

Ghost Prisoner Two Years in Secret CIA Detention

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Summary

When Marwan Jabour opened his eyes, after a blindfold, a mask, and other coverings were taken off him, he saw soldiers and, on the wall behind them, framed photographs of King Hussein and King Abdullah of Jordan. He was tired and disoriented from his four-hour plane flight and subsequent car trip, but when a guard confirmed that he was being held in Jordan, he felt indescribable relief. In his more than two years of secret detention, nearly all of it in US custody, this was the first time that someone had told him where he was. The date was July 31, 2006.

A few weeks later, in another first, the Jordanians allowed several of Jabour's family members to visit him. "My father cried the whole time," Jabour later remembered.

Marwan Jabour was arrested by Pakistani authorities in Lahore, Pakistan, on May 9, 2004. He was detained there briefly, then moved to the capital, Islamabad, where he was held for more than a month in a secret detention facility operated by both Pakistanis and Americans, and finally flown to a Central Intelligence Agency (CIA) prison in what he believes was Afghanistan. During his ordeal, he later told Human Rights Watch, he was tortured, beaten, forced to stay awake for days, and kept naked and chained to a wall for more than a month. Like an unknown number of Arab men arrested in Pakistan since 2001, he was "disappeared" into US custody: held in unacknowledged detention outside of the protection of the law, without court supervision, and without any contact with his family, legal counsel, or the International Committee of the Red Cross.

The secret prison program under which Jabour was held was established in the wake of the September 11, 2001 terrorist attacks, when US President George W. Bush signed a classified directive authorizing the CIA to hold and interrogate suspected terrorists. Because the entire program was run outside of US territory, it required the support and assistance of other governments, both in handing over detainees and in allowing the prisons to operate.

Pakistan's help was crucial to the program, more crucial than that of any other country. The Pakistani authorities delivered hundreds of prisoners to the United

States—some ending up in military custody, others in CIA custody—and it also allowed the United States and other countries to interrogate many of them on Pakistani soil. As the US State Department’s annual human rights report for 2004 describes, security forces in Pakistan “held prisoners incommunicado and refused to provide information on their whereabouts, particularly in terrorism and national security cases.” What the report does not say is that the Pakistani authorities carried out these abuses with the full knowledge and participation of American intelligence agents. Indeed, the degree of US control may have been so great, in some cases, that it constituted a form of proxy detention.

The possible use of proxy detention facilities is of especial concern now. In early September 2006, 14 detainees were transferred from secret CIA prisons to military custody at Guantanamo Bay. In a televised speech on September 6, President Bush announced that with those 14 transfers, “there are now no terrorists in the CIA program.” But he said nothing about what had happened to a number of other prisoners who, up until that point, were believed to have been in the unacknowledged custody of the CIA.

One concern is that the US might have transferred some of the remaining prisoners to foreign prisons where for practical purposes they remain under CIA control. Another worrying possibility is that prisoners were transferred to places where they face a serious risk of torture: indeed, some of the missing prisoners are from Algeria, Egypt, Libya, and Syria.

In a letter to President Bush published in conjunction with this report, Human Rights Watch has provided a list of 16 people who were believed to have been held at one time in secret CIA prisons, and whose whereabouts are currently unknown. Jabour saw or spoke to a number of those people while he was held. The letter also includes a list of 22 people who were possibly held in such prisons, and whose whereabouts are similarly unknown. A copy of the letter is included as an appendix to this report.

Human Rights Watch has called upon the Bush administration to provide a full accounting of every person that the CIA has held since 2001, including their names,

the dates that they left US custody, and their current locations. If they are being held in proxy detention in a third country, the US government should either transfer them to the United States for prosecution in US courts, or order their release.

To leave these men in hidden limbo violates fundamental human rights norms. It is also extraordinarily cruel to their families. The wife of a man who has not been seen since he was believed to have been taken into CIA custody told Human Rights Watch that she has had to lie to her four children about her husband's absence. She explained that she could not bear telling them that she did not know where he was: "[W]hat I'm hoping is if they find out their father has been detained, that I'll at least be able to tell them what country he's being held in, and in what conditions."¹

The fate of the missing detainees is one of the main unanswered questions about the CIA's secret prison program, but it is not the only one. Much is still unknown about the scope of the program, the precise locations of the detention facilities, the treatment of detainees, and the cooperation and complicity of other governments. Although confidential sources, including CIA personnel, have described some aspects of the program to journalists, and a small number of former detainees have recounted their experiences, many details of the program remain hidden.

What follows is the most comprehensive account to date of life in a secret CIA prison. Human Rights Watch interviewed Marwan Jabour over several days in December 2006, less than a month after he regained his freedom. He spoke clearly, precisely and in great detail about his experiences, although it was evident that he found some memories upsetting. His testimony is extremely valuable both in describing his own experience of secret detention and in providing information about others who were held with him.

Jabour was arrested in Lahore, he believes by the Pakistani intelligence services, and the worst physical abuses he endured took place while he was in their custody. He alleges that they beat him severely, burnt him with a red hot iron, and tied a tight rubber string around his penis, causing enormous pain. On this third day in Pakistani custody, three people he believes were Americans questioned him; the

¹ Communication to Human Rights Watch, January 24, 2007.

following day he was transferred to a secret facility in Islamabad. This facility had both US and Pakistani personnel, but the Americans seemed to be in charge.

Both in the Lahore facility and in Islamabad, Jabour endured many days of forced sleeplessness and forced standing, with little respite. Twice he collapsed, falling unconscious.

After a month in Islamabad he was flown to a secret prison, which he believes was in Afghanistan, where all of the personnel (except possibly the interpreters) were American. There, he was held completely naked for a month and a half, filmed naked, and interrogated naked. He was chained tightly to the wall of his small cell so he could not stand up, placed in painful stress positions so that he had difficulty breathing, and warned that if he did not cooperate he would be put in a suffocating “dog box.”

As the months went by, some aspects of Jabour’s treatment improved: his clothes were slowly returned; the physical mistreatment ended; he was placed in a larger cell; he got better food. Other aspects, however, changed slowly or not at all. He spent nearly all of his time alone in a windowless cell. He went a year and a half without a glimpse of sunlight. He wore leg irons for a year and a half. Worst of all, he spent more than two years with almost no contact with any human being besides his captors. Although he worried incessantly about his wife and three young daughters, he was not even allowed to send them a letter to reassure them that he was alive.

Jabour acknowledges that in 1998 he trained in a militant camp in Afghanistan in the hope of fighting in Chechnya, and in 2003 he helped Arab militants and others who had fled Afghanistan for Pakistan. But whether he violated the law should have been a matter for the courts; it was not a justification for abuse.

International human rights law prohibits enforced disappearance: basically, the holding of persons in unacknowledged, incommunicado detention. Such persons, who remain “disappeared” until their fate or whereabouts become known, are also more likely to be subjected to torture and other cruel, inhuman or degrading treatment.

The US government has long condemned these abusive practices in its policy statements and annual human rights reports; its own use of them severely undermines its moral authority on human rights. Even in wholly practical terms, its reliance on secret detention and abusive interrogation is wrong. The use of these techniques taints any testimony obtained from the persons held, making it difficult to prosecute the perpetrators of terrorist acts in fair proceedings, and to provide the public accounting of these crimes that the victims of terrorism deserve.

Key Recommendations

The US government should:

- Repudiate the use of secret detention and coercive interrogation as counterterrorism tactics and permanently discontinue the CIA's detention and interrogation program;
- Disclose the identities, fate and whereabouts of all detainees previously held at facilities operated or controlled by the CIA since 2001.

Other governments should:

- Refuse to assist or cooperate in any way with CIA detention, interrogation and rendition operations, and disclose any information that they may have about such operations.

The Case of Marwan Jabour

Marwan Ibrahim Ali al-Jabour is a 30-year-old Palestinian who was born in Amman, Jordan, and grew up in Saudi Arabia. In 1994, he moved to Pakistan to continue his studies, and in 1999 he got married. He and his wife have three young daughters.

Detention in Lahore

The beatings were difficult, but they weren't the worst part [The worst] was the fear that I would never see my family.

—Marwan Jabour, describing how he felt when he was taken into detention

Jabour was arrested after having dinner in Lahore, Pakistan, at the home of a friend, a professor at a university in Lahore, on May 9, 2004. At about 9 p.m., when he was pulling his car out of his friend's garage, a man on the street asked him about his friend. As Jabour responded, he was suddenly surrounded by a large group of Pakistani men in civilian clothing. The men grabbed him and cuffed his hands. They put him in a car and tried to put a sack over his head, but he fought back and they left the sack off.

They also arrested the friend whose house he was visiting, and another friend who was there. All three men were taken to what Jabour believes to be a Lahore station of Pakistan's Inter Services Intelligence (ISI), the country's powerful military intelligence agency; the station was close to the Panorama Centre.²

Jabour said that as soon as the men got him inside the station, they started beating him badly. "There were seven or eight officers in the room with me," Jabour told Human Rights Watch. "If I said I didn't know anything, they beat me: they slapped me, kicked me, and hit me with a stick. They insulted and threatened me. They kept me awake all night long."

² Panorama Centre is a well known market in Lahore.

Jabour said that the men also used an electric prod on him, continually questioning him about the whereabouts of suspected terrorists.

At about 6 a.m., he said, they sent him to a cell, leaving him there with shackles on his legs. There were three small cells in a row together. Jabour was alone in his cell, and his two friends were in the other cells. “They had been beaten too, but not as badly as I was,” Jabour said. “I was bruised from the beating.”

From the questions that Jabour was asked, he knew that his contacts with Arab militants had aroused official interest. Jabour told Human Rights Watch that he had trained in a militant camp in Afghanistan for three months in 1998, had returned to Afghanistan for a couple of weeks after the American bombing campaign started, and in 2003 had assisted Arabs and others who had fled Afghanistan for Pakistan. Because he had lived in Pakistan since 1994 and had studied at a university there, he spoke Urdu fluently and had local contacts. His knowledge of the local environment meant that he was able to arrange for people to get medical care and stay in local homes. Jabour claims that he assisted “unaffiliated mujahideen” —those who did not belong to al Qaeda or other armed groups—and that he was never a member of a terrorist group or in any way involved in terrorist activities.³

When the interrogators returned to his cell an hour or two later, they wanted the details of Jabour’s activities, including the names of militants he had met, and the addresses where those who had fled Afghanistan were staying. They had already found his cell phone and a diary with phone numbers. They took Jabour back to the interrogation room, where an interrogator was waiting for him. They told him to start making phone calls for them. The police began shouting and beating him. They threatened to arrest his wife. Jabour said: “They told me: ‘We’ll keep her on her knees in front of you.’” He described the scene:

We were in a specially made room with iron rings on the wall, and they chained my hands to the ceiling. They also tied a rubber string on my penis that didn’t allow me to pee. They left it on the whole time I was

³ Although Human Rights Watch cannot corroborate these statements, the fact that in 2006 the US authorities released Jabour without charge suggests that they did not believe he was implicated in acts of terrorism.

with them, except sometimes they would briefly undo it. It was terribly painful.

Jabour said that because he was kept from urinating for nearly four days, except for few brief moments of respite, he now has a problem with his kidneys. He has to urinate frequently, and sometimes there is blood in his urine.

Early in the morning on his third day of detention in Lahore, Jabour said, three people who he believes were Americans came to interrogate him: two women and a man. He was blindfolded the whole time they interrogated him, but he said that their American accents were unmistakable. (They interrogated him in English.) “They told me, ‘Marwan, you’re at a crossroads: you could spend the rest of your life in prison, or you could cooperate with us against the terrorists. You could be a rich man.’”

Jabour said that nobody physically abused him while the Americans were present, although sometimes he was made to kneel on the floor while he was being questioned. When the Americans once asked him about the bruises on his face, caused from his beating by the Pakistani police, he told them sarcastically, “Oh, we spent a very nice night together, your friends and I.”

During the interrogation, the two women did most of the talking. One was friendly, and made some suggestive comments to him; the other was very angry and swore a lot. The angry woman told him that there was a huge American man waiting for him in prison.

The Americans stayed at the police station until about midnight. After the Americans had left, the Pakistani police removed his clothes and showed him a red hot metal rod.

One of them asked me: “Where do you want to be hit with it?” I begged him not to. He burnt my left arm, just above the elbow, and my left leg. I got no medical care for the burns, which bubbled up. They took a month or so to heal. But this seemed minor compared to all the other things in my life at the time.⁴

⁴ A Human Rights Watch researcher was shown the light scars on Jabour’s arm and leg when she interviewed him in December 2006.

Jabour said that on the morning of the fourth day, the Pakistanis transferred him by car to another facility. He had been kept awake nearly the whole time he was detained in Lahore. He estimated that he was allowed a total of about three to four hours' sleep during the nearly four days he was held.⁵

Islamabad: Proxy Detention

I think it had once been a private home. It was a place of secret detention It seemed to me that this place was controlled by Americans. They were in charge.

—Marwan Jabour, recalling his detention in Islamabad.

Jabour described the detention facility he was transferred to as a “villa”: a large private compound that had been renovated to hold prisoners.⁶ He was blindfolded when he arrived so he did not see it from the outside, but he heard the Pakistanis who were in the car with him say that they were going to Islamabad.⁷ The drive from Lahore took three-and-a-half to four hours.⁸

⁵ Moazzam Begg, a British citizen who was imprisoned for two years at Guantanamo, described how when he was in ISI detention in early 2002, he witnessed other prisoners being beaten and deprived of sleep for days. Moazzam Begg, *Enemy Combatant: A British Muslim's Journey to Guantanamo and Back* (London: The Free Press, 2006), pp. 15-17.

⁶ He was held on the ground floor, but he was under the impression that the building had a second story.

⁷ The other prisoners who Jabour met in the facility confirmed that it was in Islamabad. Moreover, there are many other accounts of “disappeared” prisoners have been held in Islamabad or brought there for questioning. For example, a recent letter describing people recently released from secret detention in Pakistan states that among the detention centers where people were held was “a Safe House near Islamabad Airport.” Letter from Amina Masood, Defense of Human Rights, to the Honorable Chief Justice of Pakistan, December 19, 2006. See also “FBI questions al-Qa'eda man in Pakistan,” *Daily Telegraph* (U.K.), March 17, 2003 (“[Officials] said Yasir al-Jaziri, a Moroccan educated in America, was moved to the capital, Islamabad, for questioning after he was captured in a raid”); and “2 aides to Osama Yousaf arrested,” *Daily Times* (Pakistan), August 12, 2005 (“Sources also said Osama Bin Yousaf had been taken to Islamabad where a foreign investigation team would see him”).

Abdullah Khadr, a Canadian citizen arrested in Pakistan in October 2004, states that he too was held in secret detention in Islamabad, and was interrogated by both American and Pakistani personnel. See Affidavit of Abdullah Khadr, *United States v. Khadr*, Action No. EX0037/05, Superior Court of Justice, Toronto, 2006, pp. 25-27.

Moazzam Begg states that immediately after being arrested in early 2002 he was held in a house in Islamabad. He described it as a “very grand” house, like the house of a wealthy person, in what he thought was the G10 district of the city. Although he was held in a room, he saw several cells in another part of the house. Moazzam Begg, *Enemy Combatant*, pp. 6-13.

Finally, at least one detainee who is currently being held at Guantanamo stated in an administrative hearing that after being arrested he and a few others were brought to Lahore, interrogated there by American civilians, and then brought to Islamabad, where they spent two months in detention before being transported to Bagram air base in Afghanistan. Fahmi Abdullah Ahmed (ISN 688), *Combatant Status Review Tribunal Transcript*, US Department of Defense, set 4, pp. 425-26 (released March 3, 2006). Ahmed was arrested some time after February 2002; it is unclear when.

⁸ This is roughly the time it takes to make the trip using the Lahore-Islamabad motorway.

The forced sleeplessness that Jabour endured in Lahore continued in Islamabad. Jabour told Human Rights Watch that during his first seven days in Islamabad his captors did not allow him to sleep, except for the occasional hour-long doze. “It was a continuous investigation,” he said.

“The Americans were almost always around,” he told Human Rights Watch. “I wasn’t wearing a blindfold after I arrived there, so I could see them. I saw three American women and a man, plus about five or six Pakistanis.” Speaking of the Americans, he said: “I think it was the same man who questioned me in Lahore, and at least one different woman.” Jabour said that the Americans were dressed in regular Western clothes, and one of the women said that her name was Mary. They did not say what government agency they were from.

Jabour said that the Americans appeared to be in charge of the facility. They would question him during the day, sometimes showing him photos of suspected militants, and after midnight the Pakistanis would take over. At first Jabour was held alone in a cell that was like a room, and was attached to the wall by a chain about two meters long.

“The Pakistanis beat me almost every night,” he said. “Once they threatened to pull out my fingernails. Other times they would be friendly, and promise to release me if I talked.” He was forced to stand for long periods.

The Americans did not beat Jabour, but they made him stay awake. “They would say: ‘If you cooperate, we’ll let you sleep.’ And: ‘If you work with us, we’ll make you really rich.’ They never threatened to take me to Guantanamo, but they did say that I’d be taken away somewhere and would never see my children again. I was thinking that my life was finished.”

“I was thinking about my oldest daughter the whole time,” he said. “I thought that I’d never see her again. I was afraid that I’d be sent to Guantánamo.”

Jabour told Human Rights Watch that all of the Americans he saw at the facility were relatively young: in their late twenties or early thirties. He said that the man who questioned him was about age 28-30, with thinning hair, and the woman who called

herself Mary was tall, with medium length, light colored hair. Another woman was always angry and swore a lot. (Jabour believes this is the same woman who swore at him in Lahore.) Once, in Arabic, she told Jabour “Fuck Allah in the ass.”

Jabour collapsed twice during this first week in Islamabad; he believes that he had two heart attacks. The first time was on his fourth day of detention; the second time was at the end of seven days. “I fell unconscious both times, with my heart pounding out of my chest,” he said. The doctor, a Pakistani, checked his heart and gave him something called “glivet.”

After Jabour’s first collapse, they moved him to a cell with another prisoner, an Algerian named Adnan, who took care of him. (Jabour knew him as Adnan “al-Jazeeri,” or Adnan the Algerian.) Jabour was in such bad shape that he could not walk or feed himself. He was allowed to sleep for about four hours.

After his second collapse, three days later, he was allowed an entire day’s rest. “After the second collapse, I was hysterical,” he said.

A number of other prisoners were held in the cell block with him, which he described as a new addition to the main house. The cell block was stiflingly hot and the air was stale. There were two facing rows of three cells, each of which had a barred door facing the corridor. In front of the barred doors were wooden doors, but they were almost always left open. When the prisoners were walked down the corridor to use the toilet, they could see each other.

Jabour said that one cell held a 16-year-old boy named Khalid. Khalid, who was Egyptian, said that he had been arrested six months previously during military operations in Waziristan, in northwest Pakistan bordering Afghanistan. He was apparently badly injured during his arrest, and Jabour could hear him crying and moaning in pain at night. “He was suffering badly,” Jabour recalled. Another 16-year-old who was held in the facility was an Iraqi named Tha’er, who said that he had been arrested in mid-2003. Tha’er told Jabour that he had an Australian travel document, and that the Australians had visited him the previous year, interrogating

him and making a video of the interrogation. Tha'er also said that Abu Zubaydah and members of his group had been held in this same facility.⁹

The facility also held a Yemeni detainee who had been arrested in late 2003; a Libyan named Ayoub who had been arrested in early 2004; an Afghan known as Mohammed al Afghani, who was born in Saudi Arabia, and a Palestinian who had been arrested in early 2004. The latter two prisoners had been transferred from Peshawar prison to Islamabad the same day that Jabour had arrived. There were also three Pakistanis who were accused of involvement in the attempted kidnapping of an ISI general; they said that they had been held for a year without being charged. A fourth Pakistani was also held there; he was released a few days after Jabour arrived. Jabour said that this fourth man had been badly tortured: “you can’t imagine how much they were hurting him.”

Jabour said that the Pakistani prisoners told him that a Pakistani named Majid Khan had previously been held there with them.¹⁰

Jabour was held in the Islamabad facility for more than a month. He was never brought before a judge, charged with any offense, or allowed to see a lawyer. While he was there, another prisoner, the Yemeni, was moved from the facility, supposedly for Yemen. The day before Jabour was transferred, three other prisoners—the two 16-year-old boys, and the Algerian man—were taken away.

⁹ Zine Abd el Dine, aka Abu Zubaydah, is currently incarcerated at Guantanamo. He was among the 14 detainees transferred from CIA custody in early September 2006. It is believed that he was badly tortured during his detention. See, for example, Ron Suskind, *The One Percent Doctrine: Deep Inside America's Pursuit of its Enemies since 9/11* (New York: Simon & Schuster, 2006), pp. 115-18.

¹⁰ Majid Khan is currently incarcerated at Guantanamo. He was among the 14 detainees transferred from CIA custody in early September 2006.

Secret CIA Detention

It was a grave.

—Marwan Jabour, recalling his two years in secret CIA detention.

Jabour was transferred out of the Islamabad facility on the evening of June 16, 2004. The Pakistanis brought Jabour and three other prisoners (the Palestinian, the Afghan, and the Libyan) to the airport. The prisoners were blindfolded; their hands were cuffed, and their legs shackled. Jabour said that the drive to the airport took less than 20 minutes.

Before he was put on the plane, Jabour was led to the bathroom, where the Americans took off his blindfold. “I saw Americans in front of me, talking in sign language. A doctor was there, and he took my blood pressure and gave me an injection. I knew it was the end of my life.” Then the Americans put a sack over his head and changed his handcuffs. The injection made him a bit woozy, but he did not pass out.

Jabour said everyone entered the plane through the back, using what seemed like the door of a military plane. The plane seemed fairly small, like it could hold perhaps 20 to 30 people. The prisoners were on one side, with a seat between them. Their hands were cuffed behind their backs, and their legs were cuffed and shackled to the floor. There were four prisoners and about a dozen other people on the plane.

Jabour believes that the secret prison facility he was brought to was located in Afghanistan. He enumerated several reasons for this belief. First, the time spent flying: the flight lasted a maximum of two hours.¹¹ Second, the food served at the prison: during the Eid al-Fitr holiday,¹² the prisoners were given typical Afghan food, and near the end of his stay they were fed typical Afghan bread with regular meals. Third, facts gleaned from his captors: an officer at the prison once let slip that after

¹¹ This is more than enough time to get to Kabul from Islamabad.

¹² The Muslim holiday of Eid al-Fitr (the Festival of Fast-Breaking) is a three-day celebration at the end of Ramadan.

the earthquake in Pakistan relief supplies were flown “from here” to Pakistan.¹³ Fourth, the weather: it was extremely cold in the winter (colder than in most parts of Pakistan); one wall of his cell would be freezing to the touch. Fifth, the languages: the first director of the prison spoke fluent Farsi (Persian), suggesting that the prison was in a region where such language skills were useful.¹⁴

Jabour said he thinks that everyone at the prison was American—the guards, interrogators, prison directors, and medical personnel—except possibly the Arabic-speaking translators. Not only did the prison staff say they were American—informing Jabour that he was in U.S. custody—they spoke American-accented English.

The First Six Months

After the plane landed, the transfer team put Jabour and another prisoner in the back of a jeep, handling them roughly. The jeep then drove down an unpaved road to the prison.

When the group reached the prison, two guards brought Jabour inside. After they put him in a cell, by himself, they cut off all his clothes, leaving him naked. They released one of his hands from the handcuffs, and cuffed the other hand to a ring in the cell wall. It wasn’t possible for him to stand because the ring was near the floor, and he was attached to it via a short chain.

The cell was just over 1 meter wide by almost 2 meters long. It was roughly the size of a single mattress, but it did not have a mattress. The only objects inside the cell were a bucket and two coarse blankets.

The cell had two video cameras near the ceiling, too high for a standing person to reach. There were also speakers and a listening device built into the wall.

¹³ The US military sent relief flights from Afghanistan to assist people affected by the 2005 earthquake in Pakistan. See Embassy of the United States in Islamabad, Press Release, “250th Relief Flight Unloaded by the U.S. Military,” November 29, 2005.

¹⁴ Farsi and closely related languages are spoken in much of Afghanistan in addition to Iran.

This cell, as well as other cells that Jabour saw later, had double steel doors that were very close to each other. (In other words, to exit the cell it was necessary to go through one door and then the next.) The door that opened into the cell had a small glass window (about 40 cm by 30 cm) and a food slot below. Except for the door, the cell had no windows, but the lights were left on all the time, including at night.

Jabour said that he thought the structure of the building was old, but the cells were new and modern. Everything was metal and seemed very new.

The guards let Jabour sleep the first night (or let him try to sleep) and returned early in the morning. No one said a word to him, but they shaved his head, and also shaved off his beard and moustache. Then, without giving him any clothes to wear, they took him to an interrogation room. In retrospect, Jabour finds it hard to believe that he was paraded around naked in front of a group of men and women, but at the time he was so disoriented and upset that his lack of clothing seemed relatively minor.

The interrogation room was a relatively big room and it held about ten people, including guards and people who appeared to be doctors. Some members of the group were women. They put him a chair, shackling his hands and legs to the chair. A doctor came and another person made a video recording of Jabour's body.

A bearded man, whom Jabour had seen at the airport in Islamabad, began to talk in American-accented English. He said he was the "emir" (director) of the facility. He said Jabour had only one option: to cooperate. He promised that if Jabour cooperated, he would be treated well.

During this interrogation and countless future interrogations, his questioners asked about Jabour's activities in Pakistan, the people he had met, and his knowledge of terrorist groups. He was shown many hundreds of photos, some of people who were obviously in detention (they were wearing prison jumpsuits and showing a plaque with numbers).

During the first six months that Jabour was being interrogated, a huge, muscular man—whom Jabour called a "Marine" because of his build—would sometimes stand

behind the interrogator and act intimidating. Jabour was also frightened by an object that the interrogators called the “dog box.” It was a wooden box, about 1 meter by 1 meter in size, and the Americans told him that they put people inside it. “They said that KSM [Khalid Sheikh Mohammed] had spent some time in the dog box and then he talked. They kept threatening me: ‘We could do this to you.’”¹⁵

Jabour said that he was slapped a few times at the beginning of his stay, but was not beaten while held in the secret facility. Instead, when the interrogators felt he was not cooperating, they would chain him up in extremely uncomfortable positions, which would become painful over time.¹⁶ His hands would be attached to his ankles, and to the floor, and he would be left like that for a half hour to an hour. “At times it was difficult to breathe,” he explained. In all, he estimates that he was put in these stress positions a total of 15 to 20 times.

Jabour said that during the first six months he was held at the secret prison they would sometimes play rock music at ear-blasting levels, which could last an hour, a day, a few days, or even a week. “It was loud, awful music,” he said, “like the soundtrack from a horror movie.”

Besides the music, there was also a constant, low-level, white noise; Jabour said that it sounded like a generator. Jabour thinks that one of the main reasons for the noise was to prevent prisoners from communicating with each other.

Two weeks after Jabour arrived at the prison, he was provided with a Koran. After three-and-a-half months, he was given a prayer mat.

Jabour said that the food was awful. It was almost all canned food (often tuna or sardines): uncooked, very bland and bad-smelling. “It was like dog food,” he

¹⁵ KSM is a shorthand used by US officials for Khalid Sheikh Mohammed, alleged to be the architect of the September 11 attacks. Mohammed was held in secret CIA custody for three-and-a-half years. He was among the 14 detainees transferred from CIA custody to Guantanamo in early September 2006.

¹⁶ Numerous detainees at Guantanamo and elsewhere have reported being put in “stress positions” as punishment. In December 2002, Secretary of Defense Donald Rumsfeld issued new interrogation rules for Guantanamo, authorizing “stress positions,” removal of clothing, prolonged isolation, sensory deprivation, and forced grooming (like forced shaving of facial hair), among other interrogation techniques. In September 2003, Army Lt. Gen. Ricardo Sanchez authorized new interrogation techniques for use in Iraq, including the use of stress positions. Memorandum from Lt. Gen. Ricardo Sanchez to Commander, US Central Command, regarding “CJTF-7 Interrogation and Counter-Resistance Policy,” September 14, 2003.

remembered. During his first several months at the prison, his weight dropped considerably. Whereas he had previously weighed 93 kilograms, his weight fell to 58 kilograms. (They weighed him every week.) “I felt weak, dizzy, unbalanced all the time, like I was on a ship.”

Jabour received his clothes back piece by piece over time. First, after a month and a half at the prison, he was given a pair of pants. Then, after about three-and-a-half months, he was given a tee-shirt. Finally, after about eight months, he was given a pair of shoes.

Jabour told Human Rights Watch that his legs were left shackled to each other for one and a half years. During the time his legs were shackled, he could only take small steps; the chain running from one of his ankles to the other was about 75 centimeters long. Whenever he was taken out of the cell and brought to another room for interrogation, he was blindfolded.

The Remaining 19 Months

Jabour’s treatment improved considerably after the initial six-month period of detention, and continued improving in stages after that. The first major change was a transfer to a much larger cell.

To bring Jabour to the new cell, the guards blindfolded him and walked him around a long, complicated route, in and out of different rooms, confusing his sense of direction. When they reached the cell and removed his blindfold, Jabour found himself in a room that was about 5 meters by 7 meters in size, with a mattress, a pillow, a sink, some books of Koranic interpretation, and some strawberries. The big cell was also quieter than his previous, small cell, and the lights were turned off from 11 p.m. to 4 a.m.

Jabour was kept in the new cell for three days, then he was sent back briefly to his previous cell. “They told me I could take one thing with me,” Jabour recalled. “I wanted both the mattress and a book, but I chose the book.”

On December 18, 2004, Jabour was moved to a large cell in a separate building. When the guards moved him to that building, they took him outside; he estimates that the second building was 70 meters from the first one. His new cell number was B1.¹⁷ Like his first cell, it had no windows and no natural light.

While he stayed in the second building, he was allowed to shower once a week, on Saturdays.

Not long after he was moved into the second building he was given a watch, a calendar and a prayer schedule. He remembers that in summer the dawn prayers would be held as early as 3:25 a.m., whereas in winter the dawn prayers would be as late as 5:15 or 5:25 a.m., times that correspond to prayer times in Afghanistan.¹⁸

Except for interrogations, solo exercise, and his weekly shower, Jabour spent all his time confined within the four walls of his cell. With nothing else to occupy his mind, Jabour poured his energy into decorating his cell. After a year had gone by, the Americans gave him a map of the world, and later they gave him pictures of fish and animals. “I had asked them for a plant, which they didn’t give me, so I drew a big tree, with leaves colored on it,” he remembered. “I cut it out and taped it up on the wall.” He also made grass out of strips of paper. “I drew flowers, and I stood on my chair and stuck them to the ceiling.” Sometimes the Americans would take photos of his cell.

A year into his detention, the Americans started allowing Jabour to watch a movie once a week. The facility had a list of 200-250 films, including big-budget Hollywood films, documentaries, cartoons, sports, horror movies, and wrestling.

After a year and a half, an officer taught Jabour how to play chess. Jabour drew a chess board and made chess pieces out of paper. He also played checkers and cards with some of the women interrogators. About four months before he left, he was given a computer chess set, and a small video game.

¹⁷ He was never told the cell number of his first cell.

¹⁸ See Islamic Finder (<http://www.islamicfinder.org/>) (providing prayer times around the world).

Jabour spent much of his time reading. The prison had a big library with hundreds of books and finally, by the time he left, more than a thousand books in a variety of languages. The majority were in Arabic, but there were also books in languages such as Urdu, Persian, Indonesian and English.

One of the most momentous occasions for Jabour was when he was allowed to see sunlight. He had spent a year and a half in captivity without even a glimpse of natural light. One day the Americans opened up a skylight in his building. “They brought me a chair and let me sit under the skylight,” he remembered. “I was so happy. I joked with them, pretending to call outside, ‘Help! Someone help me! Let me out!’”

The second building he was held in had an exercise area, about 5 by 6 meters in size, in which Jabour was allowed to kick a soccer ball by himself. Near the very end of Jabour’s captivity, he was allowed to use a large gymnastics room: about 8 by 15 meters in size. The ceiling of the room was quite high up, and for a short while one of the prison subdirectors uncovered windows on the ceiling, through which Jabour could see sunlight and the sky. Jabour expressed warm feelings for the person who instituted these improvements, describing him as “a very good man.”

The food also improved toward the end of his more than two-year confinement. He started receiving Afghan bread with his meals, and toward the very end his meal would arrive heated. He was also very occasionally given Western food like pizza and hamburgers, as well as cookies and candy.¹⁹

Jabour was never permitted to contact his family, the hope for which never left him. “I told the kind ‘emir’ [a prison subdirector] that I was worried about my family,” Jabour recalled. “He said, ‘There’s some things we can do, but some things we can’t do.’ He said he couldn’t allow me to contact them.”

¹⁹ He remembers receiving chocolate bars like Snickers, Twix, Bounty, and Kit-Kats.

Secret Prison Staff

Jabour estimates that in the more than two years he was held at the prison, he saw a total of about 70 staff, consisting of some 25 guards and 45 civilian staff, including interrogators, supervisory staff, three or four doctors, and a few psychologists. He said everyone was American except for the translators, who he said were mostly Arabs. (They could have been Arab-Americans.) He said there was an Iraqi translator, three Egyptians, and a Lebanese woman.

The prison had three “emirs,” or directors, during this period. The first was a bearded man, who Jabour estimates was about 40 years old; the second was a man with a shaved head who was about 38 years old (with whom Jabour played chess on occasion); and the third was an older man, about 55, who arrived in May 2006. There were also five people who seemed to have the position of subdirector. Two of them called themselves Mr. Charlie and Mr. Warren.

Jabour said that every few months he would see a psychologist. One was a man about 50 years old. Another was a woman about 55 years old; Jabour said that he spent an hour with her on one occasion.

The translators, the doctors, and the interrogators all wore normal civilian clothing. The guards, who were all men, wore black uniforms and gloves, and had black plastic masks covering their eyes. They did not carry weapons and they did not speak, except at the very end of Jabour’s imprisonment, when they spoke to him in American-accented English.

Other Prisoners

Given the size of the prison where he was held, Jabour estimates that it had a capacity of 30-35 detainees. His estimate is further supported by the hundreds of books and videos in the prison library, and the large number of personnel who worked there.

Nearly all of Jabour’s contact with other prisoners occurred in the first month of his captivity. He estimates that there were about 12-15 detainees held in the same area

as him during that time. “They used to bang hard on our cell doors when they brought our meals,” he said. “At the beginning, they knocked on about 12-15 doors.”

Jabour found a name written on the wall in his cell: Marwan al-Adeni. He also heard what he described as “terrible shouting”—“someone saying ‘Help! Help!’”—during the first three days. On the third day, in a brief moment when the white noise had stopped (Jabour believes that it was a break between two generators), Jabour heard someone call out to him in Arabic: “Who are you? Don’t be afraid, talk.” Although Jabour had been warned not to talk to anyone, he conversed with this prisoner whenever the generator was quiet. The man said his name was Marwan al-Adeni, and that he had been held there for two months. He said that he had been arrested the previous year, and that the Americans had kept him in a secret prison that had Russian guards.²⁰ He said that he and six other prisoners had been brought together from that prison to the present one.

Jabour said that the two of them spoke every day for three days, until a guard came and punished them: he left Jabour shackled for an hour in a painful stress position. Jabour never spoke to Marwan al-Adeni again, but a year later, he found his name written on a mattress, and once he found his name written on a shirt. Also, during an interrogation when Jabour was first in custody, an interrogator showed him a photo that he said was of al-Adeni.²¹

Jabour also heard other prisoners talking during this time, again in the brief moment when it seemed like the generators were being switched. Several people gave their names, including Hudaifa, Adnan, Abdul Basit, and Abu Yassir al-Jazeeri. And once, during that first month, Jabour heard Ayoub al-Libi (whom he had been held with in Pakistan) calling him.

Another prisoner with whom Jabour had more indirect contact was Majid Khan, currently incarcerated at Guantanamo.²² On December 18, 2004, the day Jabour was

²⁰ It should be noted that unless the prisoners spoke Russian themselves, they might have mistaken a related language for Russian. Also, there could be Russian-speaking guards in certain countries in Central Asia.

²¹ Human Rights Watch has not found other sources with information about this prisoner.

²² See discussion above.

transferred to the large cell, he found an inscription below the cell's sink. It said: "Majid Kahn, 15 December 2004, American-Pakistani." He also received a book in May 2006 from the prison library that may have been meant for Khan. He had not requested the book, and believes it was given him by accident; inside it had a note written in good English that said: "I'm feeling depressed and upset. I want to go home to Pakistan. And I want the newspaper every day."

Cell B1, where Jabour was held for about a year and a half, was on a corridor with two other cells. For nearly a year, Jabour said—from December 2004 until late the following year—two Somalis were held in the cells next to his. He could sometimes hear them speaking to each other in Somali. When the two Somalis were moved, at least one other prisoner replaced them, but that prisoner never spoke and Jabour does not know who he was.

Twice when he was confined in that cell he heard a prisoner yelling, sounding very upset.²³ Jabour believes that both times it was a prisoner who was being led down the corridor: the sound approached and then it receded.

Jabour saw only a single other prisoner during his entire time at the secret prison. The circumstances of his meeting were surprising. At the end of February 2006, the prison subdirector, whom Jabour liked, told Jabour that he had good news. "He said they'd let me sit with another brother," Jabour recalled. "I said I don't believe you. He asked me who did I want to sit with: Someone religious? Someone funny? ... I said I wanted a funny guy who likes to joke. He said they had just the guy for me, a good guy: Yassir al-Jazeeri."²⁴

He met al-Jazeeri the next day. Al-Jazeeri told Jabour that he had arrived at the prison in April 2004. "I think he was part of the group of six prisoners who were transferred with Marwan al-Adeni," said Jabour. Al-Jazeeri told Jabour that he had been in a place where they beat him badly, doing permanent damage to his arm. Once they

²³ He remembers that one of those instances was in February or March 2006.

²⁴ Yassir al-Jazeeri was among the 26 people on Human Rights Watch's November 2005 list of "ghost prisoners" believed to be in CIA custody. Human Rights Watch, "List of 'Ghost Prisoners' Possibly in CIA Custody," November 30, 2005 (<http://hrw.org/english/docs/2005/11/30/usdom12109.htm>).

played loud music for four months straight.²⁵ He said that the guards were Russian but the interrogators were American. He also said that there were a lot of prisoners at that prison, and the prisoners could speak to each other.

Jabour was allowed to sit and talk to Yassir al-Jazeeri about eight times, sometimes once a week, sometime once a month. Once their meetings were suspended for a month after al-Jazeeri told Jabour that some Americans had entered his room at 3 a.m. to show him photos of Abu Musaab al-Zarqawi, who was dead.²⁶ The two were not supposed to talk about such things. The last time Jabour spoke to al-Jazeeri was in July 2006, a week before Jabour left the facility.

Jabour also learned of other detainees in US custody via his interrogations. An interrogator showed him a photo of a Somali man whom Jabour had known previously; the photo had been taken in Jabour's cell (the first small cell). Also in US custody was an African man named Speen Ghul; the Americans showed Jabour photos of him both before and after his arrest. Other detainees that Jabour remembers seeing photos of were two men named Retha al-Tunisi and Talaha.²⁷

One photo that surprised Jabour was of a boy named Talha, who appeared to be nine or ten years old.²⁸ His father was said to be Hamza al-Jofi, a militant leader in Waziristan.²⁹ When Jabour saw the photo of Talha, who was apparently in custody, he expressed amazement that the United States was holding someone so young.

²⁵ Al-Jazeeri also reportedly told Jabour that once, when a Lebanese interrogator visited that prison, they played Arab music for a full day.

²⁶ Abu Musab al-Zarqawi was the Jordanian who led Al-Qaeda in Iraq until his death in June 2006.

²⁷ From Jabour's description of Talaha, it seems very likely that he is Mohammed Naeem Noor Khan, also known as Abu Talaha. Jabour said that Talaha was in his mid-to-late 20s, that he was a Pakistani but had lived in Britain; that he was quite tall, and somewhat heavy-set; that he spoke Urdu, English, and Arabic; and that he was originally from Karachi. He also said that he thought Talaha was arrested in about July 2004, because that's when the Americans began asking Jabour about him. All of these characteristics describe Noor Khan, who was on Human Rights Watch's November 2005 list of 26 people who were possibly in CIA custody. More than two-and-a-half years after his arrest, Noor Khan's whereabouts are still unknown; his father has filed suit in Pakistan demanding information about what happened to him.

²⁸ This is a different person than the man named Talaha, mentioned above.

²⁹ American interrogators allegedly questioned Abdullah Khadr about al-Jofi while Khadr was being held in secret detention in Islamabad in October 2004. See Affidavit of Abdullah Khadr, *United States v. Khadr*, Action No. EX0037/05, Superior Court of Justice, Toronto, 2006, pp. 25-27. Human Rights Watch has no information about his son.

Release

As the months and years passed, Jabour lost all hope of leaving prison. But on the evening of July 30, 2006, without warning, the subdirector of the prison informed Jabour that Jabour would be leaving the following day. Notably, this announcement came just one month after the US Supreme Court's landmark ruling in *Hamdan v. Rumsfeld*, in which the Court held that detainees held as enemy combatants were protected under the Geneva Conventions.³⁰

Transfer to Jordan

The prison subdirector said he knew where Jabour was going to be sent, but that he could not tell him. He said there was no toilet in the plane so Jabour would have to wear diapers, and that they would make a video of his naked body to show that his body had not been harmed. He told Jabour to be ready to leave at 6 p.m.

The transfer team picked him up the next evening. They put cotton over his eyes, cotton in his ears, and rubber over that. Then they put a band around his head, a mask over his face, and head phones over his ears. His hands were cuffed in front and his legs were shackled. A belt was put around his legs, above the knees, and his handcuffs were attached to it. "I felt like a mummy," Jabour said.

They brought Jabour outside to a car, and laid him down in it. Jabour is fairly certain that another prisoner was next to him. The car drove for about an hour.

Jabour was brought outside and put in a chair, and he heard three shots. "I was afraid," he said. "I thought they were shooting people." The team was very aggressive with him, increasing his fear.

Suddenly they removed all of his wrappings and took off all his clothes. When his eyes opened, he saw a man pointing a video camera at him. Then the transfer team put a diaper on him, and put the same outfit back on, except this time they used plastic handcuffs.

³⁰ *Hamdan v. Rumsfeld*, 126 S. Ct. 2749 (2006).

He could only feel the airplane; he could not see it, but it seemed to him to be a small civilian jet. The seats faced forward, as in a normal passenger aircraft. In the plane, during the flight, a doctor took his blood pressure. The flight lasted about three-and-a-half to four hours.

Detention in Jordan and Israel

After the plane landed, Jabour was driven in a car for about 40 minutes and then brought inside a building. His handlers sat him down and began taking off the wrappings that covered him. Someone said to him in Arabic, “Keep your eyes closed. Now open them slowly.”

When Jabour opened his eyes he saw uniformed soldiers as well as men in civilian clothing. He could also see framed photos of King Hussein and King Abdullah, and he guessed that he was in Jordan. After questioning, he was sent to a cell, where a guard finally told him that he was in Amman, Jordan. Jabour later found out that he was being held at the headquarters of the Jordanian intelligence services.

A couple of weeks later, on about August 14, he was visited by a representative of the International Committee of the Red Cross (ICRC). The ICRC representative was the first independent monitor that Jabour had seen in two-and-a-half years of imprisonment. “He was very surprised by my story,” Jabour said. Jabour gave the ICRC representative the contact information for relatives who lived in Jordan. Two weeks later, a group of Jabour’s family members, some of whom had flown in from abroad, came to the detention facility on visiting day and were allowed to speak to Jabour for a short while. “I was overjoyed to see them,” Jabour later told Human Rights Watch.

While in Jordanian custody, Jabour was also allowed to send letters to his wife and children, his first contact with them in more than two years.

On September 18, 2006, the Jordanians transferred Jabour to Israeli custody. That morning, they told Jabour that he was being released. “They said congratulations, I was free,” Jabour said. “But I was still in handcuffs. And then they took me to a car and drove me to the King Hussein Bridge [on the border of Jordan and the Israeli-

occupied West Bank].” Israeli agents were waiting for Jabour at the bridge, and the Jordanians handed him over to them.

A few days after his transfer to Israel, Jabour was allowed to see a lawyer, and soon after that he was brought before a judge. After six weeks in Israeli custody, he was released into Gaza, where some of his family members lived. Two-and-a-half years after he was first arrested, he was finally able to speak to his wife and children on the phone.

The CIA's Secret Detention Program

The detention and interrogation program in which Jabour was held was operated by the US Central Intelligence Agency (CIA). It was authorized under a classified September 17, 2001 presidential directive, and operated in close secrecy for nearly five years.³¹

As Jabour's case illustrates, prisoners in the CIA program have been "disappeared," held in acknowledged detention in secret facilities, and barred from communicating with family members, legal counsel, or anyone outside. Although the International Committee of the Red Cross has repeatedly expressed concern about being denied access to detainees in CIA custody, the US government has refused to allow them to visit such facilities.³²

In a televised speech in September 2006, just before the anniversary of the September 11 terrorist attacks, President George W. Bush publicly acknowledged that the CIA had been secretly detaining suspected terrorists in facilities outside of the United States. The president said that he could not reveal "the specifics of this program, including where these detainees have been held and the details of their confinement." Instead, he dedicated most of the speech to lauding the program's accomplishments. While making the increasingly hollow claim that "the United States does not use torture," he described several cases where the CIA used "an alternative set of procedures" to obtain information from detainees who were resisting interrogation. Bush said: "I cannot describe the specific methods used—I think you understand why—if I did, it would help the terrorists learn how to resist questioning, and to keep information from us that we need to prevent new attacks

³¹ In response to a lawsuit filed by the American Civil Liberties Union (ACLU), the US government recently acknowledged the existence of the September 17 directive, after having for several years refused to confirm or deny that such a document existed. See ACLU, "CIA Finally Acknowledges Existence of Presidential Order on Detention Facilities Abroad," November 14, 2006. It has refused to make the document public, however, or even provide it to members of Congress. See "Leahy 'brushed off' on secret terror docs," UPI, January 3, 2007.

³² See "US bars access to terror suspects," BBC News, December 9, 2005; ICRC, "Developments in US policy and legislation towards detainees: the ICRC position," October 19, 2006 (ICRC President Jakob Kellenberger stating that "the ICRC had repeatedly expressed concern about detainees in undisclosed detention and had requested access to them").

on our country. But I can say the procedures were tough, and they were safe, and lawful, and necessary.”³³

As discussed below, interrogation methods reportedly used in CIA secret prisons included torture and other cruel and inhuman treatment—and were anything but lawful.

Discovering the Program

President Bush’s speech was the most important official acknowledgement of the CIA’s detention program, but it was not the first time that information about secret CIA detention had been made public. Indeed, reports that suspected al Qaeda operatives were being held by the CIA in “undisclosed locations abroad” began circulating in 2002.³⁴

The first official acknowledgement that such reports were true came with the federal prosecution of Zacarias Moussaoui for the September 11 attacks.³⁵ In February 2003, the federal district judge hearing the Moussaoui case ruled that the government had to allow Moussaoui’s lawyers to question Ramzi bin al-Shibh, who was allegedly a key figure in the September 11 attacks, and who had information that tended to exculpate Moussaoui from responsibility in the attacks. Because defendants have a constitutional right of access to exculpatory witnesses in the government’s custody, the government had to admit that it was holding bin al-Shibh in a secret location overseas. The government argued, however, that allowing Moussaoui’s counsel to question bin al-Shibh would seriously interfere with bin al-Shibh’s interrogation. Although the district court rejected the government’s claim, ruling that questioning via closed-circuit video should be allowed, the Court of Appeals for the Fourth Circuit

³³ White House, Office of the Press Secretary, “President Discusses Creation of Military Commissions to Try Suspected Terrorists,” September 6, 2006.

³⁴ See, for example, “Getting al Qaeda to talk,” CNN.com, September 17, 2002 (discussing the detention of Ramzi bin al-Shibh and Omar al-Faruq); “‘Appropriate pressure’ being put on al Qaeda leader,” CNN.com, March 3, 2003 (stating that CIA had brought Khalid Shaikh Mohammed, who was arrested in Pakistan, to an undisclosed location outside of the United States).

³⁵ Moussaoui, a French citizen of Moroccan descent, was indicted in December 2001 on charges of conspiring with other members of al Qaeda to hijack planes and fly them into the World Trade Center and the Pentagon. He later pleaded guilty and was sentenced to life in prison.

later reversed the district court's decision and barred all access to bin al-Shibh.³⁶ A similar issue later arose in the federal prosecution of Uzair Paracha.³⁷

More detailed and direct accounts of the CIA's secret detention and interrogation program emerged in 2004 and 2005 from former detainees. Most notably, in June 2004, Khaled el-Masri, a German citizen of Lebanese descent, told German police about his kidnapping, abuse, and secret detention. El-Masri was arrested by Macedonian agents on December 31, 2003, on the Serbia-Macedonia border, held secretly for nearly a month in a hotel in Skopje, then picked up by US agents and flown to Afghanistan, where he spent four months in unacknowledged detention. At the time the story was made public, el-Masri's lawyer said that he believed el-Masri had been held by the CIA. When journalists interviewed CIA officials regarding el-Masri's claims, the officials refused to either confirm or deny that he had been held.³⁸

Later in 2005, three Yemeni former detainees told Amnesty International about their experiences in CIA detention, and a number of Guantanamo detainees told their legal counsel that prior to their transfer to Guantanamo they had been held in a secret "dark prison" in Kabul, Afghanistan.³⁹ All of these accounts had certain common characteristics, including descriptions of interrogators and prison directors who spoke American-accented English, black uniformed and masked guards, flights in which the detainee was placed in diapers and wrapped up like a package, and various forms of physical and mental abuse.

³⁶ The access question eventually involved several other suspected members of al Qaeda (including Khalid Sheikh Mohammed and Tawfiq bin Attash), all of whom were transferred to Guantanamo in September 2006. The US government was so worried that the courts might grant Moussaoui's counsel some form of access to these detainees that it cited the Moussaoui case as a reason for denying detainee access to the 9/11 Commission. See Thomas H. Kean and Lee H. Hamilton, *Without Precedent: The Inside Story of the 9/11 Commission* (New York: Alfred A. Knopf, 2006), p. 121.

³⁷ In the Paracha prosecution, the defendant sought access to Majid Khan and Ammar al-Baluchi, both of whom were transferred to Guantanamo in September 2006. The defendant was convicted in November 2005 of providing material support to al Qaeda.

³⁸ Don Van Natta Jr. and Souad Mekhennet, "German's Claim of Kidnapping Brings Investigation of US Link," *New York Times*, January 9, 2005.

³⁹ Amnesty International issued a series of reports based on the Yemenis' description of their experiences. See, for example, Amnesty International, "USA/Yemen: Secret Detention in CIA 'Black Sites,'" AMR 51/177/2005 (November 2005). And Human Rights Watch issued a press release about the "dark prison." Human Rights Watch, "US Operated Secret 'Dark Prison' in Kabul," December 19, 2005.

Relying on flight logs and information from plane spotters (people who watch aircraft arrivals and departures at airports), journalists and human rights investigators were able to trace a number of the flights by which the CIA allegedly transported prisoners.⁴⁰

Yet, despite mounting evidence of the CIA's secret prison program, the Bush administration refused to discuss its operations. Indeed, it was reported that the administration did not describe the program in any real detail to the congressional intelligence committees tasked with providing oversight of the CIA's activities.⁴¹ Even when the *Washington Post* published a front-page news story describing the history and scope of the detention program in November 2005—a piece reportedly based on accounts by current and former intelligence officials—not a single administration official spoke about the program on the record.⁴²

According to the *Washington Post*, the secret detention program had at various times included sites in eight countries, including Thailand, Afghanistan and several democracies in Eastern Europe. Although at the request of the US government the *Washington Post* did not name the Eastern European countries where the prisons were located, Human Rights Watch released information pointing to Poland and Romania as among the sites of detention facilities.⁴³ A few weeks later, ABC News reported that at least 11 “High Value Targets” had been held in CIA custody in Poland.⁴⁴

Based on information from current and former intelligence sources, a number of journalists have described the interrogation methods used in CIA facilities. These

⁴⁰ The plane that brought el-Masri from Skopje to Kabul, for example, was a Boeing Business Jet whose registration number was N313P. For detailed accounts of how the CIA used civilian jets to transport prisoners both to its own prisons and to foreign prisons, see Stephen Grey, *Ghost Plane: The True Story of the CIA Torture Program* (New York: St. Martin's Press, 2006), and Trevor Paglen and A.C. Thompson, *Torture Taxi: On the Trail of the CIA's Rendition Flights* (Hoboken, Melville House Publishing, 2006).

⁴¹ Congressional intelligence committees were reportedly briefed about the existence of the CIA detention program, but they were not, for example, informed of the locations of the prisons. “Bush defends secret prisons, harsh interrogations,” Asheville Global Report, September 14-20, 2006. Notably, in response to President Bush's September 6, 2006 speech, Senator John D. Rockefeller IV, vice-chairman of the Senate Intelligence Committee, complained that Bush had “withheld details of the CIA detention and interrogation program from the congressional intelligence committees.” Press Statement, “Rockefeller Responds to President's Decision to Bring Captured Al-Qaeda Terrorists to Trial,” September 6, 2006.

⁴² Dana Priest, “CIA Holds Terror Suspects in Secret Prisons,” *Washington Post*, November 2, 2005. Priest later won a Pulitzer prize for her reporting on the CIA's secret prison program.

⁴³ Human Rights Watch, “Statement on US Secret Detention Facilities in Europe,” November 7, 2005.

⁴⁴ See “List of 12 Operatives Held in CIA Prisons,” ABC News, December 5, 2005 (stating that, among others, Khalid Sheikh Mohammed, Hassan Ghul, and Mohammed Omar Abdel-Rahman were held in Poland).

“enhanced interrogation techniques,” as the CIA reportedly called them, included extended sleep deprivation combined with forced standing, as well as exposure to extreme cold.⁴⁵ The CIA also reportedly employed waterboarding, a torture method by which the prisoner is strapped to a board and made to feel like he is drowning. It is believed that several of the 14 prisoners transferred to Guantanamo in September were subject to waterboarding.⁴⁶

The Pakistan Connection

Jabour’s experience of arrest in Pakistan and subsequent “disappearance” into CIA custody was far from unique. Indeed, it appears that a large majority of the prisoners held by the CIA were originally arrested in Pakistan, often during joint U.S.-Pakistani operations. Of the 14 high-level CIA detainees transferred to Guantanamo in September 2006, for example, nine were picked up in Pakistan.⁴⁷ And most of the other people who are thought to have been in CIA custody were arrested in Pakistan.

The Pakistani authorities have made no secret of the fact that they have handed over several hundred terrorism suspects to the United States, boasting of the arrests and transfers as proof of Pakistan’s cooperation in US counterterrorism efforts.⁴⁸ While the majority of these detainees were transferred into US military custody in Afghanistan or at Guantanamo,⁴⁹ or were transported to third countries via the CIA’s rendition program,⁵⁰ some substantial number of them disappeared into CIA

⁴⁵ See Brian Ross and Richard Esposito, “CIA’s Harsh Interrogation Techniques Described,” ABC News, November 15, 2005. ABC News reported that these techniques were first authorized in mid-March 2002.

⁴⁶ See *ibid.*; Suskind, *The One Percent Doctrine*, p. 115.

⁴⁷ They are: Zine Abd El Dine (aka Abu Zubaydah), Ramzi bin al-Shibh, Mustafa Ahmad al-Hawsawi, Khalid Sheikh Mohammed, Majid Khan, Ali Abd al-Aziz Ali (aka Ammar al-Baluchi), Walid bin Attash (aka Khallad), Ahmed Khalfan Ghailani, and Abu Faraj al-Libbi.

⁴⁸ Available information indicates that somewhere between 400 and 800 people were transferred from Pakistani to US custody between late 2001 and the end of 2005. See, for example, South Asia Terrorism Portal, “443 Al Qaeda suspects handed over to US,” January 7, 2003; Dr. Shoaib Suddle, Director General, National Police Bureau of Pakistan, “Fighting International Terrorism: The Role of Pakistan as a Frontline State,” February 13-14, 2006. President Pervez Musharraf himself has acknowledged that Pakistan handed over 369 detainees. Pervez Musharraf, *In the Line of Fire* (New York: Free Press, 2006).

⁴⁹ According to one study, at least 36 percent of the detainees brought to Guantanamo (that is, 270 people) were arrested in Pakistan, and possibly as many as half (i.e., 380 or more people) were arrested there. Mark Denbeaux and Joshua Denbeaux, “Report on Guantanamo Detainees,” Seton Hall Public Law Research Paper No. 46, February 2006, p. 14.

⁵⁰ Much has been written about the CIA’s rendition program (its program of delivering detainees without legal process to countries where they often face torture), which is closely related to its secret prison program. See, for example, Stephen Grey, *Ghost Plane*; Jane Mayer, “Outsourcing torture: The secret history of America’s ‘extraordinary rendition’ program,” *New Yorker*,

custody.⁵¹ Family members have filed suit in the Pakistani courts in some cases, but without knowing whether their relatives remain in Pakistani custody, are in US custody, or are being held elsewhere.⁵²

February 14, 2005; Amnesty International, "Below the radar: Secret flights to torture and 'disappearance,'" AMR 51/051/2006, April 5, 2006; Editorial, "Torture by Proxy," *New York Times*, March 8, 2005.

⁵¹ Human Rights Watch has the names of dozens of people who were arrested in Pakistan and may have been handed over to the CIA.

⁵² Some cases have involved more than one missing person, including people who were believed to have "disappeared" into CIA custody, at least for a time, people in Pakistani custody, and people who have since turned up at Guantanamo. For example, the sister of Khalid Sheikh Mohammed filed suit seeking information about her brother Khalid, her son Ali Abdul Aziz Ali, her nephew Musab Aruchi (aka Abdul Karim Mehmood), and other family members. The first two men are now known to be at Guantanamo, after having spent years in CIA custody. Aruchi's whereabouts are unknown, although it is thought that he was in CIA detention for a time. See "Interior ministry not aware of Khalid Sheikh's whereabouts," *The News* (Pakistan), January 26, 2007.

Former Detainees: Where Are They Now?

It is not known precisely how many detainees had been held in the CIA's secret prison program at some point prior to September 2006, but it is certain that there were many more than 14 of them.

Estimates of the number of detainees held by the CIA over the course of the program vary. The *Washington Post* described a two-tier system of detention, with some 30 "major terrorism suspects" being held at high-security prisons operated exclusively by CIA personnel, and an additional 70 less important suspects being transferred to prisons run by other countries' intelligence services.⁵³ The major suspects, also known as "High Value Targets," were alleged top al-Qaeda leaders, not "foot soldiers."⁵⁴

The picture emerging from detainee accounts, however, suggests that these numbers are understated, and that the true picture is more complex. For example, at the prison in Afghanistan where Khaled el-Masri was held, the guards were Afghan, but the interrogators, the main director, and the people in charge of prisoner transport appeared to be CIA.⁵⁵ So while the prisoners had daily contact with Afghan personnel, all of the important decisions regarding detention, treatment, and release were made by Americans.

And at the so-called Dark Prison in Afghanistan, which appears to have been operated solely by CIA personnel, there were a substantial number of detainees who were not top terrorism suspects. Human Rights Watch knows of some 20 prisoners previously held at that facility who are currently held at Guantanamo, as well as a former detainee who was released from Guantanamo in 2004.⁵⁶ The majority of

⁵³ Stephen Grey estimates that hundreds of detainees were handed over to other countries, while "less than three dozen at any time" were held in CIA prisons. *Ghost Plane*, p. 240.

⁵⁴ High Value Target (HVT) is a US military term. The loss of High-Value Targets "would be expected to seriously degrade important enemy functions throughout the friendly commander's area of interest." Defense Technical Information Center (undated) (available at: <http://www.dtic.mil/>). Most of the 14 detainees in CIA custody who were transferred to Guantanamo in September 2006 had been deemed High Value Targets.

⁵⁵ Human Rights Watch interview with Khaled el-Masri, Ulm, Germany, May 26, 2006.

⁵⁶ This group includes Mohammad Nasir Yahya Khusruf (who is about 60 years old), Abd al-Salam al-Hila, Musab Omar Ali Al Mudwani, and Bashir Nasir Ali Al Marwalah, among others.

these prisoners (and obviously the one who was released) would not be considered major suspects.

Similarly, prisoners such as Marwan Jabour and the three Yemeni former detainees interviewed in 2005 by Amnesty International were far from top suspects—they were eventually released without charge. Yet they too were held in prisons that seemed to have only American staff, as well as the extreme high-security arrangements characteristic of the CIA.

Missing Detainees

There is no comprehensive accounting of CIA detainees. But based on detainee testimony, press articles, and other sources, Human Rights Watch has put together a list of 16 people whom we believe were once held in CIA prisons and whose current whereabouts are unknown. We have also compiled a separate list of 22 people who were possibly once held in CIA prisons and whose current whereabouts are unknown.⁵⁷

The people listed below—by name, nationality, and presumed place and date of arrest—are believed to have once been held in secret CIA prisons:

1. Ibn al-Shaykh al-Libi (Libyan) (Pakistan, 11/01)⁵⁸
2. Mohammed Omar Abdel-Rahman (aka Asadallah) (Egyptian) (Quetta, Pakistan, 2/03)
3. Yassir al-Jazeeri (Algerian) (Lahore, Pakistan, 3/03)
4. Suleiman Abdalla Salim (Kenyan) (Mogadishu, Somalia, 3/03)
5. Marwan al-Adeni (Yemeni) (arrested in approximately 5/03)
6. Ali Abd al Rahman al Faqasi al Ghamdi (aka Abu Bakr al Azdi) (Saudi) (Medina, Saudi Arabia, 6/03)
7. Hassan Ghul (Pakistani) (northern Iraq, 1/04)
8. Ayoub al-Libi (Libyan) (Peshawar, Pakistan, 1/04)
9. Mohammed al Afghani (Afghan born in Saudi Arabia) (Peshawar, Pakistan, 5/04)
10. Abdul Basit (probably Saudi or Yemeni) (arrested before 6/04)

⁵⁷ It should be emphasized that the level of secrecy surrounding the CIA's prison program remains extremely high, and the obstacles to obtaining this type of information are daunting. In short, there may well be many other former CIA detainees of whose existence nobody outside the program knows.

⁵⁸ It is believed that al-Libi was transferred from CIA custody to Libya in early 2006, but this has not been confirmed.

11. Adnan (arrested before 6/04)
12. Hudeifa (arrested before 6/04)
13. Mohammed Naeem Noor Khan (aka Abu Talaha) (Pakistani) (Lahore, Pakistan, 7/04)
14. Muhammad Setmariam Naser (Syrian/Spanish) (Quetta, Pakistan, 11/05)
15. Unnamed Somali (possibly Shoeab as-Somali or Rethwan as-Somali)
16. Unnamed Somali (possibly Shoeab as-Somali or Rethwan as-Somali)

In addition, the following people may have once been held in secret CIA prisons:

1. Abd al-Hadi al-Iraqi (presumably Iraqi) (1/02)
2. Anas al-Liby (Libyan) (Khartoum, Sudan, 2/02)
3. Retha al-Tunisi (Tunisian) (Karachi, Pakistan, early- to mid-2002)
4. Sheikh Ahmed Salim (aka Swedan) (Tanzanian) (Kharadar, Pakistan, 7/02)
5. Saif al Islam el Masry (Egyptian) (Pankisi Gorge, Georgia, 9/02)
6. Amin al-Yafia (Yemeni) (Iran, 2002)
7. _ al-Rubaia (Iraqi) (Iran, 2002)
8. Aafia Siddiqui (Pakistani) (Karachi, Pakistan, 3/03)
9. Jawad al-Bashar (Egyptian) (Vindher, Balochistan, Pakistan, 5/03)
10. Safwan al-Hasham (aka Haffan al-Hasham) (Saudi) (Hyderabad, Pakistan, 5/03)
11. Abu Naseem (Tunisian) (Peshawar, Pakistan, 6/03)
12. Walid bin Azmi (unknown nationality) (Karachi, Pakistan, 1/04)
13. Ibad Al Yaquti al Sheikh al Sufiyan (Saudi) (Karachi, Pakistan, 1/04)
14. Amir Hussein Abdullah al-Misri (aka Fazal Mohammad Abdullah al-Misri) (Egyptian) (Karachi, Pakistan, 1/04)
15. Khalid al-Zawahiri (Egyptian) (South Waziristan, Pakistan, 2/04)
16. Musaab Aruchi (aka al-Baluchi) (Pakistani) (Karachi, Pakistan, 6/04)
17. Qari Saifullah Akhtar (Pakistani) (arrested in the UAE, 8/04)
18. Mustafa Mohamed Fadhil (Kenyan/Egyptian) (eastern Punjab, Pakistan, 8/04)
19. Sharif al-Masri (Egyptian) (Pakistan border, 8/04)
20. Osama Nazir (Pakistani) (Faisalabad, Pakistan, 11/04)
21. Osama bin Yousaf (Pakistani) (Faisalabad, Pakistan, 8/05)
22. Speen Ghul (from Africa) (Pakistan)

The crucial, unanswered question is: where are all these detainees now? One concern is that the US may have transferred some of them to foreign prisons where for practical purposes they remain under CIA control. Another worrying possibility is that prisoners were transferred from CIA custody to places where they face a serious risk of torture, in violation of the fundamental prohibition on returns to torture. On the latter question, it is worth noting that some of the missing prisoners are from Algeria, Egypt, Libya, and Syria, countries where the torture of terrorism suspects is common.

The CIA Program and Human Rights Violations

In his September 6, 2006 speech, President Bush stated that the CIA's detention and interrogation program had been "subject to multiple legal reviews by the Department of Justice and CIA lawyers," and had "received strict oversight by the CIA's Inspector General." But if the CIA program passed scrutiny, as the President suggested, then that raises serious questions about the legal review provided by the responsible government agencies on matters of national and international consequence. By international human right or humanitarian law standards, the CIA program was illegal to its core.

In secretly detaining and abusing prisoners like Marwan Jabour, the US government violated a host of fundamental human rights norms. