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USA: A case to answer

From Abu Ghraib to secret CIA custody:

The case of Khaled al-Maqtari

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UNITED STATES OF AMERICA

A case to answer

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Introduction

On 6 September 2006, US President George W Bush announced the transfer of 14 men from secret Central Intelligence Agency (CIA) custody to military detention at the US Naval Base in Guantánamo Bay in Cuba. This was the first time that the US program of clandestine interrogation and detention, long an open secret, had been publicly acknowledged. Although the President noted that no-one was then being held by the CIA, he emphasized that the secret detention program would "continue to be crucial". Indeed, the transfer of a 15th so-called "high value" detainee, 'Abd al-Hadi al-Iraqi, from CIA custody to Guantánamo in April 2007 demonstrated the continuing operation of the CIA's program. In June 2007, President Bush issued an executive order effectively re-authorizing the CIA's use of secret detention and interrogation.[1] That order remains in force.

In September 2007 CIA Director General Michael Hayden defended the program, including on the grounds that "fewer than 100 people" had been subjected to it. "These programs are targeted and selective," he added. "They were designed for only the most dangerous terrorists and those believed to have the most valuable information, such as knowledge of planned attacks." He and other US officials have used similar reasoning to defend the CIA's use of torture and other cruel, inhuman or degrading treatment. In testimony to the US Senate Intelligence Committee on 5 February 2008, for example, General Hayden tried to justify the torture technique of "waterboarding", simulated drowning, against three detainees in 2002 and 2003 as a means to obtain information from detainees at a time of perceived threat to public safety, and because the intelligence community "had limited knowledge about al-Qa'ida and its workings."[2] Such justifications fly in the face of the absolute prohibition of torture and other ill-treatment under international law.

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[1] See below, and Amnesty International, *USA: Law and executive disorder; President gives green light to secret detention program*, AI Index AMR 51/135/2007, August 2007, http://www.amnesty.org/en/report/info/AMR51/135/2007.

[2] *USA: Impunity and injustice in the 'war on terror'*, AI Index: AMR 51/012/2008, 12 February 2008, http://www.amnesty.org/en/library/info/AMR51/012/2008.

The same goes for secret detention. No matter how carefully targeted the program is, the bottom line is that secret detention, in and of itself, violates international human rights and humanitarian law, as contained in treaties binding on the USA. Torture and enforced disappearance, which frequently accompany the use of secret incommunicado detention, are both crimes under international law. The illegality of the CIA's secret program has been accompanied by a complete absence of accountability for such crimes.

The CIA has operated its secret detention program in covert prisons outside the USA, known as "black sites". The locations of these sites are unknown, their operations are classified at the highest level of secrecy, they are not open to any scrutiny or inspection, the identity of those detained is not disclosed to family members, lawyers, or humanitarian organizations such as the International Committee of the Red Cross (ICRC), and detainees are isolated from each other and from the outside world. According to a November 2005 report in the Washington Post, there had been "black sites" in at least eight countries at various times since 2002,[3] although CIA facilities in Thailand and Guantánamo, along with one of several sites in Afghanistan, had since closed. The facilities tended to be used in rotation, with some detainees transferred from site to site together, although several sites were in operation at any given time. The Washington Post also noted that "black sites" had been located in unspecified Eastern European countries.

In June 2007, the Parliamentary Assembly of the Council of Europe's Committee on Legal Affairs and Human Rights released the second report of its inquiry, led by Swiss Senator Dick Marty, into secret detention and renditions in Europe. The report concluded that there is "now enough evidence to state that secret detention facilities run by the CIA did exist in Europe from 2003 to 2005, in particular in Poland and Romania." The report also found that the governments of these countries were aware of, and may have authorized, CIA-run secret detention centres on their territories.

The detailed investigations carried out by the Council of Europe, together with the statements of the handful of men who have emerged from the secret prisons – released as anonymously as they were apprehended – have helped to construct a detailed picture of the regime and the conditions of confinement, demonstrating conclusively that the USA has carried out a range of human rights violations through the use of the secret detention program.

Khaled Abdu Ahmed Saleh al-Maqtari is one of those most recently released. He was held in CIA "black sites" in Afghanistan and in an unknown country until days before President Bush's 6 September 2006 announcement, when the CIA network of secret jails appears to have been at least temporarily cleared. Khaled al-Maqtari has been held both at the notorious hard site at Abu Ghraib[4] – where he has described a regime of beatings, sleep deprivation, suspension upside down in stressful positions, intimidation by dogs, induced hypothermia and other forms

[3] Dana Priest, CIA Holds Terror Suspects in Secret Prisons, *Washington Post*, 2 November 2005

[4] The Abu Ghraib "hard site" was a cell block inside the facility, where detainees felt to have high intelligence value were housed (most other detainees at Abu Ghraib were held in tents). The Abu Ghraib detainee abuse photographs were taken inside the hard site.

Khaled Abdu Ahmed Saleh al-Maqtari, Yemen, October 2007. **© Amnesty International**

of torture – and in CIA "black sites" in Afghanistan and an unidentified third country, where he spent nearly three years in complete isolation, the victim of an enforced disappearance.

Khaled al-Maqtari's name was first given to Amnesty International by another ex-detainee in late 2005, nearly a year before his transfer out of CIA custody. Attempts to locate him then failed, and the organization was unable to confirm his whereabouts until after he had been transferred to Yemen in September 2006. His case intersects with those of others who have been released from CIA custody, and with those of detainees still held in Guantánamo and in third countries. It illustrates the global reach of the secret detention network and the degree of coordination between the US military and intelligence agencies, and between the US and other governments, as well as the secret detention program's apparent propensity to apply the given criteria for inclusion in the program in a less carefully targeted manner than CIA Director Hayden has suggested.

Iraq: Arrest in Fallujah, detention in Abu Ghraib

When I was in Abu Ghraib they kept me naked for nine days, and this was not a respectful way to pray, so I prayed with my head only

Khaled al-Maqtari is now 31 years old, but appears older, a stocky, solemn looking man, with short black hair and beard. He was born in Tabuk in Saudi Arabia, but has lived most of his life in Hodeidah, a small city on the Red Sea coast of Yemen. He was returned to Yemen after 32 months of CIA detention in September of 2006, and held by the Yemeni authorities in Sana'a and Hodeidah until May 2007, when he was unconditionally released. At no stage during this 40-month period was his detention ever reviewed by a judicial authority, and he was never charged with any criminal offence.

Khaled al-Maqtari said that he left Yemen for Iraq in early 2003, travelling overland and arriving in spring. He stayed first in a valley near Ramadi and then in Mosul before arriving in Fallujah in October of 2003, seven months after the US-led invasion of Iraq. In Fallujah, he

says, he sometimes worked at an internet café, in a two-story shopping market called al-Ghufran near the centre of town.

Mishahdah, Iraq: Soldiers from the US Army's 4th Infantry Division round up detainees during a July 2003 operation aimed at pro-Saddam Hussein insurgents. All of the men in the village were reportedly detained during the operation. © AP/PA Photo/John Moore

He had been in Fallujah for about three months when US forces with armoured vehicles and tanks raided the al-Ghufran market and arrested many people, described by Khaled al-Maqtari as shop workers and shoppers. Khaled Al-Maqtari himself was apprehended at about 1.30pm, and like the others, was cuffed and hooded. The plastic handcuffs were pulled so tight, he said, that they dug furrows into his wrists.[5] He could hear and feel dozens of other detainees jostling around him, until they were all loaded onto a column of US trucks with helicopters overhead protecting them, and taken to a military camp outside of Fallujah.

At the camp, soldiers pulled him from the truck and dragged him to an interrogation room by his plastic cuffs, so that he was forced to crawl or try to run, all the while, he said, being kicked and beaten. "And I learned that this was how I would always be moved, both in this place and later in Abu Ghraib". When the hood was removed, an interrogator demanded to know where he was from. Although he said he was an Iraqi, the interpreter recognised by his accent that he was foreign and guessed that he was a Yemeni. This news angered the interrogator, an "American" man with grey hair and civilian clothing, who started shouting at Khaled al-Maqtari, who was only able to catch the phrase "what the hell is this" amidst the torrent of unfamiliar English words.

[5]The cuffs were so tight that they could not be snipped off, but had to be cut out of the grooves they had dug into his wrists. In a leaked 2004 report on violations of the Geneva Conventions by US forces in Iraq, the ICRC raised, among many other forms of ill-treatment *"handcuffing with flexi-cuffs, which were sometimes made so tight and used for such extended periods that they caused skin lesions and long-term after-effects on the hands (nerve damage), as observed by the ICRC".* Report of the International Committee of the Red Cross (ICRC) on the Treatment by the Coalition Forces of Prisoners of War and Other Protected Persons by the Geneva Conventions in Iraq during arrest, internment and interrogation, [ICRC Iraq report], February 2004.

An hour or two later, Khaled al-Maqtari was again hooded, and taken to another cell, where he was periodically visited by a US soldier with a powerful voice. "He was just shouting at me like a beast, I don't think he was saying words, just shouting." Khaled Al-Maqtari was kept standing in the room, still hooded, cuffed and disoriented, and every few minutes – or if al-Maqtari tried to sit down – the soldier would creep into the room and scream or laugh maniacally into Khaled al-Maqtari's ear. [6]

January 2004: during a raid in Fallujah, a soldier with the 346th Tactical Psychological Operations Company carries a confiscated computer from a shop
©US Army, Staff Sgt. Charles B Johnson

Later in the evening, Khaled al-Maqtari was taken to a helicopter with at least two other detainees. He suspects that they were Yemenis or other non-Iraqis, as he had overheard that the Iraqi prisoners were being processed separately. From the degree of commotion, shouting and other noise he heard at the camp, he estimated that up to 100 people had been detained.

According to the US Army, the 13 January 2004 operation in Fallujah was known as "Operation Market Sweep" and was aimed at arms dealers operating out of a notorious city centre market. In the course of the raid, "the soldiers confiscated more than 100 rifles, two heavy machine guns, 6,500 round of ammunition, 18 rockets, 244 grenades, 150 mortars and various explosive devices, including 17 pre-manufactured improvised explosive devices. During the operation more than 60 people were captured."[7]

Khaled al-Maqtari and the others in the helicopter were transferred to the Abu Ghraib Detention Facility. A US military official at the information offices of the Multi-National Forces in Iraq told Amnesty International that individuals detained in the field, and determined to be "an imperative risk to the security and safety of Iraq", should have been brought to a Coalition Theater Internment Facility, like Abu Ghraib, be assigned an Internment Serial Number (ISN) and entered into a database. Khaled al-Maqtari was apparently never assigned an ISN[8], which

[6] The ICRC's leaked 2004 report also raised the issue of hooding, "used to prevent people from seeing and to disorient them, and also to prevent them breathing freely…Hooding was sometimes used in conjunction with beatings thus increasing anxiety as to when blows would come. The practice of hooding also allowed the interrogators to remain anonymous and thus to act with impunity." The ICRC report also raised, *inter alia*, the use of "exposure while hooded to loud noise and music", "stress positions", sleep deprivation cause by the playing of loud music or constant light", and subjection of detainees to forced nudity, ICRC Iraq report, *op. cit*.

[7] Justin A Carmack, 'Op Market Sweep' captures Fallujah arms dealers, *Army News Service*, 13 January 2004

[8] The Multi-National Force's Task Force on Detention Operations in Iraq searched their database at Amnesty International's request, but did not find any record of Khaled al-Maqtari

suggests that he was turned directly over to Military Intelligence (MI) on suspicion of being a foreign fighter.

At Abu Ghraib, he was immediately brought to a small room, where there were at least three "Americans" and an interpreter, all dressed in fatigue trousers and shirts without uniform insignia. One of the first questions they asked him was whether he was a Sunni or a Shia. "I had to think," he told Amnesty International, "I didn't know which answer would make them hit me harder, so finally I just said that I am a Muslim." His clothes were cut off "from his feet to his neck" with scissors, and he was again hooded and shackled in chains.

Khaled al-Maqtari said that his interrogators did not identify themselves to him, other than to say that they were "Americans". He was likely to have been interrogated at Abu Ghraib by members of the US Army's 205th Military Intelligence Brigade, which was then operating there, or by the CACI contractors working with them, rather than by CIA officials and contractors on site.[10] A former military interrogator has told Amnesty International that it would be normal procedure for a suspected foreign fighter detained by the Army to be first turned over to MI before being assessed for possible transfer to CIA custody.[11]

[P]ersons deprived of their liberty supervised by the military intelligence were subjected to a variety of ill-treatments ranging from insults and humiliation to both physical and psychological coercion that in some cases might amount to torture in order to force them to cooperate with their interrogators. In certain cases, such as in Abu Ghraib military intelligence section, methods of physical and psychological coercion used by the interrogators appeared to be part of the standard operating procedures by military intelligence personnel to obtain confessions and extract information. Several military intelligence officers confirmed to the ICRC that it was part of the military intelligence process to hold a person deprived of his liberty naked in a completely dark and empty cell for a prolonged period to use inhumane and degrading treatment, including physical and psychological coercion, against persons deprived of their liberty to secure their cooperation…. These methods of physical and psychological coercion were used by the military intelligence in a systematic way to gain confessions and extract information or other forms of cooperation from persons who had been arrested in connection with suspected security offences or deemed to have an 'intelligence value'.

ICRC report on US violations of the Geneva Conventions in Iraq[9]

[9] See ICRC Iraq report, op. cit.

[10] CACI International supplied contract interrogators to the US Army in Iraq between 2003 and 2005. At the time of Khaled al-Maqtari's detention in January 2004, CACI said that it had up to 10 contract interrogators at Abu Ghraib, all of whom would have reported to the US military, and not to the CIA. See http://www.caci.com/iraq/Truth_and_Error_in_Media_Portrayal_of_CACI_in_Iraq.doc

[11] Al-Maqtari reported that when he was being prepared for transfer to Afghanistan, his captors told him more than once that "the CIA is waiting for you", suggesting that he was not yet in their custody. However, it is also possible that he was interrogated by both CIA and MI personnel. US Army Major General George Fay's "Investigation of the Abu Ghraib detention facility and 205th Intelligence Brigade" notes at 2.b.(4) that: *"The CIA conducted unilateral and joint interrogation operations at Abu Ghraib. The CIA's detention and interrogation practices contributed to a loss of accountability and abuse at Abu Ghraib. … CIA detainees in Abu Ghraib, known locally as "Ghost Detainees," were not accounted for in the detention system. With these detainees unidentified or unaccounted for, detention operations at large were impacted because personnel at the operations level were uncertain how to report or classify detainees."*

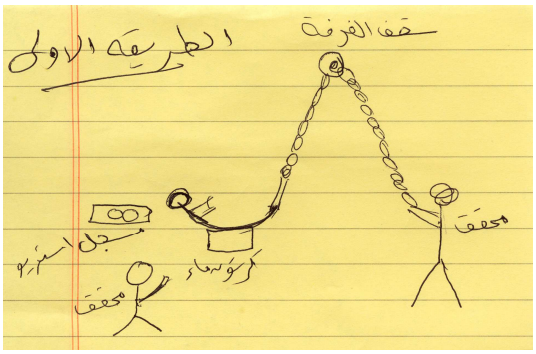
The men dragged him to a larger room, measuring about three by four metres, which he calls "the torture room". There was always water on the floor, he said, "just enough to make it slippery and too uncomfortable to sit or lie down on, and to make it worse when I fell down on it."[12] Once inside, he said, he was beaten again by the three men, who hit him with fists and sticks, "taking turns, as though it was a children's game. There was a CD machine, playing some kind of terrorising music to create a frightening atmosphere, and it was very loud." He was still hooded, and said he could not judge where the wall was, so kept smashing into it, especially after they swung him in circles to increase his disorientation.

