Application of the War Crimes Act, the Detainee Treatment Act, and Common Article 3 of the Geneva Conventions to certain techniques that may be used by the CIA in the interrogation of high value al Qaeda detainees. Memorandum for John A. Rizzo, Acting General Counsel, Central Intelligence Agency, from Steven G. Bradbury, Principal Deputy Assistant Attorney General, Office of Legal Counsel, US Department of Justice, 20 July 2007, page 34.

<sup>786</sup> See also USA: See no evil: Government turns the other way as judges make findings about torture and other abuse, 3 February 2011, <http://www.amnesty.org/en/library/info/AMR51/005/2011/en>



# CONCLUSION

*The present prohibition against using these interrogation methods does not render their past use illegal*

Obama administration, brief to US Court of Appeals, March 2010<sup>787</sup>

Publication of the Senate Select Committee on Intelligence's summary is a step in the right direction, but it is only one step. Much more needs to be done before the USA can be considered to have addressed the human rights violations, including crimes under international law, committed in the CIA programme. The full report, as well as other materials revealing the truth about the human rights violations committed in this programme, should be released. And immediate steps must be taken to end the impunity and blocking of remedy in relation to what went on in this secret detention programme.

President Obama has suggested that issuing the summary is enough, that this limited disclosure will prevent recurrence of the sort of violations that took place in the CIA programme. He expressed the "hope" that its publication "can help us leave these techniques where they belong – in the past".<sup>788</sup> Such focus on "techniques" while again not mentioning the enforced disappearances that underpinned the programme also raises concerns. This occurred again in a briefing by "senior administration officials" who added:

"So as Americans, we are committed to sending a clear message to the world that we support transparency. And that's how we resolve to never use these types of techniques again. That is why the President supported the declassification of these documents. I think we set an example as a democracy by showing that we have a process for working through these issues; that that process includes, again, taking an accounting of what took place, having a degree of transparency about what's been done in the past, but again, resolving to move forward together as one country using our resolve to secure our country but also using different techniques in the – than we've used in the past. And that's part of the strength of our Democratic institution."<sup>789</sup>

In 2009, opposing an independent commission of inquiry, President Obama had asserted:

"our existing democratic institutions are strong enough to deliver accountability. The Congress can review abuses of our values, and there are ongoing inquiries by the Congress into matters like enhanced interrogation techniques. The Department of Justice and our courts can work through and punish any violations of our laws".<sup>790</sup>

The Senate Intelligence Committee's review, begun two months before this statement, is now complete. The full 6,700 page report has been provided to the White House, the CIA, the Department of Justice, the Department of Defense, the Department of State, and the Office of the Director of National Intelligence. Senator Feinstein expressed the hope in her foreword to the summary that distributing the report in this way would "prevent future coercive

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<sup>787</sup> *ALCU v. Department of Defense, Central Intelligence Agency*. Brief for appellees, In the US Court of Appeals for the DC Circuit, March 2010. USCA Case #09-5386.

<sup>788</sup> Statement by the President on the Report of the Senate Select Committee on Intelligence, 9 December 2014, <http://www.whitehouse.gov/the-press-office/2014/12/09/statement-president-report-senate-select-committee-intelligence>

<sup>789</sup> Background Briefing by Senior Administration Officials on the Senate Select Committee on Intelligence Detention and Interrogation Report - Via Conference Call, 9 December 2014, <http://www.whitehouse.gov/the-press-office/2014/12/09/background-briefing-senior-administration-officials-senate-select-commit>

<sup>790</sup> Remarks by the President on National Security, 21 May 2009, <http://www.whitehouse.gov/the-press-office/remarks-president-national-security-5-21-09>

interrogation practices and inform the management of other covert action programmes".<sup>791</sup>

This is not enough. Failure to end the impunity and ensure redress not only leaves the USA in serious violation of its international legal obligations, it increases the risk that history will repeat itself when a different president again deems the circumstances warrant resort to torture, enforced disappearance, abductions or other human rights violations.<sup>792</sup>

The Department of Justice should re-open the criminal investigations into CIA interrogations it ended in 2012 without any charges being handed down. This time, it should ensure that the scope of the investigation meets international law and standards, and is conducted with a view to bringing to justice all those involved in crimes under international law.

The administration must also ensure real access to remedy and an end to injustice. So far it has exploited secrecy to block remedy, and has persisted with unlawful detentions, including of some named in the Senate Committee report. Abu Zubaydah, whose "enhanced" interrogation became a "template" for the interrogation of detainees who followed him into the secret programme, is among them. Nearly 13 years after President George W. Bush approved his transfer to what would become four and a half years of enforced disappearance, he remains in custody in Guantánamo. He has never been charged with any crime. Nor have those responsible for the crimes committed against him been brought to account.

Those parts of the executive which have received copies of the full Senate Intelligence Committee report on the CIA programme, including the Department of Justice, appear not even to have read it, let alone act upon the evidence of crimes under international law it adds to the compelling case already in the public domain.

Ensuring accountability was always going to be a challenge, not only because of the USA's long-standing reluctance to apply international law to its own conduct, but because this secret detention programme was not the invention of some rogue agents, but an operation approved at high levels of government over some seven years.

As Amnesty International wrote thirty years ago in its 1984 global report on torture: "If the torture agencies are aware that their acts are criminal, they also know that their superiors will protect them in the unlikely event that the state attempts to prosecute them".<sup>793</sup>

The campaign for justice continues.

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<sup>791</sup> See Feinstein Response to Call for Return of Senate Torture Report, 20 January 2015, <http://www.feinstein.senate.gov/public/index.cfm/press-releases?ID=60c0eed2-df3b-4729-9910-22b9eb9c98fa>.

<sup>792</sup> During a televised debate between Republican Party presidential contenders on 13 November 2011, Herman Cain said of water-boarding: "I don't see that as torture, I see it as an enhanced interrogation technique," while Michelle Bachmann asserted that the technique was "very effective". Both said that if they became President they would authorize the use of waterboarding. They are far from the only officials or former officials to have continued to support the CIA programme in the years since it was shut down. See, Cheney on Interrogation Tactics: 'I Would Do It Again in a Minute', <http://www.nbcnews.com/meet-the-press/cheney-interrogation-tactics-i-would-do-it-again-minute-n268041>

<sup>793</sup> Torture in the Eighties, *op.cit.*