After a while, according to Khaled al-Maqtari, his assailants sat down to rest while making him stand on a chair in front of a powerful air conditioner, holding up a full case of bottled water. They removed his hood and periodically poured cold water over his head, so that the air conditioning blasted against his wet skin and naked body, and made him shiver so hard that he could barely remain standing. When his arms began to shake so that he could not support the heavy box, he was beaten with a stick to keep him standing, but he eventually could not even stand to stop the beating and collapsed. They continued to beat him with a stick, he said, and every time he was about to pass out they would put some kind of smelling salts under his nose, so he would not lose consciousness, or they would put a mentholated ointment[13] in his eyes, which was so painful that he was afraid he would lose his vision. Sometimes when he was about to pass out an interpreter would come in and shout "wake up" in Arabic and then the "Americans" would resume the beating.

Khaled al-Maqtari thought they had finished with him, but instead, he said, a chain was hung from the ceiling of the room, and he was suspended upside down by his feet, with his arms still cuffed behind his back, while a pulley was used to lower him up and down over the water crate. As they lowered him down over the box, his torso was distorted, causing both pain and fear. "All of my muscles were tensed up to stop me from collapsing down, and I was terrified if I let go it would have broken my back." When they pulled him up again, he explained, he had to tense up different muscles, and this too caused incredible pressure on his back and legs. His interrogators, he said, kept moving him up and down slightly "so that I could experience all the different kinds of pain", and when he was lowered onto the box they beat him with sticks and put the CD player alongside his head at full volume.

[12] A former contract interrogator who was stationed at Abu Ghraib in January 2004, Eric Fair, has told AI that the water on the floor was not an interrogation tactic, but a reflection of conditions. Most rooms in Abu Ghraib had water on the floor in the winter of 2004, he said, as it "rained constantly, and the entire prison leaked."

[13] Described as a vapour rub, of they type usually used for opening blocked nasal passages



Khaled al-Maqtari's description of his suspension from the ceiling at Abu Ghraib

While he was on the box, Khaled al-Maqtari said, one of the interrogators used him as a footstool, sitting in a chair nearby and resting his feet on Khaled al-Maqtari's head or back, and once putting a cigarette out on his shoulder. This interrogator kept shouting at him: "you know where I'm from? I'm from New York, the place you Arab [...][14] tried to destroy". Khaled al-Maqtari describes the New Yorker as being "not fat" and of medium height, with a triangular face, dark hair and eyes, aged between 40 and 45, and wearing a pair of military-style trousers with multiple pockets. "He beat me and trampled on my face when I was suspended..... Once he brought with him a woman translator, and I am sure she was either American or British. She spoke broken Arabic. Her hair was dark with some red in it and was tied like how all the female interrogators tied their hair."

After what seemed like several hours, Khaled al-Maqtari said, he was brought to a room divided by wooden partitions into "small boxes", with a door at one end, where it was just about possible to lie down in a hunched position.[15] On this occasion, and throughout his stay in Abu Ghraib, he was brought there between sessions, but found it impossible to rest because guards sometimes kicked the door, or threw water and food at him. "It was some kind of dried thing, not real food, and not cooked or hydrated, so it was very hard to eat. They did just enough to keep us alive for the next interrogation."

At dawn of his second day at Abu Ghraib, Khaled al-Maqtari was taken out of the box, still naked and shackled. When he asked to go to the toilet, he said, they dragged him there by his feet, banging his head against the wall on both sides of the narrow corridor, before returning him to the "torture room". An Iraqi interpreter was there, along with three men in fatigues and the interrogator from New York, who began to question him about houses he had stayed in

[14] Khaled al-Maqtari said that this word was not translated to him, the interpreter just told him it was "a very bad name".

[15] Referring to an ICRC visit to Abu Ghraib in January 2004, in which the ICRC delegates were denied access to eight detainees, the Fay report notes at 3.k.(8) that: *Of particular interest was the status of DETAINEE-14, a Syrian national and self-proclaimed Jihadist, who was in Iraq to kill coalition troops. DETAINEE-14 was detained in a totally darkened cell measuring about 2 meters long and less than a meter across, devoid of any window, latrine or water tap, or bedding. On the door the ICRC delegates noticed the inscription "the Gollum," and a picture of the said character from the film trilogy "Lord of the Rings."*

while in Mosul and Fallujah. He was in enormous pain, and unable to concentrate, and says the interrogator offered to sign a paper promising not to torture him anymore if he just answered the questions. Khaled al-Maqtari said he told his captors that such a paper would have no meaning, because they could tear it up any time.

All that day and the next, still naked and shackled, he was taken in and out of the "torture room", never being allowed to sleep for more than a few minutes at a time in the box room. He describes being repeatedly drenched and put in front of the air conditioner, until he could not speak at all because his teeth were chattering so hard and uncontrollably, and he collapsed. The interrogators brought him hot tea, and said they would bring him clothes if he answered their questions. Khaled al-Maqtari began to tell them which houses he had been staying in, and they brought him a long striped shirt. "It covered me, but not very well." Once he had put it on, they took him to a helicopter and brought him back to Fallujah.

He rode in the helicopter with his hands cuffed and secured above his head; the skin around his wrists had already worn raw. In Fallujah, he said, they put him into a white minivan, which was dented and dirty to make it look like a civilian vehicle, but with a hidden camera on the outside. He was shackled to the floor, between two seats. He was the only detainee in the van, and there was an Iraqi driver and two translators, both armed with automatic weapons. The grey-haired interrogator from the base was there, in a *kefiyah*. "I think he was a high-ranking one, as all the others seemed to fear him." There was also an "American" woman, wearing a *hijab*, and both she and the grey-haired interrogator had laptop computers. "They were all trying to appear like normal Iraqis," Khaled al-Maqtari said, "and there were curtains on the windows, so people could not see them too well." The laptop received images from the camera outside, so that Khaled al-Maqtari could see where they were driving without being able to see outside the vehicle directly, and without anyone being able to see him. When they passed the house, Khaled al-Maqtari pointed it out, and they marked it on the screen. "We will take care of it," they told him.

He was returned to Abu Ghraib, where the promise not to torture him further was ignored. At about dusk they came and told him that the house he had shown them had been raided and that one US soldier had been killed. Khaled al-Maqtari says they started beating him again, shouting that he was an accomplice in the death of an American, and accusing him of plotting with those inside the house. He tried to argue with them, asking "how can I be getting information to them when I am in here with you?"

Once again he was stripped, beaten, drenched with cold water, and blasted with the air conditioner. He was then taken to an outdoor area covered in gravel, and told to cross it. He had to crawl because of the cuffs and chains, and the stones dug into his hands and knees. When he got to the middle of the area, he said, they brought the dogs, three of them, from three different directions. It was cold and dark, and Khaled al-Maqtari was still naked, wet and shivering. "The dogs came and put their noses right against me and made terrible noises. I had no defence, not even any clothes. Later I thought that they were very well trained because they only made the noises and showed me their teeth, but it was very, very frightening because I never knew that they were not going to bite me. I still have dreams about this."

According to Khaled al-Maqtari, the interrogators kept telling him to admit to involvement in anti-US operations, but he told them he had nothing to confess. "Then they took me back and beat me and tortured me to the maximum I could bear, until even they started to be convinced that I could not tell them more about operations, so they asked about houses in Mosul. They threatened me during the interrogation that they would bring the Mossad and the Jews to rape me, and sometimes they threatened to hand me to the Shia.[16] When I was still shivering from the water, they brought strong lamps like football lights and shined them right in my face until finally I fainted." He was taken back to one of the boxes, and his guards told him: "This time we will let you sleep for one whole hour, if you show us the houses in Mosul." Khaled al-Maqtari said he was so desperate for even that one hour of sleep that he agreed to try, but felt it was only a few minutes before they came to take him to Mosul by helicopter.

In Mosul he was put into the same kind of vehicle as in Fallujah, containing the same grey-haired man and the woman in *hijab*, as well as two other "Americans", one of whom was acting as the driver, and was dressed like an Iraqi. In Mosul, Khaled al-Maqtari saw them actually mounting the camera on the van, and so figured out how the system worked. After he had found the house and they marked it on the screen, they asked him many questions about the house and the positions of the rooms inside.

The day after his return to Abu Ghraib, he was stripped and taken back to the interrogation room, where the torture resumed. This time, he said, they accused him of not having told them that there was a weapons stash in the house in Mosul. He tried to tell them that he had not been there for four months, so would not have known about it, but they began torturing him again, and asking him about a house in the al-Amriya, a district in western Baghdad, where he had spent a few hours on arrival in Iraq.

This time, the interrogators told him, he would go with "the Brits" to locate the house. That evening, a team that Amnesty International believes were likely to have come from United Kingdom Special Forces (UKSF), collected him from US custody. The interrogator was British but spoke good Arabic, Khaled al-Maqtari said, adding that he had green eyes, and wore a *kefiyah* and black clothes. This search operation was markedly less technical than his outings in the US surveillance van; Khaled al-Maqtari was put in the back seat of an unmarked black jeep and chained to the interrogator. The driver and another man, both westerners, both armed, rode in the front. Khaled al-Maqtari sensed that the driver was the officer in charge. They took him out of Abu Ghraib, past a guard at the gate, and out into the city. It was late at night and there were few people in the streets. He said he could not see well, did not know the district, and could not find the house. He was frightened that they would beat him, but when it was clear that he could not provide the information they sought, he was brought back to Abu Ghraib. On return, the driver shook his head "no" at the US interrogators; Khaled al-Maqtari felt that he was letting them know that their search mission had failed, and that he had not cooperated.

[16] Such threats were "standard tactics", according to a former interrogator, as were threats about sending detainees to Guantánamo Bay.

Khaled al-Maqtari said he was not abused by the UKSF team, although he is sure that they were aware that he had been tortured. He said he was brought to meet them directly from the "torture room", and was still huddled in a wet blanket, with the marks of the beatings clearly visible on his body. They did not ask him any questions about his treatment.

Former Special Air Service (SAS) trooper Ben Griffin, who was stationed in Baghdad in early 2005, told Amnesty International that an SAS squadron had been working in a joint US-UK special forces group in Baghdad, carrying out surveillance and intelligence operations against insurgents and foreign Arab fighters, since the beginning of the occupation.[17] The group shared information, he said, and it would not have been out of the ordinary for an SAS team to take a prisoner directly from US custody on the kind of search mission Khaled al-Maqtari has described. The SAS squadron, he explained, also carried out its own arrest operations; there were a number of Arabic speakers in the squadron, so they were able to carry out assessment interrogations in the field, while other detainees were brought back to the SAS base for further questioning. The SAS did not have a holding facility, and if the detainee was felt to have further intelligence value, he would be turned over to US custody. As a rule, the SAS troopers did not participate in interrogations; Griffin said that these were carried out "behind closed doors". However, they were aware of the methods likely to be employed against those who were sent to Abu Ghraib for further questioning.

Towards the end of his first week in custody, Khaled al-Maqtari said, a medic came and examined his wounds, and gave him antibiotics and pills for the pain. His ribs, back and legs were severely bruised, he was spitting blood, and he had deep gouges in his wrists from the cuffs. The Iraqi interpreter came with the medic, and Khaled al-Maqtari recalls that "he acted very gentle and concerned, saying things like 'oh, I wonder how this could have happened to you?' when this interpreter had been there almost the whole time and knew very well what had caused my injuries." The medic asked Khaled al-Maqtari how he had come by his injuries, but he was too frightened to answer through the interpreter.

Nine days after his arrest, Khaled al-Maqtari recalls, "one of the interrogators came and said: 'the Mossad and the CIA are waiting for you', then they put me in a small room, in the dark, and I was without clothes, shaking and crying." Alone in the dark, al-Maqtari began to hallucinate: "someone with an Iraqi accent came to me and asked me if I wanted water, and at first I thought it was a man, but she was a woman and she gave me a drink of water and said to read the Quran and disappeared. My dreams were nightmares. Always someone was shouting, I dreamed of bizarre things, like dogs, all through the little half hour when they allowed us to sleep. I still have these nightmares."

Former contract interrogator Eric Fair, who was in Abu Ghraib in January of 2004, has reviewed Khaled al-Maqtari's account of his treatment there. Although he did not corroborate all of the details provided by Khaled al-Maqtari – he has noted, for instance, that he never saw

[17] Interview with Ben Griffin, January 2008. Ben Griffin was honourably discharged from the UK Army's Special Air Service in 2005, after refusing to take further part in a war he regarded as illegal: "I did not join the British Army to conduct American foreign policy," he said. *See* Sean Rayment, SAS soldier quits Army in disgust at 'illegal' American tactics in Iraq, *Telegraph* (UK), 11 March 2006

any detainee being suspended upside down by his feet – Eric Fair told Amnesty International: "I've pored over this report, hoping to find major inconsistencies and gross exaggerations. It is to this nation's shame that I cannot. My time at Abu Ghraib and Fallujah offers no concrete evidence to refute many of the things Khaled has said."

Although coalition forces were entitled to detain civilians suspected of criminal activities, including insurgency, such detainees would still be entitled to humane treatment and due process, including registration and visitation by the ICRC. At no time during his detention in Abu Ghraib was Khaled al-Maqtari registered, documented or charged with any crime.[18] He did not see anyone from the ICRC, nor was he ever allowed to contact a lawyer or his family. "They did not say what the accusation was. They asked about the house, and the Iraqis, and if I know where there are others Yemenis, these types of questions. Also for example, who carries out suicide bombing, 'for sure you must know them, you must be one of them', these types of things... But they never said when they will release me. Hours before I would leave, perhaps half a day before it, they told me to expect the CIA. After six or four hours, the *ninjas* came for me."

In a procedure which has also been described to Amnesty International by other detainees transported by the CIA, a three- or four-person removal team, dressed completely in black, with black gloves and facemasks, came to prepare Khaled al-Maqtari for his departure. They put him in a diaper, socks, short trousers, and a shirt without buttons, then covered his eyes and stuffed his ears with cotton, taped firmly into place, before hooding him and topping it off with noise-reducing headphones. "They do not talk, said Khaled al-Maqtari, "not even a word, the

[18] The UN Human Rights Committee, in an authoritative statement on the prohibition on torture and cruel, inhuman and degrading treatment, has stated that *"to guarantee the effective protection of detained persons, provisions should be made for detainees to be held in places officially recognized as places of detention and for their names and places of detention... to be kept in registers readily available and accessible to those concerned, including relatives and friends"*. Human Rights Committee, General Comment 20, Article 7 (Forty-fourth session, 1992), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, UN Doc. HRI\GEN\1\Rev.1 at 30 (1994), para. 11. Accurate and detailed registers of detainees are required under international law and standards, including the UN Standard Minimum Rules for the Treatment of Prisoners and the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, the Geneva Convention relative to the Treatment of Prisoners of War of 12 August 1949 (Third Geneva Convention), Articles 122 to 125 and the Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), Articles 136 to 141. See also Committee against Torture, *Conclusions and Recommendations of the Committee against Torture: United States*, July 25, 2006, at para 16: The Committee notes with concern that the State party does not always register persons detained in territories under its jurisdiction outside the United States, depriving them of an effective safeguard against acts of torture (art. 2). The State party should register all persons it detains in any territory under its jurisdiction, as one measure to prevent acts of torture. Registration should contain the identity of the detainee, the date, time and place of the detention, the identity of the authority that detained the person, the ground for the detention, the date and time of admission to the detention facility and the state of health of the detainee upon admission and any changes thereto, the time and place of interrogations, with the names of all interrogators present, as well as the date and time of release or transfer to another detention facility.

same as the *ninjas* in the secret prisons."[19] "It is clear", he said, "that they have a lot of experience. They know what they are doing, and each of them had a specific role. I mean if I wanted to get dressed myself, I wouldn't be able to do it so fast."

"Whenever they put on or take off the chains, they grab you harshly, so that we do not escape. They were very strong, everything was horrifying, they even closed the doors violently to terrify us. I was not able to see anything, everything was black. They did not want you to be comfortable; they wanted us to be in an atmosphere of terror all the way there".

He was brought to the airstrip in the back of a jeep or truck, and felt that at least one other prisoner, possibly two, was transported with him. He thinks the other detainee transferred with him out of Iraq might have been a Saudi Arabian, whose name, or nickname was Khaled al-Sharif.[20] In Abu Ghraib, they had shown Khaled al-Maqtari a photo showing al-Sharif in Iraq; later, in Afghanistan, they showed him another photos of al-Sharif, this time taken inside the detention facility there.

He described the plane that brought him to Afghanistan as small and fast and quiet; the engines were barely audible through his headphones. He felt little vibration from the engines either before or after boarding the plane, which he entered via a short set of about five stairs, and this and the proximity of other passengers lead him to think it was a small jet. "This one was a modern plane and very nice. Although I was covered, I felt that the floor was very soft and like carpet. I fell on to it as soon as I got in the plane."

He said that he lay on the floor because he was in so much pain from the beatings. "I even think they feared that I was dead or something, because they brought equipment to measure the oxygen and the blood pressure." No matter what position he sought, the pain was too excruciating to allow him to sleep for long, and if he moved, he said, someone would kick him. "At first I couldn't believe that I found a place to lie down, I so wanted to sleep, I just wanted to rest because I was in pain all over, but then I couldn't sleep because the pain was so strong. My hands were tied around my back, and if I tried to move my hands to ease the pain, they kicked me."

At the time of Khaled al-Maqtari's detention, US forces in Iraq were bound by the Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), article 49 of which prohibits the transfer of protected persons, including

[19] A similar process was described by Swedish police officers who witnessed a US-led renditions team preparing two men for transfer in December 2001; the renditions team told them that the procedures had become policy for transporting terrorist suspects "post 9/11". Inquiry registration number 2169-2004, conducted by Swedish Parliamentary Ombudsman Mats Melin, date of adjudication: 22 March 2005, p20. A Swedish national security police director also told the investigation: *"I can say that we were surprised when a crew stepped out of the plane that seemed to be very professional, that had obviously done this before."*

[20] A Libyan by this name, aka Hazim, was detained with Khaled al-Maqtari in the prison in Afghanistan, although is unlikely to be the same person, as he was reportedly already in the Afghanistan facility from late 2003.

insurgents who are not part of the military, from the occupied territory.[21] Unlawful deportation or transfer or unlawful confinement, as well as torture and other inhuman treatment, in violation of the Geneva Conventions, are war crimes, and prosecutable as such under US and international law.[22] In addition, international human rights law applies, even in time of war.

The former head of the US Justice Department's Office of Legal Counsel has written that soon after taking up the post in October 2003, he was told by the then White House Counsel, Alberto Gonzales, that the administration had need for legal advice on the question of whether the Fourth Geneva Convention "protects terrorists in Iraq".[23] Former Assistant Attorney General Jack Goldsmith asserts that "near the end of my first week on the job, the lawyers around the government reached a consensus: the convention protected all Iraqis, including those who were members of al Qaeda or any other terrorist group, but not al Qaeda terrorists from foreign countries who entered Iraq after the occupation began… I agreed."[24]

A few months later, then Assistant Attorney General Goldsmith drafted a memorandum to Alberto Gonzales and circulated it to the head lawyers at the CIA, the Departments of State and Defense, and the National Security Council. This draft memorandum, dated 19 March 2004, "elaborates on interim guidance provided in October 2003 concerning the permissibility under [article 49 of the Fourth Geneva Convention] of relocating certain 'protected persons' detained in occupied territory to places outside that country."[25] The memorandum concluded that the USA could, "consistent with article 49", (1) remove from Iraq under local immigration law "protected persons" who were "illegal aliens"; and (2) "relocate 'protected persons' (whether illegal aliens or not) from Iraq to another country to facilitate interrogation, for a brief but not indefinite period", as long as the individual concerned had not been "accused of offences" within the meaning of article 76 of the Convention.

What role such advice may have played in the transfer of Khaled al-Maqtari out of Iraq is impossible to judge, due to the secrecy surrounding the CIA's rendition, detention and interrogation program, and the fact that most documents relating to it remain classified. For his part, Jack Goldsmith has written that he never finalized the March 2004 memorandum and "it never became operational, and it was never relied on to take anyone outside of Iraq".[26] He further states that "I do not know whether the request for legal advice about relocating Iraqi prisoners outside Iraq for questioning was associated with a broader rendition program. But I do know that the draft opinion could not have been relied upon to abuse anyone, not only

[21] Article 49 states, in part, "Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of motive".
[22] Article 8, Rome Statute of the International Criminal Court.
[23] Jack Goldsmith, *The Terror Presidency: Law and judgment inside the Bush administration*. W. W. Norton (2007), page 32.
[24] *Ibid*. page 40.
[25] Permissibility of relocating certain 'protected persons' from occupied Iraq. Memorandum for Alberto R. Gonzales, Counsel to the President, from Jack Goldsmith III, Assistant Attorney General, US Department of Justice, Office of Legal Counsel, Draft, 19 March 2004.
[26] *The Terror Presidency, op. cit.*, pages 172-173

because it was never finalized, but more importantly because it stated that the suspect's Geneva Convention protections must travel with him outside Iraq."[27]

Whether the US authorities concluded that Khaled al-Maqtari's nationality and their suspicion that he was involved with *al-Qa'ida* left him unprotected by the Geneva Conventions, or whether they considered that the advice articulated in the draft Office of Legal Counsel memorandum gave them a green light to remove him from Iraq to Afghanistan and into the CIA's secret program, the upshot is that their conduct and his treatment violated international law. Moreover, while US authorities have never charged Khaled al-Maqtari with any crime, his account of his treatment at the hands of the US government points to crimes having been committed against him for which no one has been held to account. The US authorities have a case to answer.

From hard site to "black site": CIA custody in Afghanistan

CIA operated Gulfstream V, widely known to be used for the transport of CIA detainees, including Khaled al-Maqtari. It was registered as N379P in February 2000 by Premier Executive Transport Services, a CIA front company; it was re-registered as N8068V at the beginning of 2004; and again re-registered as N44982 in December 2004 by Bayard Foreign Marketing, a phantom company registered in 2003.

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Amnesty International has obtained flight records that corroborate Khaled al-Maqtari's recollections, at least to the extent that a Gulfstream V jet, operated by a CIA front company and widely known to be used for the transport of CIA detainees[28], left Baghdad International

[27] *Ibid.* (footnote 14 of the draft memorandum stated that the relocation of a "protected person" from Iraq did not mean that he or she would "forfeit the benefits" of that status.) See also, Dana Priest, Memo Lets CIA Take Detainees Out of Iraq: Practice Called Serious Breach of Geneva Conventions, *Washington Post*, 24 October 2004 ("A US government official who has been briefed on the CIA's detention practices said some detainees are probably taken to other countries because 'that's where the agency has the people, expertise and interrogation facilities, where their people and programs are in place'.")

[28] This Gulfstream V executive jet, successively registered as N379P, N8068V and N44982, has been the plane most frequently identified with known cases of rendition. It was registered in February 2000 by Premier Executive Transport Services, a CIA front company; it was re-registered as N8068V at the

Airport on 21 January 2004, nine days after Khaled al-Maqtari's arrest, heading for Khwaja Rawash airport in Kabul. Khaled Al-Maqtari says he was transferred by vehicle to a secret facility in Afghanistan, which he believes was Bagram Air Base, and he refers to it throughout his interviews as Bagram.[29] Other detainees in Afghanistan later told him that he had arrived at about the same time as two other prisoners.[30]

His arrival at the new facility followed a pattern familiar to Amnesty International. He was brought to see a doctor or medic, who took blood and a urine sample, photographs were taken of his naked body, and wounds and marks were recorded on a diagram. The same process has been described to Amnesty International by other former black site detainees[31]. "I felt they were checking a lot, as they were scared that I might die if they hit me any more times." He was then given a blue shirt and trousers and brought to see a man he was told was a psychologist.

All of the prison staff wore black clothes, he said, and the guards were gloved and masked, although the medical personnel did not cover their faces. He described the psychologist as "American", white, short and fat, with glasses and thinning black hair combed back at the sides, aged between 40 and 45 years. The same psychologist also treated Khaled al-Maqtari in the second secret prison, and was present during some of his interrogations[32]. "He said I was in a bad state because of my fear of dogs." The doctor then told him that he "had it in his own hands to make this either a better or a worse place... If you cooperate with the investigators, they will give you a prayer mat and a Quran, otherwise you may be in a worse position than in the past."

Khaled al-Maqtari was placed in a small cell, close to the bathroom, where he stayed for about two weeks before being moved to a larger cell in the same corridor. Inside both cells, there were cameras that he felt were following his movements, as even in the dark he could see the red light moving back and forth. He initially remained handcuffed and shackled, the cell was kept dark for the first four or five days, and sounds were played over a speaker inside the cell.

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beginning of 2004; and again re-registered as N44982 in December 2004 by Bayard Foreign Marketing, a phantom company registered in Oregon State since August 2003. No other aircraft were registered by Bayard Foreign Marketing. The aircraft, which by then had become known as the "Torture Taxi" to journalists and plane spotters around the world, was sold in early 2006. Until 15 October 2005, Premier Executive Transport Services aircraft were permitted to land at US bases worldwide. The plane had an average range of 5,800 nautical miles at 459/585 knots (non-stop Washington Dulles-Kabul in 12 hours, for example), and could be configured for eight to 18 passengers.

[29] Other information suggests that it could have been a different CIA facility, sometimes known as the "dark prison", which was closer to Kabul, see below.

[30] The two may have been Riyadh al Sharqawi [Al-Haj Abdu Ali Sharqawi] and Umayr bin Attash [Hassan Muhammad bin Attash], who reportedly arrived at this Afghanistan facility in January 2004

[31] See, for example, Amnesty International, *USA/Yemen: Secret Detention in CIA 'Black Sites'*, AI Index AMR 51/177/2005, November 2005; Amnesty International, *Below the Radar: secret flights to torture and 'disappearance'*, AI Index AMR 51/051/2006, April 2006; Amnesty International, *Partners in Crime: Europe's role in US renditions*, AI Index EUR 01/008/2006, June 2006.

[32] A former CIA field officer confirmed to Amnesty International in January 2008 that psychologists were routinely present at interrogations

"It was not really music," Khaled al-Maqtari explained, "but noise to scare you, like from one of those scary movies. You feel your veins pumping and you become nervous. I was very nervous all the time I was in the room. Every time you think you are getting used to it, they would change it. I was scared, there were no dogs but there was noise there. Whenever you try to sleep, they bang on the door loudly and violently. There was music and shouting.

"There was a metal window in the cell, but there was no light from it. This window was within the building, not facing outside, and it was near the ground. I heard the guards walk past it, but mostly it was covered with cardboard. Ants and mice entered the room from there."

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[33]. "There was water in the bottom half of it, and you sit on it to urinate, then you cover it." Moazzam Begg, who was held in Bagram throughout most of 2002, told Amnesty International that he was provided with similar facilities from July 2002, adding that the toilet was mobile and purpose built, with a conventional toilet seat and cover.[34]

Interrogation and cooperation

Two days after Khaled al-Maqtari arrived, guards came and took him to see a "tall and thin" interrogator, who gave him bread and tuna. "This was how they do it," he said, "when they want to talk to you, they give you food." Experts on the CIA program, quoted by the *New Yorker* magazine, explained that offering and withholding food, and varying portion sizes, is part of the "psychological arsenal" available to the interrogators. "It's all calibrated to develop dependency."[35]

Khaled al-Maqtari asked where he was, and the interrogator told him that "you are in a place that maybe you will be able to get out of, but there are others who will never be able to get out, so you need to choose which you will be." Khaled al-Maqtari said he then asked "what did I do?", and the interrogator replied: "you were in Iraq and you may know where some Arab fighters are and you have not told us, or you may know suicide bombers and those who carry out suicide bombings."

Interrogations took place nearly every afternoon. The guards would come to the cell, and Khaled al-Maqtari had to stand well away from the door as they entered. His arms were then chained, he was masked and hooded, and taken to the interrogation room, where the hood, but not the chains, was removed.

All of the interrogators were from the US and used interpreters; the interpreters rotated, so that he never had the same ones for more than a week at a time. A former interrogator told Amnesty

[33]A US Air Force publication described the portable toilets as "molded plastic nightmares built in some Middle East country": *Airman: the magazine of America's Air Force*, May 2003
[34] Email from Moazzam Begg, 19 January 2008
[35] Jane Mayer, The Black Sites: a rare look inside the CIA's secret interrogation program, *New Yorker,* August 2007

International that this "good practice", aimed at ensuring that no interpreter develops a sympathetic relationship with a detainee. Khaled al-Maqtari met only male interpreters in Afghanistan. Interrogators also rotated, although less frequently. Khaled al-Maqtari said he was questioned by the tall, thin interrogator for about two weeks, followed by another with green or blue eyes, and the distinctive habit of wearing what Khaled al-Maqtari believed was a swimming cap during interviews. He was later interrogated by a woman who said her name was Sarah; she wore glasses and covered her hair. In the interrogation room, there was also a curtained off area, where someone else was always sitting. Khaled al-Maqtari was only ever able to see this person's feet.

He asked the interrogator with the swimming cap when he would be released, and was told: "there are three kinds of answers – there are things we can tell you, things we can't tell you and things that even we don't know, that only the big officials can determine."

The interrogators were nothing if not thorough. "They wanted every detail of my life, from the time I was born until I was arrested. They asked where I studied, where I travelled, who I spoke to. I mean in great and boring detail. Who are my brothers and sisters, what are their names and birth dates, who are their husbands and wives and children, who are my parents and uncles and friends. Who are all the people I have ever met. Of course they showed me many photos of people and many in Guantánamo Bay, I could see from the clothes, and asked 'do you know this one and that one'. If I knew one of them, they would take some time talking about him, if he is important to them. If he is not, or if he is dead or killed, that would be it."

"This was their method of interrogation: in the first place [Abu Ghraib] they tortured you so much that when you move to a new place and the treatment is better you start to feel that they are very kind. But in the first stage they asked about important questions, like where the houses of the fighters were. In the three months and some days I was in Bagram, they made me tell my whole life story fully many times. Later, in the secret detention, they asked the same questions over and over again, in many different ways to make sure that you are telling the truth."

On several occasions, Khaled al-Maqtari said that he heard detainees screaming and crying. The detainee in the cell next to his, Adnan al-Libi, was once taken away for three days, and Khaled al-Maqtari thought he might have been transferred. "But from the interrogation room, I heard very loud music and I wondered how the Americans can stand such loud music. When Adnan was brought back to his cell, he was tired and barely able to move or talk, and he said: 'I was in that place, suspended, and they were beating me and the loud music was playing and I was being interrogated.'" Muhammad Bashmilah, who was being held in the same facility at the same time, has said that he heard the screams of Adnan al-Libi being tortured in the interrogation room.[36]

[36] Center for Human Rights and Global Justice, *Surviving the Darkness: Testimony from the US Black Sites*, December 2007, p 24. See also

Medical care

On arrival in Afghanistan, Khaled al-Maqtari says he was suffering from internal bleeding and extensive bruising, and was in constant pain. Although he saw a doctor, who photographed and recorded his injuries, it was several weeks before he was given any medical treatment, and he believed that provision of care was linked to his degree of cooperation during interrogation. "They started to give me treatment after a while," he said, "when they knew I was telling the truth. They started to treat the bruises and wounds. They gave me an ointment and 'Vicks' for the breathing. Of course they gave us these things for the interrogation, I know this was for the sake of information. The proof for that is that when they got the information, they took the 'Vicks' and everything else from me."

Being allowed brief time outdoors was likewise contingent on cooperation. After two weeks, "when they had the information", he was taken out to a yard, and sat on a chair facing directly into a wall, inches away from his face. "It was a high wall, but there was fresh air… You are not allowed to turn your head a millimetre to the left or right, and you could stay for no more than 10 to 15 minutes, completely chained. Then they cover you and take you back. They didn't ever remove my mask, until I was in front of the wall sitting down. The first time I saw some remains of snow and heard some car noises.[37] I felt cold. There was also a lot of rain. I often heard the sounds of rain in Bagram. But later, in the secret jail, you would never hear, see or feel anything."

Conditions of confinement

The guards brought food to the cells, but did not enter except to bring detainees out for interrogation or for a shower. They would often bang on the door or wall when they passed, and although this meant that the detainees could rarely sleep without interruption, the noise from further down the corridor gave them warning of approaching guards. According to Khaled al-Maqtari, Adnan al-Libi would alert them when the guards were approaching, saying: "the fox is here".

A five-minute shower was allowed once a week, although Khaled al-Maqtari said that the water was scarce and cold: "There was a boiler but they never switched it on, except once, when they needed information… I was not able to wash because I was ill."

Who was in the secret prison?

As soon as interrogations finished, Khaled al-Maqtari was returned to his cell, always hooded, so as not to see any of the other detainees or any details of the building he was in. The position of the interior window and the sounds made by passing guards from all sides of the room, led him to suspect that the cells were discrete box-like structures, rather than rooms, although they had rendered walls like ordinary prison cells. By listening to other detainees who would speak during any lapses in the music or sound effects, he worked out that there were

[37] There was a substantial snowfall at Bagram and outside Kabul on 8 February 2004

two rows of 10 cells each. The lapses were never more than a few seconds, unless the generators stopped working, but Khaled al-Maqtari said that for detainees held in isolation, starved of communication, those brief interludes "were like a lifetime".[38]

Khaled al-Maqtari stayed in cell 19 for about two weeks. During his first few days the music in his room was excruciatingly loud, but during a break he heard a voice calling in Arabic to a prisoner called Riba'i. "When I heard it I was so happy, because I was not imprisoned alone." Then he heard the same voice calling out for "Mu'ath", "Naseem", "Marwan" and "Hazim". "I later found out that the person calling was Adnan al-Libi, he had a strong voice. He kept saying 'number 19, talk to us, number 19' but I didn't know that I was number 19 yet."

"Adnan was always calling others. He was always trying to find out who was there, who was new. At first I was scared and didn't know that he was calling me. And I was not able to get close to the door at first, I was handcuffed to the window. Days later they undid my handcuffs which allowed me to go near the door. There I heard again 'number 19, number 19' and this time I told them who I was. They were saying 'Allah Akbar' [God is great] and Adnan told me there were now six Yemenis there – Riyadh al-Sharqawi, from Ta'iz, and Umayr bin Attash, the brother of Khallad, were also new. They were both arrested in Karachi and sent to Jordan by the Americans. Umayr was 13 months in Jordan and Riyadh was there for nearly two years and they were tortured horribly."[39]

After about two weeks, Khaled al-Maqtari was moved to cell 13, which was next to Adnan al-Libi, and closer to the other prisoners, so he was able to ask questions during the infrequent breaks in the noise. Adnan al-Libi and the others told him more about the prisoners who had been held there before Khaled al-Maqtari's arrival. Ibn al-Sheikh al Libi, they said, had been taken away a few weeks before; he had been there only a few months, having spent the summer in a "medieval prison" and the previous year in Egypt.[40] Khaled al-Maqtari was also told that Abdulsalam al-Hela had been detained there earlier in 2003; he was later transferred to Guantánamo, where he remains today. Sheikh Saleh al Libi, who moved to cell 20 in April, said he had originally been detained in Mauritius and rendered through Morocco, and that he had previously been held in one cell outside, and one cell at the other end of the row. His given name and current whereabouts are unknown.[41]

[38] Other former "black site" detainees held in Afghanistan have described a similar facility, including Muhammad Bashmilah, Salah 'Ali Qaru, Muhammad al-Assad, and Binyam Muhammad.

[39]The six were Khaled al-Maqtari, Muhammad Bashmilah, and Salah 'Ali Qaru, who have since been released, and Riyadh al Sharqawi [Al-Haj Abdu Ali Sharqawi], Sanaad al-Qasemi and Umayr [Hassan Muhammad] bin Attash, who are currently held in Guantánamo (Hassan Muhammad bin Attash is a Saudi national from a Yemeni family, who was 17 years old when he was detained). A seventh Yemeni, Muhammad al-Assad, was also being held there; he has told Amnesty International that he did not speak in this prison, and al-Maqtari recalls that there were one or two prisoners on the row who never responded to any queries.

[40] Ibn al-Sheikh al-Libi [Ali Abdul-Hamid al-Fakhiri] reportedly told another Libyan detainee that the "medieval prison" he had been held in after he was returned from Egyptian custody was Pul-e-charki, an Afghan prison.

[41] Muhammad Bashmilah also reports spending some time in a cell outside the main row, see *Surviving the Darkness*, op cit, p 22.

At least three "high value" detainees had recently been detained at this site: Khallad [Tawfiq bin Attash], a Yemeni, and Ammar Baluchi [Ali Abdul Aziz Ali],a Pakistani raised in Kuwait, said they had been arrested in Pakistan together; Ramzi bin al-Shibh, a Yemeni, told the others that he had been in "a prison in Kabul" but was transferred out because the ICRC had learned he was there and had tried to see him. All three were said to have been transferred out in September 2003, and reappeared three years later, among the 14 "high value" detainees transferred to Guantánamo. Two of the other "high value" detainees, Mukhtar [Khalid Sheikh Mohammed] and Hambali [Riduan bin Isomuddin], had reportedly been held there earlier in the year.[42]

In cell 13, the light was left on constantly, and the names of what Khaled al-Maqtari surmised were two of the cell's previous occupants were scratched on the wall: Badr al-Madni and Abu Nasser al-Qahtani. He said he added his own name and nickname (Firas) on the wall below.[43]

Through conversations with Adnan al-Libi and the other detainees, Khaled al-Maqtari began to mentally map the names, or at least the nicknames, and cell numbers of those on his corridor. He could converse with the detainees closest to him, but any other messages had to be passed down through other prisoners, and could become garbled in the process.

"I think Riba'i may have been Tunisian, but he was very far away[44]; Hazim is Libyan; Naseem is Tunisian; Adnan is Libyan of course; Marwan al-Adenni is a Yemeni from Aden, he is here now [meaning here in Yemen], and so is Shumilla [Muhammad Bashmilah][45]. I am Yemeni of

[42] Where appropriate in this report, the name used by Khaled al-Maqtari or other former detainees is given in the text, with the given name of the individual, where known, in brackets. There is no standard means of transliterating Arabic names into the Roman alphabet, so the same given name is often represented by a number of different spellings. The name Muhammad, for instance, is commonly written in at least four ways. Moreover, a full Arabic name may consist of up to five parts, not all of which are always used. This has led to enormous confusion and complication in identifying persons detained by the US, who may be listed under several versions of their name. In a recent request to the US Army for information about a former detainee, lawyers provided 66 possible spelling variations for the name of a single person. In addition, many WOT detainees have aliases or nicknames, and in some cases are so well known by these aliases that their real names are hard to ascertain. Yasser al-Jaza'iri, for instance, simply means "Yasser the Algerian", yet he has been cited by this name in official US documents (where the name is usually spelled al-Jazeeri), while his given name has never been listed. Detainees would generally have heard only the alias or nickname of other detainees, or a mixed version of their name (ie, "Umayr" bin Attash, instead of Hassan bin Attash) and would not be likely to know the given names of other detainees, unless told by their interrogators.

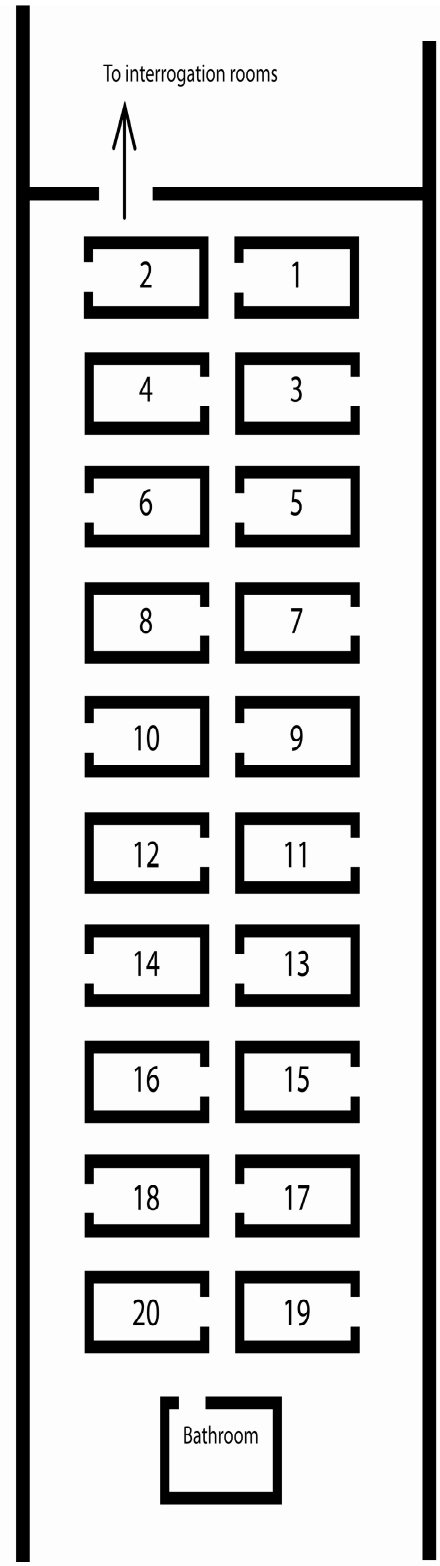
[43] Detainees with similar names, currently held in Guantánamo, had previously been held in Afghanistan. Saad Iqbal al-Madni was held in Afghanistan from April 2002 until March of 2003. He had been arrested in Jakarta in January 2002, and rendered to Egypt on the CIA's Gulfstream V, where he was held for 92 days before being rendered to Afghanistan via Pakistan in April of 2002. He was held in Afghanistan for nearly a year before being sent Guantánamo in March of 2003. At least five detainees called al-Qahtani have been held at Guantánamo, most of whom were previously detained in Afghanistan.

[44] In a later interview, Khaled al-Maqtari indicated that he thought Riba'i was probably Libyan. Other detainees have said that they were held with a Libyan called Riba'i in this facility.

[45] "Shumilla" is a diminutive of Bashmilah

course, and so are Umayr bin Attash and Riyadh Haitham al-Sharqawi – they were calling him Riyadh. And Abu Malik al-Qasemi was another Yemeni. Also there was Abu Ahmed, who was called Abu Ahmed 'the Malaysian. 'Abu Mu'ath al-Suri was very near me, and Abu Yasser al-Jaza'iri was near to Ahmed. There were many of them. Later came Majid Khan, from Pakistan, with Abu Abdullah al-Saudi. There were other ones who did not respond when Adnan was calling him out, and saying to him 'we are your friends'."

Majid Khan, a Pakistani who was one of the 14 detainees transferred from the CIA program to Guantánamo in September 2006, arrived in the facility in Afghanistan about six to eight weeks after Khaled al-Maqtari. Khan, who spoke little Arabic, 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. Abu Abdullah al-Saudi, who said he had been arrested in Iraq the month before, and had apparently been a "ghost detainee" like Khaled al-Maqtari, arrived at the same time.



Detainees reportedly held in secret facility in Afghanistan from January – April 2004; listed by cell number and name known to other detainees [given name in brackets]

1. Ahmed the Malaysian: current whereabouts unknown

2. Riba'i [Hassan LNU]: transferred to CIA "black site" in 2004, reportedly transferred to Libya in 2006, whereabouts unconfirmed

3. Yasser al Jaza'iri: transferred to CIA "black site" in 2004, current whereabouts unknown

4. Riyadh al-Sharqawi [Al-Haj Abdu Ali Sharqawi]: transferred to Guantánamo in September 2004

5. Umayr bin Attash [Hassan Muhammad bin Attash]: arrived late January 2004, transferred to Guantánamo in September 2004

Ibn al-Sheikh al-Libi [Ali Abdul-Hamid al-Fakhiri]: transferred out of this facility in early January 2004, apparently to CIA "black site", reportedly transferred to Libya in 2005, current whereabouts unconfirmed

6. Shumilla [Muhammad Faraj Ahmed Bashmilah]: transferred to CIA "black site" in April 2004, returned to Yemen in May 2005, released from custody in March 2006

7. Naseem al Tunisi: current whereabouts unknown

8. Hazim al-Libi [Khaled al-Sharif]: transferred to CIA "black site" in 2004, reportedly transferred to Libya in 2006, whereabouts unconfirmed

9. Abu Malik al Qasemi [Sanaad Yislam al Kazimi]: transferred to Guantánamo in September 2004

10. Abu Abdullah al Saudi: arrested in Iraq in February or March 2004, transferred to Afghanistan facility in April 2004, current whereabouts unknown

11. Marwan al-Adenni [Salah Nasser Salim 'Ali Qaru]: transferred to CIA "black site" in April 2004, returned to Yemen in May 2005, released from custody in March 2006

12. Mu'ath al-Suri, aka Abu Abdullah: current whereabouts unknown

13. Khaled al-Maqtari: transferred to CIA "black site" in April 2004, returned to Yemen in September 2006, released from custody in May 2007

14. a Somali man, name unknown

15. Adnan al Libi [Majid LNU]: transferred to CIA "black site" in 2004, current whereabouts unknown

16. Muhammad al Assad: transferred to CIA "black site" in April 2004, returned to Yemen in May 2005, released from custody in March 2006

17. Binyam Mohammed [based on his own statement, Khaled al-Maqtari said this was one of the cells occupied by someone who did not speak]: transferred to Guantánamo September 2004

18. Majid Khan: transferred to CIA "black sites", transferred to Guantánamo September 2006

19. Laid Saidi [based on his own statement: Khaled al-Maqtari says that someone arrived in this cell a day or two before the April 2004 transfer]: Laid Saidi himself reports having been moved from one detention facility in Afghanistan to another in late April 2004

20. Sheikh Saleh al-Libi: current whereabouts unknown

One of the Yemenis held with Khaled al-Maqtari in Afghanistan, "Abu Malik al Qasemi", appears to be the same person as a Yemeni now being held at Guantánamo, Sanaad Yislam al Kazimi. Al Kazimi reported that he was in the "Dark Prison" from September 2003 until May 2004, with other Yemenis including Muhammad Bashmilah and Salah 'Ali Qaru, and that he was in the cell next to Binyam Mohammed, an Ethiopian who is also now being held in Guantánamo. Binyam Mohammed, who had been arrested in Pakistan and rendered by US agents to Morocco, has said that he was taken from Morocco to Afghanistan in January 2004, and was held in "the Dark Prison" for five months. His description of this facility is similar to Khaled al-Maqtari's description of "Bagram". Both had 20 cells in two rows of 10, numbered in the same way, with double metal doors and low interior windows. Binyam Mohammed also explicitly mentions the ghostly sounds and music that had so disturbed Khaled al-Maqtari: "They used horror sounds, like they were from the movies, 24 hours a day for maybe two weeks. There was hardly any way to sleep. It was like a perpetual nightmare."[46] Binyam Mohammed estimated that there were up to 20 people in the prison, and that these had previously included "the Yemeni businessman from Sana'a named Abdulsalam Hiera" (presumably Abdulsalam al-Hela).

A statement from al-Sharqawi, in which he confirms that he was transferred to Afghanistan from Jordan in January 2004, describes the prison as "a pitch dark place, with extremely loud scary sounds". Other elements of his description are consistent with Khaled al-Maqtari's, particularly his account of being allowed to sit on a chair in front of a high wall once a week, where he too noticed snow cover[47]. All of these details strongly suggest that Khaled al-Maqtari, al-Sharqawi and the other Yemenis were held in the same place, and that it could have been the "Dark Prison", rather than Bagram.

Khaled al-Maqtari thought he was in Bagram primarily because the words "Welcome to Hotel Bagram" were inscribed on the wall of his cell, in English. He also said that other detainees who knew Afghanistan, including one who had been arrested in Khost and transferred by car, had told him that they "must be" in Bagram, because of the distance of the car journey. Other evidence is likewise equivocal: when Khaled al-Maqtari arrived in Kabul, he was transferred by vehicle from the airport to the prison, and he estimates that the trip took 30 to 45 minutes. He thought the vehicle travelled quickly, without stopping or starting, which led him to believe that they were not moving through traffic, but on a fairly deserted road. If the plane indeed landed in Kabul, 30-45 minutes at consistent speed would be about the time needed to reach Bagram. However, Muhammad Bashmilah, who was held in the same detention centre at the same time, recalls a journey of less than half an hour, more consistent with a site closer to Kabul.[48]

Both Khaled al-Maqtari and Salah 'Ali Qaru have said that there was at least one disused Russian truck in the yard of the facility, and Muhammad Bashmilah reports that he was able to see a prison guard tower, both of which suggest a purpose-built prison or military base.[49]

[46] Unclassified statement of Binyam Mohammed, August 2005
[47] Unclassified statement of Al-Haj Ali Sharqawi, April 2006
[48] Interview with Muhammad Bashmilah, May 2006. See also *Surviving the Darkness*, op cit, p 32.
[49] Interviews with Salah 'Ali Qaru, February 2006. See also *Surviving the Darkness*, op cit, p 26

Bagram is littered with Russian wrecks and guard towers, but so are other sites near Kabul. The "Dark Prison" is rumoured to have been located in a complex near Kabul airport, but the precise location is not known, nor is it clear whether or not it contained guard towers and abandoned military vehicles.

Given the extreme measures taken to insulate "black site" detainees from the outside world, their conclusions about the location of the detention site are bound to be speculative. To complicate matters further, there was at least one other CIA facility in operation at the same time. Abdulsalam al-Hela has described being held in at least four detention centres in Afghanistan, including Bagram airbase and the "dark prison" as well as facilities apparently run by Afghans[50]. Khalid el-Masri who was rendered to Afghanistan from Macedonia one day after Khaled al-Maqtari was transferred from Iraq, was taken to a detention centre close to the airport, where he saw Afghan guards in Afghan dress. His attorneys have concluded that he was held in a facility known as the "Salt Pit", an abandoned brick factory complex at an isolated site north of Kabul, a short distance from the airport. Khalid el-Masri has said that he was held with Laid Saidi, an Algerian handed over to US custody after being expelled from Tanzania to Malawi in May 2003. Laid Saidi, who has since been released, was held in at least three different facilities in Afghanistan, including a place he described as "filthy, not even suitable for animals", where he says he spoke to Khalid el-Masri[51], and a "very dark prison" near Kabul airport, where "there was very loud Western music being played".[52] Another CIA detainee who was moved into Afghanistan in January 2004 was also likely to have been held there: Muhammad al-Assad told Amnesty International that he had first been taken to a facility where the sounds of aircraft were regular, and which had Afghan or Pakistani guards in their native dress. His cell was old and had a window high up on one wall. After a few weeks there, he was driven to another facility about 20-40 minutes away. His descriptions of his new surroundings and of his eventual transfer make it clear that he had gone to the facility where Muhammad Bashmilah, Khaled al-Maqtari and the others were being held.

Whatever its precise location, this facility seemed to function as a transit and evaluation centre; some detainees had been brought there directly from arrest in Pakistan or Afghanistan, others had been held in other facilities in Afghanistan or abroad, and some had been "extraordinarily rendered" and were in the process of being transferred back from Jordanian or Egyptian custody. Of some 23 detainees thought to have been held there in late 2003 and early 2004, 14 were apparently transferred to other CIA "black sites" (four of whom were "high value" detainees who then transferred to Guantánamo in September 2006), at least three joined the regular detainee population at Guantánamo, and the fate of six others remains unknown.[53]

[50] Declassified notes of interview with Abdulsalem al-Hela, June 2005

[51] Craig Smith and Souad Mekhennet, Algerian Tells of Dark Term in US Hands, *New York Times*, 7 July 2006

[52] Interview with Laid Saidi, January 2007, by Thomas H Nelson, attorney.

[53] Through Khaled al-Maqtari and other former detainees, Amnesty International has identified 24 individuals who were held at this site in late 2003 and early 2004. There may well have been others held there whose names were not known, or who did not communicate with other detainees. In several cases we have not been able to determine a detainee's given name, so some of them may have been released or transferred to Guantánamo.

CIA 'black site': whereabouts unknown

In April 2004, probably around the 24th, Khaled al-Maqtari and a number of his fellow detainees were moved out of the Afghanistan facility.[54] He was given no warning of the impending move; two guards simply came to his room after lunch, at about 2pm, and brought him to the doctor for a medical check. The doctor's examination room was on a raised platform inside the hangar or warehouse; Khaled al-Maqtari remembers that he went up three steps to a floor, then up one additional step to enter the examination room. Once inside, his blindfold and clothes were removed, and each mark or injury on his body was numbered and recorded on the same chart he had seen the doctor use before.

Khaled al-Maqtari counted nine separate body charts on the doctor's desk, indicating to him that at least nine detainees were being prepared for removal.[55] The medical check itself took about half an hour, and Khaled al-Maqtari was then brought to another room, where the transfer team was waiting. The three-man team, dressed entirely in black, quickly put him into a nappy, knee-length trousers and a shirt, blocked his ears and covered and taped his eyes, finishing off with sound-deadening headphones, handcuffs and shackles. He was then brought to another area where he was pushed down to the ground in a sitting position. Unable to see or to talk, he could still feel that other detainees were seated on either side of him, and over the next two to three hours, he could periodically hear the sounds of other detainees being brought in.

Late in the afternoon, Khaled al-Maqtari and the other detainees were put into a vehicle, lying down, with others lying next to him. The drive to the airport took about 30 minutes, and once

[54] Other detainees have said about 12 people were moved. Why this group of detainees were moved at this particular time is unknown. Amnesty International has documented a pattern of detainee transfers in the USA's "war on terror" that seems to correlate to key moments in litigation in the US courts and to indicate an administration bent on ensuring that detentions abroad of foreign nationals remain as far from the scrutiny of the courts as possible. These transfers from Afghanistan to the unknown "black site" occurred a few days after oral arguments were held in the US Supreme Court on 20 April 2004 on the landmark question of whether the US courts had jurisdiction to consider habeas corpus petitions from foreign nationals held in Guantánamo, arguments which touched on detentions in Afghanistan and resulted in the *Rasul v. Bush* ruling against the government (dissenting from the *Rasul* ruling, Justice Scalia, joined by Chief Justice Rehnquist and Justice Thomas, warned that "the Court boldly extends the scope of the habeas statute to the four corners of the earth"). Two years later, the timing of the eventual transfer of Khaled al-Maqtari and others from this "black site" appears to have been linked to the Supreme Court's 2006 *Hamdan v. Rumsfeld* ruling, which President Bush described as putting the secret detention program in jeopardy, and after which, exploiting the cases of 14 "high-value" detainees held in the CIA program, he obtained the Military Commissions Act, which he interpreted as allowing the secret detention program to continue. See Section 4 and Appendix 2 of USA: No substitute for habeas corpus – six years without judicial review in Guantánamo, AI Index: AMR 51/163/2007, November 2007, http://www.amnesty.org/en/report/info/AMR51/163/2007

[55] Amnesty International believes that the nine included: Khaled al-Maqtari, Muhammad Bashmilah, Salah 'Ali Qaru, Muhammad al-Assad, Laid Saidi, Riba'i, Yasser al-Jaza'iri and Adnan al Libi.

there, they waited another hour in the car. His impression was that they were waiting for another carload of detainees to arrive.

At around sunset, he was loaded into a plane, apparently larger than the Gulfstream jet that had brought him to Afghanistan. Hooded and chained, he could not move as fast as the guards wanted, and so he was carried part of the way up the gangway. "There were two of them, one on each side, and sometimes one in front of me pulling me. If you are too weak to stand, they carry you."

"From the loud noise and rough ride and the way we sat," said Khaled al-Maqtari, "I felt it might have been a plane used for cargo." The plane seemed to have bench seats along the side, rather than in rows. The journey lasted "about three hours", although Khaled al-Maqtari acknowledges that this is only his best guess[56]: "I was very tired and couldn't count how long it took exactly. I don't think I slept because if you try to sleep, the guards kick you, but maybe I did and the time is hard to judge when one is very ill."

"After we landed, we were taken from the plane to a helicopter. The distance between them was maybe 200 metres, and the air was cool and fresh, definitely not hot. The helicopter journey was for one-and-a-half to two hours approximately. It was shorter than the plane trip, anyway. We were put into a vehicle, lying down as before. At first the road was asphalt, then it was bumpy, as if it was not paved. It took about 30 minutes to get there. The road was one level, neither going up nor going down."

On arrival at their final destination, a CIA "black site" in which Khaled al-Maqtari was to spend the next 28 months, he and the other detainees were brought into a large building like a warehouse, where he was chained in a sitting position to a ring in what seemed like some kind of trailer or container "like being in the back of a truck". He was there for several hours, and again felt that they were waiting for other detainees to arrive and be processed.

The size and location of this "black site" remains the subject of speculation. Amnesty International has reported extensively on the cases of three other Yemenis who were apparently held in the same site, and two of these men told Amnesty International in October 2005 that they believed this detention centre was in Europe. Khaled al-Maqtari himself firmly believes that the site was not in the Middle East or Afghanistan, citing the food, the distance they had travelled, and the orientation of the toilets (which were facing Mecca). The Council of Europe's June 2007 report confirmed the existence of secret detention centres in Poland and Romania up until the end of 2005, when these sites were closed down, but Khaled al-Maqtari and several other detainees who arrived at this site in 2004 were held until mid-2006, and evidence suggests that some of the "high value" detainees may have been moved from Poland and/or Romania to this site prior to their transfer to Guantánamo in September 2006.

[56] Others on the same flight have estimated three to five hours (*Below the Radar*, op cit, p 12). Laid Saidi, who appears to have been transferred out of Afghanistan on the same flights, said he believed the flight took five to six hours and the helicopter transfer two (interview with Laid Saidi, January 2007, op cit)

In the cells themselves, there were no windows and no natural light of any kind seeping in. When the lights were off, the room went completely black. The detainees were never able to hear any sounds of wind, rainfall, thunder or lightning, which made it difficult to get any sense of the climate in their location. Both heat and air conditioning were available in the cells, although they were more often used as reward and punishment than to maintain a constant temperature, so Khaled al-Maqtari was able to tell that there was significant variation between winter and summer. When he arrived, at the end of April 2004, he felt that the weather was cool and fresh. The winters were harsh and cold, and when he was briefly allowed outside during the summer months, towards the end of his stay, he described the direct sunlight as being warm enough to make him sweat, but not hot. Such a vague description would fit many locations in Europe and elsewhere, but would rule out locations in the desert or the tropics.

The duration of his transfer flights provides very general indications of where Khaled al-Maqtari might have been, but without knowing the size, speed and route of the aircraft, as well as the exact duration of the flights, no specific location can be pinpointed. The flight that returned Khaled al-Maqtari to Yemen in September 2006 was described as a non-stop journey of at least six hours in a "good plane"[57]. Given that cruise speeds for likely aircraft vary from about 250 to well over 500 knots, the final flight could have been anywhere from around 2,500 to more than 5,000 kilometres.[58] However, the triangulation between this flight and the shorter plane and helicopter journeys from Afghanistan appears to rule out locations in Western Europe and the Middle East.[59]

The facility in which Khaled al-Maqtari was held from April 2004 until September 2006 was new or refurbished, and carefully designed and operated to ensure maximum security and secrecy, as well as disorientation, dependence and stress for the detainees.[60] Well-staffed and resourced, and highly organized, the system in operation there would not have been maintained solely for the purpose of interrogating low-level suspects.

Intake procedures, for instance, consisted of being photographed naked from all angles, and having fingerprints and eye scans taken[61], before being examined by the doctor, and having all marks and injuries recorded. Khaled al-Maqtari then spent the first days of his time in this

[57] *Below the Radar*, op cit, p 15

[58] A Beech B300 has a maximum cruise speed of 311 knots, while certain models of the Gulfstream V can cruise at up to 585 knots. There are also turboprop planes with the capacity to fly seven hours non-stop; the CASA CN 235, for instance, has a cruising speed of about 246 knots. One nautical mile is equal to 1852 metres.

[59] The initial flight from Afghanistan could have reached Azerbaijan, Armenia, Turkey or Georgia or coastal Bulgaria or Romania, among other destinations; an additional helicopter flight of 120 minutes from such locations would have been unlikely to have gone more than 350 nautical miles. Aviation experts note that it is not common for helicopter flights to cross international borders, although technically possible. Assuming that the flight from Afghanistan had reached Turkey, eastern Bulgaria or Romania, possible sites for the final detention centre could have included Turkey, Bulgaria, Romania, Albania, Bosnia and Herzegovina and the Slovak Republic.

[60] *Secret Detention in CIA "Black Sites"*, op cit, pp 12-14.

[61] Khaled al-Maqtari reports that his eyes were scanned with a machine, which could have been either a retina scanner, or iris recognition technology

facility in his cell, naked and chained so close to the wall that he could barely reach the toilet. There were two video cameras in the cell, with red lights that blinked whenever he moved, and a mesh-covered speaker in the wall. The interior of the double cell door was heavy metal, and appeared to be new, and the toilet was likewise new and made of stainless steel.

Khaled al-Maqtari remained in this cell for four months, then moved to a nearby cell for about a year and finally to a third cell, which was some distance away, possibly in an adjoining building, for the remainder of his 28-month incarceration. Security levels and procedures in the new prison were even tighter than before, and communication between prisoners was almost impossible. The guards, like those in the previous facility, were dressed entirely in black, with their faces and hands also covered, and communicated by hand gestures, or simply by pushing him in the direction they wanted him to go.

The interrogators appeared to be preoccupied with maintaining the secrecy of the site. Khaled al-Maqtari was frequently asked how many cells he thought there were in the facility, and where he thought it was. Sometimes, he said "they bring a piece of paper and ask you to write down how many prisoners you think there are. I would say I didn't know, but I did, I think there were 15 cells in my section." The cells were divided into small blocks of three, each with a double steel entry door leading onto a small hallway, and a similar door from the block to the outside corridor.[63] Khaled al-Maqtari also felt there was another section; he explained that on one occasion guards covered him with a blanket, and took him down stairs into a long corridor, where he heard detainees shouting. "You felt that those there are tortured even more."

Majid Khan, seized at his brother's home in Karachi in March 2003, has alleged that he was tortured during his more than three years in secret CIA custody. His lawyers, who finally had access to him in Guantánamo in late 2007, a year after his transfer to the base, have filed Declarations in US federal court detailing the alleged torture against Majid Khan and other detainees held in CIA custody. All such detail has been redacted (censored) from the public record on the grounds of national security. His lawyers have stated the following:

"Khan's torture was decidedly not a mistake, an isolated occurrence, or even the work of 'rogue' CIA officials or government contractors operating outside their authority or chain of command. To the contrary, as detailed in the Dixon Declaration, Khan [redacted] prisoners who were similarly abducted, imprisoned and tortured by US personnel at CIA 'black sites' around the world. The collective experiences of these men, who were forcibly disappeared by the government and became ghost prisoners, reveal a sophisticated, refined program of torture operating with impunity outside the boundaries of any domestic or international law".[62]

Otherwise, interrogation practice followed much the same pattern as in Afghanistan. Conditions were initially harsh, so that it was some days before Khaled al-Maqtari was given even basic clothing, and several months before he had any blankets. Very gradually, he said, "they improved the situation as they got

[62] See Amnesty International, USA: *To be taken on trust? Extraditions and diplomatic assurances in the 'war on terror'*, AI Index: AMR 51/009/2008, March 2008.
[63] Muhammad Bashmilah describes a similar cluster of cells in this facility, see Out of the Darkness, op cit, p 40.

information from us." In the second year he was given access to books and writing materials, and started to be taken out for exercise and to view DVDs.[64] In the last two months, he was even able to use a white board in his cell to write requests for the air conditioning be turned down.

During the interrogations themselves, Khaled al-Maqtari did not suffer the kind of physical abuse he had been subjected to in Abu Ghraib, although he said he was regularly handled roughly and pushed around, particularly by the guards. The first few times he was questioned, he said, "I was not able to speak a single word. I was shaking whenever I was brought to them. I think they thought if we torture him any more he will go mad. But they kept me there for six hours, with the air very cold, until I got seizures. This happened until the doctor came to me. They put up the air conditioning sometimes, until all of my bones hurt me, but if they had put much more pressure on me I would have gone mad."

Amnesty International has interviewed a number of former "black site" detainees, all of whom have described years spent in mind-numbing isolation, broken only by interrogation sessions which seemed to them to have very little to do with alleged terrorist activities. Those interviewed by the organization have all been released – presumably because they were not found to pose a threat to the USA, or to be the "dangerous terrorists" CIA Director Hayden has insisted the secret detention program was designed for. Their interrogations were therefore likely to have been fundamentally different from those carried out with detainees thought to be high-level *al-Qa'ida* operatives. During his interrogations in the "black site" Khaled al-Maqtari was once again invited to recount his life story in excruciating detail, and to answer questions about the lives of his friends, family and acquaintances. He said he was shown thousands of photographs, including many of prisoners in Guantánamo, and told to provide any information – first or second hand – he had about those he recognised. Sometimes he had trouble concentrating, describing himself as "mentally exhausted" and unable to talk, and said the interrogators would give him questions on a piece of paper, to think about and answer in his cell. Another detainee described the process as collecting pieces of a puzzle before knowing what the puzzle would turn out to be.

[64] Muhammad Bashmilah, Muhammad al-Assad and Salah Ali Qaru, who were held in this facility from April 2004 until May 2005, have also described to Amnesty International gaining access to books, writing materials and exercise facilities. See *Below the Radar*, op cit, pp 13-14, and *Secret Detention in CIA custody*, op cit, pp 12-13.

The years of interrogation endured by Khaled al-Maqtari and other detainees who were never charged by the US, could perhaps best be characterised as a broad information fishing exercise. Indeed, the current CIA Director has indicated that the methods used in the secret detention program, at least in the initial years, were at least in part motivated by the US government's intelligence gap in relation to *al-Qa'ida*. In testimony to the Senate Intelligence Committee on 5 February 2008, for example, General Hayden tried to justify the water torture he admitted had been used in 2002 and 2003 as a means to obtain information from detainees at a time of perceived threat to public safety, and on the grounds that the intelligence community "had limited knowledge about *al-Qa'ida* and its workings."[65]

In February 2008 the CIA admitted to having "waterboarded" Khalid Sheikh Mohammed, Abu Zubaydah and 'Abd al-Rahim al-Nashiri. The latter was arrested in November 2002 in the United Arab Emirates, and was held in secret CIA custody until he was transferred to Guantánamo in September 2006. At his Combatant Status Review Tribunal hearing on 14 March 2007, 11 months before the CIA's admitted to having "waterboarded" him, 'Abd al-Nashiri testified that he had been tortured in CIA custody. Through a translator, he said: "From the time I was arrested five years ago, they have been torturing me. It happened during interviews. One time they tortured me one way and another time they tortured me in a different way." Clarification was then sought by the CSRT President, but in the publicly available transcript of the hearing, 'Abd al-Nashiri's relevant responses have been withheld:
President: Please describe the methods that were used.
Detainee: [**Redacted**]. What else do I want to say? [**Redacted**]. Many things happened. They were doing so many things. What else did they did? [**Redacted**]. They do so many things. So so many things. What else did they did? [**Redacted**]. After that another method of torture began [**Redacted**].

Whatever its motivation, prolonged secret incommunicado detention, which itself constitutes torture or other cruel, inhuman or degrading treatment, is unlawful. It violates universal standards of human rights, facilitates other forms of torture, and amounts to enforced disappearance. It jeopardizes the prospect of fair trials, erodes the rule of law, and potentially breeds widely-felt resentment at such injustice, thereby undermining rather than nurturing long-term security.

Khaled al-Maqtari said that he repeatedly asked his interrogators why he was there, and what his crime was: "I said to them: 'For justification you say human rights and democracy, but what right to do you have to torture someone when you have nothing against him. Has anyone seen me killing an American or doing anything like that?' When they arrested me, I did not have any weapons. I told this many times to the psychologists, they used to listen to me, but the interrogators never even asked about my arrest."

[65] USA: *Impunity and injustice in the 'war on terror',* AI Index: AMR 51/012/2008, 12 February 2008, http://www.amnesty.org/en/library/info/AMR51/012/2008.

Khaled al-Maqtari was subjected to many of the techniques described by Professor Alfred McCoy, an authority on the history of CIA interrogation, as "no-touch torture".[66] He endured prolonged solitary confinement, sensory deprivation and overload (eg, with lighting and loud music), and has described the use of stress positions, sleep deprivation, forced nudity, exposure to extremes of hot and cold, prolonged shackling, and withdrawal of medication. The abuses that have affected him most, he said, were the years of endless isolation, the complete absence of any control over or knowledge about his future, the constant monitoring by cameras, and his segregation from the outside world, particularly the lack of contact with or news about his family.

According to an expert body of health care professionals experienced in detention issues, between one third and 90 percent of those held in solitary confinement experience serious psychological and physiological effects, ranging from insomnia and confusion to hallucinations and psychosis.[67] "When the element of psychological pressure is used on purpose as part of isolation regimes such practices become coercive and can amount to torture."[68] Physicians for Human Rights has noted that "systematic, repetitive infliction of psychological trauma establishes control over another person," and that methods of psychological control, including (but not limited to) sleep deprivation, solitary confinement and severe humiliation, "are designed to instil terror, pain and helplessness and destroy a detainee's sense of autonomy without use of physical violence."[69]

The detention conditions described by former 'black site' detainees could be said to constitute a form of controlled sensory deprivation, in which various stimuli were added incrementally. Khaled al-Maqtari believed that his treatment improved as his interrogators became convinced that they had all the information they could get from him, and others have echoed that their treatment improved as they were closer and closer to release.

Sensory deprivation can cause irreparable psychological damage in less than a week.[70] Ironically, given that this is an interrogation tactic, one of the effects seen in sensory deprivation of little more than a single day was to sharply increase levels of suggestibility. Professor Ian Robbins, a clinical psychologist at St George's Hospital in London who has studied the effects of sensory deprivation, has noted that "the evidence that is accumulated in

[66] "No-touch torture" relies on the two pillars of extreme sensory deprivation – inflicted by prolonged isolation, hooding, manipulation of light and dark, heat and cold, noise and silence -- and self-inflicted pain, which can be caused by stress positions, sleep deprivation, extended shackling, or being forced to hold heavy objects. The combination causes victims to feel responsible for their own suffering, and the trauma created by the fusion of these techniques, McCoy notes, "is a hammer blow to the fundamentals of personal identity". See Albert McCoy, *A Question of Torture: CIA interrogation from the cold war to the war on terror,* Henry Holt and Company, New York, 2006, p 21-60

[67] The Istanbul statement on the use and effects of solitary confinement, adopted on 9 December 2007 at the International Psychological Trauma Symposium, Istanbul, Turkey

[68] Ibid.

[69] *Leave no Marks, Enhanced Interrogation Techniques and the Risk of Criminality*, Physicians for Human Rights and Human Rights First, 2007.

[70] McCoy, *A Question of Torture*, op cit, p 39.

those places [that use sensory deprivation] must be considered very unreliable because people will after a while start to take on board the views of their interrogators."[71]

During his 28 months in this "black site", most of Khaled al-Maqtari's limited contact with other human beings was with interrogators. These interrogators, with one exception, worked with interpreters – both men and women – who spoke "better Arabic" than in the previous facilities, and Khaled al-Maqtari believed that most of them were native speakers, although some of them told him that they had been brought up in the USA. He heard Lebanese, Syrian and Egyptian accents, and said that one who was familiar with Yemeni expressions and sayings tried to "cheer him up" sometimes by using them.

Communication between prisoners in the secret detention centre was strictly forbidden, and the tight and ever-present security made it almost impossible in practice. Even when Khaled al-Maqtari tried to write on his cell wall, he said, he was usually caught by the cameras, and he would then be subjected to extremely loud music as a punishment. He did eventually manage to leave his name on the walls of the second and third cells he stayed in, and saw in his first cell the names of Muqaatil al-Madni, from Pakistan, and Khalil al-Uzbeki scratched into the wall. Detainees also attempted to communicate by writing on articles of clothing, which were changed every week. On several occasions he was given clothing which contained the name of "Marwan al-Adenni".[72]

Khaled al-Maqtari met several of the facility's officials, including one who called himself the "*Amir*" [meaning leader or commander]. Khaled al-Maqtari described him as "a giant, bold American who was sent from Washington". The "*Amir*" and/or his deputy would come in person to the cell if there was something important to explain, including instructions on procedure or any change of routine, or sometimes when Khaled al-Maqtari had been particularly ill. The "bold one" remained at the facility until early 2006, when a new "*Amir*" came to introduce himself to Khaled al-Maqtari. He believed that these "*Amirs*" were in charge of his area, but that there was another, more senior official in charge of the whole facility. Another senior official, a Lebanese-American who did not use an interpreter, arrived at the facility in about May 2006, Khaled al-Maqtari had first met him in Afghanistan, and believed that he was in charge of the other interrogators.

Other prisoners at the 'black site'

In his third cell, where he stayed for most of his final year in secret detention, Khaled al-Maqtari believes that the prisoner beside him towards the end of his detention was Majid Khan, a Pakistani, with whom he had been held in Afghanistan. One day they delivered a book written in Urdu to Khaled al-Maqtari, then took it back and handed it in to the cell next door. "I used to hear Majid's voice sometimes, too, because when I was calling for prayers I heard him say, *al-salam alikum* [peace be upon you]; he really could not speak much [Arabic], but he

[71] BBC television, *Horizon*, Total Isolation, broadcast on 22 January 2008
[72] Marwan al-Adenni [Salah 'Ali Qaru], told Amnesty International in interviews in 2005 and 2006 that he wrote his name in articles of clothing and books while in the secret prison.

used to say *salam*, and I knew his voice." The guards heard him trying to communicate, and took Khaled al-Maqtari's books and writing materials away as a punishment. "They took me to the interrogation room, and said 'you did something very serious, we took from you these things as a punishment. If you repeat it, other things will happen to you'." A short time later, during one of the weekly clothing changes, he was given a jacket that had the name "Majid Khan" written inside.

About six months before his release, the "*Amir*" told Khaled al-Maqtari that he would be allowed to meet with another detainee. They would get half an hour together, and if they did not break any rules – the main one being that they were not to discuss where they thought they were – the meetings would continue.

The detainee they brought told Khaled al-Maqtari that his name was Ahmed Abdel Rashid, sometimes known as Abu Ahmed. He was originally from Somalia, Khaled al-Maqtari said, but he had been living in Islamabad teaching Islamic studies for many years.[73] Ahmed Abdul Rashid has not previously been identified as a "black site" detainee or appeared on any previous lists of prisoners who have "disappeared" in US custody, although Marwan Jabour, a Palestinian who may have been held in this detention centre between 2004 and 2006, said that two Somalis were held in the cells in his three-cell block during 2005, although he did not know their names.[74] Ahmed Rashid told Khaled al-Maqtari that his wife and three children were still in Islamabad, where he had been arrested about 16 months before. Pakistan's Inter-Services Intelligence had held him for two weeks before turning him over to US custody, and then he came directly to the secret detention centre from Pakistan. As soon as he mentioned these details about his detention and transfer, the door was opened and they were told that they must not speak of this.

Anxious for the meetings to continue, Khaled al-Maqtari said that he and Ahmed Rashid spoke mostly about their childhoods in Somalia and Yemen, and their families, or they read the Quran together. As Ahmed Rashid was a teacher of Islamic studies, Khaled al-Maqtari began to save up questions about religion to ask him during their weekly meetings, although occasionally the interpreters told him that the meeting had been cancelled, as "the situation does not allow it". During one meeting, they began talking about noises they had both been hearing, but once again the doors burst open and the guards told them they must not speak of this. In total they met about eight times, sometimes for up to one hour.

Towards the end of his detention, Khaled al-Maqtari says he was issued a blanket on which was written: "To Cuba, to Morocco, to Romania and to this place – Abu Ubeidah al Hadrami". Abu Ubeidah al-Hadrami is an alias for Ramzi bin al-Shibh, one of the 14 "high-value" detainees transferred from secret CIA custody to military detention in Guantánamo in

[73] Amnesty International, CagePrisoners, Centre for Constitutional Rights, Center for Human Rights and Global Justice, Human Rights Watch, and Reprieve, *Off the Record: US responsibility for enforced disappearances in the 'war on terror',* AI Index: AMR 51/093/2007, June 2007, p 10.
[74] Interview with Marwan Jabour, November 2006. Jabour also described similar meetings with another detainee – Yasser al Jazeeri – starting in the early part of 2006.See also *Ghost Prisoner: Two Years in CIA Detention*, Human Rights Watch, February 2007.

September 2006, and one of the six charged by the US authorities in February 2008 for capital trial by military commission. If accurate, this tiny account suggests that during the four years in which he was "disappeared", Ramzi bin al-Shibh was held at the CIA interrogation facility at Guantánamo, which was reportedly closed in 2004[75], and that he was either rendered to Morocco, or held in a CIA "black site" there. The reference to his being held in Romania, and then "this place", is also intriguing. Reports confirming the existence of CIA "black sites" in Romania and Poland have emphasised that they closed by the end of 2005. If this is the case, then inmates from those facilities, who reportedly included both Ramzi Bin al-Shibh and Majid Khan, may then have been moved to the facility in which Khaled al-Maqtari had been since April 2004. It also seems likely that this facility closed down in September 2006, and that Khaled al-Maqtari and others were transferred back to their home countries while the 14 "high value" detainees were sent to Guantánamo, enabling President Bush to assure the public that "the current transfers mean that there are now no terrorists in the CIA program."[76]

Cooperation and conditions of detention

Khaled al-Maqtari felt that all of his conditions of confinement, including the provision of food, were calibrated to his behaviour and level of cooperation. In the beginning, he said, the food was so bad, and his stomach pain so severe, that he often could not eat what they brought. "I was ill from the time I got there," he said. "We got rice stuck together in a lump, sometimes not well cooked and hard. Later, I sometimes ate a few triangles of cheese with honey." There was also sliced bread, and some kind of tinned meat, which he did not eat because he was afraid it may have contained pork.

For long periods of time, Khaled al-Maqtari was unable to keep solid food down. His weight fell alarmingly low, and after a few weeks in which he says he ate scarcely at all, they began to feed him bottles of "Ensure", a food substitute drink. "Each bottle had 350 grams, and it had things like vitamins and iron and magnesium in it. Three times a day, one for every meal; there was vanilla, chocolate and strawberry."

As time went on, the food slowly improved, so that in the last year of his stay he was sometimes given special food, including rice with sultanas and nuts. On one occasion, he said, "I asked for food, because I was fed up with that Ensure, and my stomach was hurting me, and they brought me something close to Muhalbiya [a mild white pudding]."

The diet also seemed designed to offer no clue to their location, as there was little fresh food, and nothing distinctively regional; Khaled al-Maqtari described it all as "western". Much of it was food that would have been pre-packaged and easy to store, and although the labels and wrappers were always removed, it was sometimes possible to read manufacturers marks.

[75] Dana Priest, CIA Holds Terror Suspects in Secret Prisons: Debate Is Growing Within Agency About Legality and Morality of Overseas System Set Up After 9/11, *Washington Post*, 2 November 2005

[76] President discusses creation of military commissions to try suspected terrorists. White House, 6 September 2006, http://www.whitehouse.gov/news/releases/2006/09/20060906-3.html.

"They use things from all different places," Khaled al-Maqtari said, "chocolate bars from America, the juice from the Emirates, the water from Oman, the medicine from Lahore, the blanket from Mexico, the paper cups from Saudi Arabia. But always different. They do to this to confuse you, so that you don't know which country you are close to."

Other aspects of their treatment also improved over the course of his incarceration in the "black site". After some months he was given a Quran and a watch so that he could follow prayer times; initially the watch was taped outside the cell door, so that he could see it through the small viewing window, but a few months later he was allowed to have it inside his cell. His guards told him that the watch was set to the time at Mecca. Later still, they sometimes played Quranic readings over the speaker in his cell, and towards the end of his stay he was given a handheld electronic football game.

After about a year, Khaled al-Maqtari was allowed to use an exercise room once a week, for about 30 minutes at a time. The room, which was next to one of the interrogation rooms, was large, about 20 metres square, and usually contained a basketball and an exercise bicycle. There was a net partitioning the room, and he had to stay on one side of it while he played. The guards removed his chains and shackles, but remained on their side of the net.

At the very end of his detention, Khaled al-Maqtari was finally allowed to see the sky. He was taken outside, into a narrow yard or courtyard, where he could hear planes and car horns, and most importantly, he could see the sun. "It was almost hot," he said, "but not very hot. It was mild. I was so happy I just lay down under the sun so it would shine on all of my body." But at his next session, he arrived to find that the open area had been covered with a net. "I was ill, and I needed the sun. I shouted at them, I said 'you don't want me to get better. Why did you cover it?' First they said, 'we can't tell you', but one of them later told met 'it was covered so you don't see anything or hear anything passing by'."

Medical care

Khaled al-Maqtari's ill-health continued during the 28 months he spent in this facility. He claims to have been in excellent health at the time of his arrest, and attributes his ailments to the physical effects of the torture in Abu Ghraib and the other facilities, and the psychological impact of his enforced disappearance and isolation. At the secret facility, he says he saw at least five doctors or medics and a dentist[77], as well as half a dozen psychologists.

"I think I was the most ill there. I had many illnesses and many doctors. I asked them but they refused to say what diseases I have got." During his interviews with Amnesty International, Khaled al-Maqtari continually coughed up mucus and blood, a condition that started, he said, while he was in secret detention. "I had to spit and cough all the time. I asked them [the doctors] where is this coming from? One said 'maybe this is because of the weather and you are in the room on your own', and another said 'maybe because of the place

[77] Muhammad Bashmilah also reports seeing a dentist, *Surviving the Darkness*, op cit, p 51

you left your toothbrush', and another says, 'this is discharge from your nose'. Everyone said a different thing, and they couldn't find treatment for these illnesses."[78]

He said he was usually given four or five different medications a day, and that he needed a doctor at least once or twice a week. He suffered from seizures, panic attacks, fits of hysteria, stomach pain, vomiting blood, passing blood from his bladder or bowels, back and knee pain, and kidney stones. He still has trouble breathing today, and said he cannot stand on one of his feet. "Some of the damage was from the beatings... but I think the suspension was the worst. I have been examined by an expert here and he told me that there was a hole where a piece [of bone] broke off in my shoulder and another in my side. Afterwards I always had pain all over my body, and I cannot turn from side to side. I think this was from the suspending, it was painful. I could not bear the pain."

Later in his second year at the "black site", he was provided with a white board and a marker pen, and taught a code. If he needed a doctor urgently, he would write the letter "E" on the board, there were other codes if it was not urgent, or if he wanted the psychologists or interrogators. The board was fixed to the wall, in view of the cell cameras, so that the guards would be able to see on the video link what he had written.

Before he was given the board, he would simply scream until someone came. "I knew only a few words of English," he said, "so I would point at myself and look in the camera and shout 'sick, sick'." Sometimes they would tell him that the doctor was not "in the building" but that they would call him, and this gave Khaled al-Maqtari the impression that the facility had at least two buildings. He also had the sense that there was always a doctor on duty and one on call. Under US Federal guidelines for care of prisoners, an acceptable ratio of doctors to prisoners would be in the region of 500 to one, again indicating that this particular facility was unusually well staffed and equipped.[79]

Khaled al-Maqtari said that there were five male doctors or medics in the detention centre at various times, although he saw one of them more frequently than any of the others. He described him as an older man, about 60, with a round face and white beard, who wore a heavy gold ring. Another doctor was small, clean-shaven and black haired, "about 45 years old, always wearing a tight t-shirt and carrying a travel bag." None of the doctors gave him their names or encouraged much conversation, but one – who was trying to calm Khaled al-Maqtari down enough to put a drip in his arm – did talk briefly about his medical training and background, telling Khaled al-Maqtari that he had studied for 13 years in the USA. All of the other doctors, Khaled al-Maqtari believed, were also from the USA.

There were also four men and one woman, again from the USA, whom Khaled al-Maqtari identified as psychologists. The woman, he said, sometimes tried to cheer him up. He once

[78] Two detainees who had allegedly been held in secret detention by the US contracted tuberculosis while in custody, one of whom – Saud Memon – died shortly after his release in April 2007.
[79] In order for a facility to receive a federal designation of suffering from a "Health Professional Shortage", it must have more than 250 inmates, and an inmate:physician ratio greater than 1000:1.

asked her age, and she told him she was 34, then said she should not have told him this because she was not allowed to give him any personal information about herself.

Khaled al-Maqtari felt that the psychologists were of little help. "I was always screaming, crying, thinking, and constantly dazed," he said. He was given medication, which he believes were tranquilizers, "for the seizures and the screaming." The psychologists helpfully told him that his psychological turmoil was because he was detained and isolated, and suggested he should "put up with it and forget".

"They always advised me not to think," he continued. "Some said maybe I was ill because I was chained with a one metre chain for four months, and only moved to go to the bathroom. What made me even angrier is that they said 'you should run'. How could I run when I was chained? I asked them to just unchain me.... I felt better when I tried to break dishes or banged on the metal doors, that is, when I did something."

Khaled al-Maqtari said that he was monitored very carefully by means of his cell cameras, and that he was thought to be a suicide risk. On several occasions, he said, when he had vomited blood, guards burst into his room and chained him to the wall: "maybe they thought I was doing something to myself to make this happen."

Transfer for medical treatment

Khaled al-Maqtari's stomach pain and bleeding left him largely unable to eat solid food, and he continued to fail to respond to drug treatment. In early August 2006, he was taken by plane from the secret detention centre to a distant hospital facility, where he had what he was told was an endoscopy.

There were few clues as to the location of the medical facility, but it was likely to have been a considerable distance away from the "black site". Khaled al-Maqtari first flew on one plane for about five or six hours, then transferred to a second plane, which seemed to fly for some eight hours before landing. He felt that the second plane, in particular, was "modern", rather than a cargo jet, and the seats would have been comfortable if he hadn't been so firmly tied and unable to move.

Another detainee, who was taken with him on both flights, was coughing, perhaps due to his condition, although Khaled al-Maqtari felt he was also trying to make his presence known. Khaled al-Maqtari started reciting verses from the Quran, and the other detainee responded before they were both told to be quiet. Khaled al-Maqtari believes by his accent that he was probably a Saudi Arabian.

Khaled al-Maqtari thought he might even have been taken to the USA for treatment, because the flight was so long. When he complained, and wondered why he had not been sent somewhere closer, one of the interpreters told him: "don't think it is easy to take you to the hospital, the hospitals are far away and you need a very special one."

His captors took no chances with security. The area of the facility to which the detainees were brought had either been emptied before they landed, or was a disused section of some kind of medical facility. Their flight arrived by night, and both men were put on a bus and taken directly to the hospital, about 30 minutes away. Khaled al-Maqtari remained blindfolded throughout, but noticed that the air and the floor in the hospital were very cool, and completely silent – there were no sounds of any other patients, staff or equipment: "I only heard the chains of the person next to me, the one who was with me and was coughing. There was no one else there."

Khaled al-Maqtari waited about 45 minutes while the other detainee was taken away, and was then taken through to the treatment room by a Lebanese-accented interpreter, who had travelled with them from the secret detention centre. He was not anesthetized or sedated for the hour-long procedure – which would have been normal medical practice – and so felt it was "very painful". The interpreter calmed him down by talking to him throughout, telling him that he was doing well, and to be patient. As soon as it was over, there was no recovery period, the two detainees were taken straight back to the plane.

After the first leg of the return flight, they again changed planes, and Khaled al-Maqtari felt that they waited while food or other goods were loaded onto the plane heading back to the "black site". One of the interrogators had told him that "it was difficult to bring food daily to this place, we bring food and store it and when it is finished we order more food."

Khaled al-Maqtari said that they never gave him the results of the tests, and never managed to find a medication regime that alleviated his pain and other symptoms. In the end, he said, he thought that his ailments had been "a gift from God… to scare them into handing me back, because the treatment they gave me did not work, because I was so ill, and was going mad. They didn't want to have me then, because they had all the information from me." About three weeks after his hospital visit, he was taken from the secret detention centre and returned to Yemen.

Transfer to Yemen

From the early part of 2006, Khaled al-Maqtari said, his captors had been telling him that he would not stay with them for long, and that they would transfer him somewhere else. He was resigned to being transferred to another secret site, but said he asked them anyway, nearly every day, when and where he would be taken. There was no answer until the morning of what he believes was 31 August or 1 September 2006, when an interrogator came to his cell at 10am, to say that they would transfer him "somewhere else" that afternoon. "I asked if it was a better place," Khaled al-Maqtari said, "and he told me 'almost'. I asked him whether I could take the books I had or were there books there. I was scared that they might transfer me somewhere worse. He brought me a plastic bag, and allowed me to put in it some sticks [used for cleaning teeth], the Quran, prayer hat, and some rose-berry beads I had."

It was late in the afternoon when the interrogator returned with guards, and gave him some clean clothes to put on. For the first time during any of his flight transfers, they also brought

him shoes, made of white cotton, which he described as "Egyptian" although they were made in Germany.[80] He began to believe he would be returning to Yemen, as before he left, one of the interrogators told him "now you can start your life again".

He was hooded and taken in the back of a truck or small bus to what he described as a "container", where they waited about 45 minutes for the plane to arrive. He could hear "airport" sounds while they were waiting. He heard a plane landing and taxiing toward them, then three men came to the container and stripped him and took photos, fingerprints and a retina scan. He was then put back in the same clothes and shoes before being blindfolded and hooded and brought by car to the waiting plane. It was a small plane, he said, as he only had to go up about four steps, and when he got to the top they lowered his head. The flight was direct, and he said it took about six hours.

In Yemen, he was held first in the Political Security prison in Sana'a for 16 days, then transferred to a jail in Hodeidah. The Yemeni authorities assured him he would be released, but that "he had to be patient". He was finally released in May 2007, with a group of other prisoners, as part of the celebrations for the day commemorating the unification of north and south Yemen.

The human cost of rendition and secret detention is all too often ignored. Amnesty International first spoke to Khaled al-Maqtari weeks after his release, but he was then emotionally unable to carry out a comprehensive interview. It took him several months to recover to the point of being able to discuss his experiences. As described above, his physical condition remains poor, and he is not able to afford to pay for medical treatment. Specialised medical and psychological care for the victims of torture is not available in Yemen, and Khaled al-Maqtari is afraid to travel to any country where he might be able to receive such treatment. He is currently surviving largely because of the generosity of his family, but says that the strain on his relatives is unsustainable. Even if he were able to work, he says, no one would hire him, as although he was never charged with a terrorist offence, he remains stigmatized because he was detained by the USA. In desperate financial straits, under suspicion by any potential employers, monitored by the security and intelligence service, and unable to secure treatment for the physical and psychological effects of his treatment in US custody, he fears he will never again be able to lead a normal life.

Afterword: Assuring the future of the CIA detention program

On 20 July 2007, President Bush issued an executive order giving his authorization to the continuation of the CIA's secret detention and interrogation program, referred to as the "High Value Terrorist Detainee Program".[81] In the order, the president asserted that the CIA program:

[80] Laid Saidi, an Algerian released from secret detention in 2004, also describes being given a pair of white shoes. See Craig Smith and Souad Mekhennet, *Algerian Tells of Dark Term in U.S. Hands*, *New York Times,* 7 July 2006

[81] For a comprehensive discussion of the ramifications of the June 2007 Executive Order, and the background to the development of the secret CIA program, see: Amnesty International, *USA: Law and*

"fully complies with the obligations of the United States under Common Article 3" (of the four Geneva Conventions), provided that "the conditions of confinement and interrogation practices of the program" remain within the limits set out in the executive order. The US authorities, including the President, have repeatedly emphasised that the CIA program and the techniques used in it have been cleared as lawful by administration lawyers. Clearly, then, the USA is interpreting its international obligations in a way that renders them meaningless and perpetuates an absence of accountability for a program in which the international crimes of torture and enforced disappearance have been committed.

Common Article 3 of the Geneva Conventions reflects customary international law applicable in armed conflict. Like international human rights law, which is applicable at all times, it requires fair trials and prohibits, among other things, torture and cruel treatment. Common Article 3 also explicitly prohibits "outrages upon personal dignity, in particular, humiliating and degrading treatment". For detainees held by the CIA who were not detained in the context of an armed conflict, international human rights law, not common article 3, provides the appropriate international legal framework governing their treatment. Treaties including the International Covenant on Civil and Political Rights and the Convention against Torture, to which is the US is a party, similarly proscribe torture and other cruel, inhuman or degrading treatment.

Under the program, however, the CIA has held detainees entirely incommunicado in secret locations, often for years on end, while denying them access to lawyers, courts, relatives, international human rights monitors and the ICRC. The order thus authorizes and endorses secret incommunicado detention, a practice that violates international law, and itself amounts to torture or other cruel, inhuman or degrading treatment. Former detainees have alleged that they were subjected to treatment including prolonged solitary confinement, beatings, suspension in chains, sleep deprivation, forced nudity, exposure to extremes of hot and cold, prolonged shackling, and withdrawal of medication. The secret detentions carried out by the CIA thus far have also amounted to enforced disappearance, which, like torture, is a crime under international law.

In contrast to the absolute prohibition of torture and other ill-treatment under international law, the executive order interprets US and international law in such a way as to facilitate a sliding scale of unlawfulness in relation to torture or other ill-treatment against detainees viewed by the CIA as potential sources of "high-value" intelligence. Furthermore, it contains loopholes that may allow further ill-treatment of detainees held in the CIA program, including in relation to humiliating and degrading treatment. It fails to rule out the use of the kinds of "enhanced interrogation techniques" used on Khaled al-Maqtari. It seeks to block accountability for the abuses already carried out under the program, including for officials and agents who have authorized, condoned or carried out enforced disappearances, abductions, secret detentions, and torture or other ill-treatment.

executive disorder; President gives green light to secret detention program, AI Index AMR 51/135/2007, August 2007, http://www.amnesty.org/en/report/info/AMR51/135/2007

Enforced disappearance & secret detention violate international law

Secret detention is in and of itself a violation of international human rights and humanitarian law, as set out in treaties binding on the USA. The practice typically contravenes the prohibition against arbitrary detention, and the prohibition against torture or cruel, inhuman or degrading treatment.[82] Its specific practice by the USA has been condemned by two treaty-monitoring bodies, the UN Human Rights Committee and the UN Committee against Torture. The Human Rights Committee stated:

> "The State party should immediately abolish all secret detention and secret detention facilities...It should only detain persons in places in which they can enjoy the full protection of the law." [83]

In similar vein, the Committee Against Torture stated:

> "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... The State party should publicly condemn any policy of secret detention."[84]

In confirming the existence of the secret detention and interrogation program in September 2006, and endorsing its continuation, the President was admitting to having authorized enforced disappearances, which are recognized as a crime under international law by a succession of international instruments.[85]

On 6 February 2007, the International Convention for the Protection of All Persons from Enforced Disappearance, adopted by consensus by the UN General Assembly in December 2006, opened for signature. The preamble of this treaty reiterates the "extreme seriousness of enforced disappearance, which constitutes a crime and, in certain circumstances defined in international law, a crime against humanity". Fifty-seven countries (not including the USA) signed the Convention on 6 February. Under the Convention, enforced disappearance is:

> "the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support

[82] ICCPR articles 16, 9 and 7; the Convention against Torture
[83] Human Rights Committee, United States of America: Concluding observations, UN Doc. CCPR/C/USA/Q/3/CRP.4, 27 July 2006.
[84] Conclusions and recommendations of the Committee against Torture: United States of America, UN Doc. CAT/C/USA/CO/2, 18 May 2006.
[85] Including the 1994 Inter-American Convention on the Forced Disappearance of Persons, which refers to forced disappearance as "an affront to the conscience of the Hemisphere", and the 1998 Rome Statute of the International Criminal Court, Article7(2)(i), which defines the crime against humanity of "enforced disappearance of persons" as "*the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.*"

> or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law".

Individuals were held in the CIA's secret program for up to four and a half years before President Bush confirmed the existence of the program in September 2006. The prior refusal or failure to clarify the fate or whereabouts of the detainees, leaving them outside the protection of the law for a prolonged period, placed them squarely within the agreed definitions of enforced disappearance. Fourteen of the detainees held in the program were identified and transferred to Guantánamo in early September 2006, a 15th joined them in April 2007, and Amnesty International knows of at least 10 other men who have been released from the program, after having "disappeared" for periods of up to three years. Some three dozen others believed to have been held in the CIA program remain unaccounted for, their fate and whereabouts unconfirmed.[86]

Secret detention facilitates torture or other ill-treatment, as well as amounting to such treatment in and of itself. As the UN Working Group on Arbitrary Detention stated recently in its severe criticism of the CIA program, such detention

> "falls outside of all national and international legal regimes pertaining to the safeguards against arbitrary detention. In addition the secrecy surrounding the detention and the interstate transfer of suspected terrorists may expose the persons affected to torture, forced disappearance, extra judicial killing and in case they are prosecuted against, to the lack of the guarantees of a fair trial."[87]

The CIA's secret detention program, in which "alternative" interrogation procedures are employed, is supposed to be limited to individuals believed to be in possession of high-value information. According to President Bush's executive order of 20 July 2007, for a detainee to qualify for detention in the program the Director of the CIA must determine that he or she is "likely to be in possession of information that could assist in detecting, mitigating, or preventing terrorist attacks" or "could assist in locating the senior leadership of al Qaeda, the Taliban, or associated forces".

No indication is given of how the CIA Director is meant to make this determination as to who is to be held in secret custody. For example, will information coerced from one detainee under torture or other ill-treatment be used as the basis for pulling another detainee into the CIA program?[88] In a statement about President Bush's executive order and the secret detention

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[86] Amnesty International, CagePrisoners, Center for Constitutional Rights, Center for Human Rights and Global Justice, Human Rights Watch, and Reprieve, *Off the Record: US responsibility for enforced disappearances in the 'war on terror',* AI Index: AMR 51/093/2007, June 2007, http://www.amnesty.org/en/report/info/AMR51/093/2007.

[87] Opinion No. 29/2006 (United States of America), Concerning: the case of Mr. Ibn Al-Shaykh al-Libi and 25 other persons, adopted 1 September 2006, para. 21.

[88] For example, the torture or other ill-treatment of Mohamedou Ould Slahi in Guantánamo, possibly in Defense Intelligence Agency custody while denied access to the ICRC for more than a year on grounds of "military necessity", reportedly followed the naming of Slahi during the interrogation of Ramzi bin al-

program, the Director of the CIA, General Hayden, asserted that "fewer than 100 hardened terrorists have gone through the program since it began in 2002, and, of those, less than a third have required any special methods of questioning."[89] Why the US has released without charge so many "hardened terrorists" is a matter for speculation, while the assurance that "fewer than a third" of the CIA's detainees were subjected to techniques amounting to cruel, inhuman or degrading treatment rings hollow in the face of the statements of Khaled al-Maqtari and other former "black site" detainees about the treatment they endured.

The wording of the executive order allows it to cast a much broader net than General Hayden suggests. Under the order, a detainee in the CIA program must be a foreign national who the Director of the CIA determines is a "member or part of or supporting al Qaeda, the Taliban, or associated organizations" and "likely to be in possession of information" that "could assist in detecting, mitigating, or preventing terrorist attacks" or "could assist in locating the senior leadership of al Qaeda, the Taliban, or associated forces". This could arguably draw in family members of individuals sought by the USA if such relatives are deemed by the CIA Director to be "supporting" one of the named organizations or "associated forces" and to have knowledge of the wanted person's whereabouts. In September 2002, for instance, Yusuf and Abed al-Khalid aged nine and seven respectively, were reportedly taken into custody by Pakistani security forces looking for their father, Khalid Sheikh Mohammed. The two were apparently still being detained in March 2003, when a press report confirmed that the CIA was holding the boys. One US official was quoted as saying:

> "We are handling them with kid gloves. After all, they are only little children...but we need to know as much about their father's recent activities as possible. We have child psychologists on hand at all times and they are given the best of care."[90]

Impunity

The executive order makes it possible for the CIA to continue to hold detainees in secret custody – to continue to carry out enforced disappearances – and offers little if any protection against the additional human rights violations that stem from secret incommunicado detention. Moreover, it reinforces the enormous accountability gap that persists in relation to past abuses, and seeks to ensure that this lack of accountability continues. Instead of carrying out its obligation to investigate credible allegations of enforced disappearance, including in the case of Khaled al-Maqtari, the US administration has sought to bend the rules, or simply ignore them. The obsessive secrecy that protects the operation of the CIA's "high value terrorist detainee program" leaves it immune to political or legal scrutiny, ensuring continued impunity for the human rights violations it entails.

Shibh in secret CIA detention at an unknown location. See USA: *Rendition – torture – trial? The case of Guantánamo detainee Mohamedou Ould Slahi*, AI Index: AMR 51/149/2006, September 2006, http://www.amnesty.org/en/report/info/AMR51/149/2006.

[89] 5 October 2007 Statement to Employees by Director of the Central Intelligence Agency, General Michael V. Hayden on the CIA's Terrorist Interrogation Program, https://www.cia.gov/news-information/press-releases-statements/press-release-archive-2007/terrorist-interrogation-program.html

[90] *See* Olga Craig, CIA Holds Young Sons of Captured al-Qaeda Chief, *Sunday Telegraph* (UK), 9 March 2003

The record is no better when it comes to accountability for torture. To date, as far as Amnesty International can ascertain, no CIA personnel have been brought to justice in relation to acts of torture or other ill-treatment, despite reports indicating that a pattern of such abuses exists, and despite agency personnel allegedly being involved in a number of deaths in custody in Iraq and Afghanistan.[91] The administration has chosen to ignore its obligations by the simple expedient of pretending that they do not exist. Yet no matter how many times the president says that the secret detention program complies with international obligations, including under Common Article 3, the fact remains that it does not.

While the military investigation into intelligence activities at Abu Ghraib concluded that "the CIA's detention and interrogation practices contributed to a loss of accountability and abuse" at the prison,[92] neither this nor other investigations conducted outside of the CIA Inspector General's office have had the scope to examine the CIA's secret program.[93] The Office of the Director of National Intelligence has stated that the CIA program "has been investigated and audited by the CIA's Office of the Inspector General (OIG), which was given full and complete access to all aspects of the program." [94] No details or findings relating to any such investigations have been made public. International standards require that investigations into torture and other cruel, inhuman or degrading treatment be prompt and effective, carried out by independent, competent and impartial investigators, and that their findings be made public.[95]

In its March 2005 statement asserting that its agents "do not torture" (while remaining silent on whether or not they engage in cruel, inhuman or degrading treatment), the CIA noted that

[91] David Passaro, a CIA contractor, was convicted in 2006 for assault in the case of an Afghan national who died in US custody Afghanistan in 2003. The CIA Director responded to the conviction by stating that "Passaro's actions were unlawful, reprehensible, and neither authorized nor condoned by the Agency... As abhorrent as this situation was, it is a fact that we, as an Agency, did not sweep it under a rug. We addressed it head-on and dealt with it swiftly." Statement to the CIA workforce by Director Hayden on the conviction of former CIA contractor David Passaro, 17 August 2006, https://www.cia.gov/news-information/press-releases-statements/press-release-archive-2006/pr08172006.htm. In the case of Manadel al-Jamadi who died in CIA and Navy SEAL custody in Abu Ghraib on 4 November 2003, for example, nine members of the Navy SEAL team were given "non-judicial punishment" by their commanding officer. None of the CIA personnel allegedly involved has been charged or prosecuted, despite being a case in which the CIA Inspector General found a "possibility of criminality". Statement by Senator Patrick Leahy, US Senate Committee on the Judiciary, on the nomination of Paul McNulty to the position of Deputy Attorney General, 2 February 2006.

[92] AR 15-6 Investigation of the Abu Ghraib Prison and 205th Military Intelligence Brigade, August 2004.

[93] The global review conducted by the Naval Inspector General, for example, noted that "the CIA cooperated with our investigation, but provided information only on activities in Iraq." Vice Admiral Albert Church's report added that "it was beyond the scope of our tasking to investigate the existence, location or policies governing detention facilities that may be exclusively operated by [other government agencies], rather than the [Department of Defense]" Unclassified executive summary of the Church Report, March 2005. The "independent" Schlesinger Panel global report similarly stated that "we are aware of the issue of unregistered detainees, but the Panel did not have sufficient access to CIA information to make any determinations in this regard".

[94] Summary of the High Value Terrorist Detainee Program, *op. cit.*

[95] UN Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

"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".[96] The absence of prosecutions of CIA personnel suggests that the policy remains out of compliance with international law, and indeed that the secret detention policy goes hand in hand with one of impunity.

[96] Statement by CIA Director of Public Affairs Jennifer Millerwise, 18 March 2005, *op.cit*.

Recommendations

Amnesty International calls on the US administration to:

1. Cease the use of secret, incommunicado or unacknowledged detention, and ensure that all government agencies adhere to a strict policy of registering and acknowledging all detentions;
2. Make known the names, fate, and whereabouts of all individuals the US has detained in the context of the "war on terror", even if they have been released, transferred to the custody of another state, or are dead;
3. Provide immediate access by the ICRC to all detainees now held, or previously held, in secret detention, either in direct US custody or in the custody of another government to whom US agents have access;
4. Charge detainees with recognizable criminal offences and bring them to trial within a reasonable time in independent courts, with full adherence to international fair trial standards, or else release them. There should be no recourse to the death penalty;
5. Allow detainees access to lawyers and to communicate with family members;
6. Withdraw all requests or demands to foreign governments for the continued detention of persons transferred from US custody, including from the CIA program;
7. Ensure that all allegations of enforced disappearance, torture and other ill-treatment carried out in the context of the CIA program are fully, independently and transparently investigated, and that anyone responsible for such human rights violations is brought to justice;
8. Explicitly prohibit interrogation techniques that violate the international prohibition on torture and other cruel, inhuman or degrading treatment and give clear guidance that anyone responsible for using or ordering the use of such techniques will be prosecuted;
9. Declassify all government documents providing authorization or legal clearance or discussion of secret detention, rendition, and enhanced interrogation by the CIA or other agencies;
10. Ensure that all those who have been subjected to enforced disappearance, secret detention, torture or other cruel, inhuman or degrading treatment are provided access to effective remedy, including compensation;
11. Ensure that Khaled al-Maqtari's allegations of torture and other cruel, inhuman or degrading treatment by US personnel, including members of the armed forces and the CIA, are subject to prompt, thorough, independent and impartial civilian investigation in strict conformity with international law and standards concerning investigations of human rights violations;
12. In view of evidence that Khaled al-Maqtari was the victim of an enforced disappearance, the US authorities should initiate prompt, thorough and impartial investigations into the allegations by a competent and independent state authority, as set out in Article 12 of the International Convention for the Protection of All Persons

from Enforced Disappearance, and Article 13 of the UN Declaration on the Protection of All Persons from Enforced Disappearance;

13. Ensure that appropriate reparation is provided to Khaled al-Maqtari. This should include restitution, compensation and rehabilitation, as well as full and public disclosure of the truth, public acknowledgement of the facts, and acceptance of responsibility.

Amnesty International calls on the US Congress to:

1. Hold hearings into the establishment and operation of the CIA's secret detention program, including examining the decision-making process by which detainees were included in the program and their interrogation and treatment, and to establish the identity, fate and whereabouts of everyone who has been or is being held in secret detention;
2. Legislate to make the human rights violation of enforced disappearance as defined in international law a criminal offence punishable by penalties commensurate with the gravity of the offence;
3. Legislate to ensure that the CIA secret detention program is ended, and that no similar program can be established in future;
4. Ensure that no further enforced disappearances are carried out by any government agency, and that all secret detention facilities under US control are shut down;
5. Legislate to ensure that no interrogation techniques or detention conditions which would violate international law can be used by, or on behalf of, any US agent against anyone held anywhere;
6. Establish sufficient oversight of the CIA, other US intelligence agencies, and special operations forces to ensure that none of their activities are carried out in violation of US or international law, and that "state secrecy" provisions cannot be used to shield unlawful activities from Congressional scrutiny.

Amnesty International calls on all other governments:

1. End any cooperation or assistance with secret detention operations, and disclose any information held about such operations, including past operations;
2. Desist from transferring a person to US custody where there are substantial grounds for believing that he or she would be in danger of being subjected to secret detention or enforced disappearance, torture or other cruel, inhuman or degrading treatment or punishment;
3. Ensure that anyone transferred from US custody is held in a recognized place of detention, that their family is notified and allowed visits and other communications with the detainee, that any such detainees are given access to the ICRC and to legal counsel, and that they are released promptly, unless they are charged with a recognizably criminal offence, and a court has determined that they should be kept in custody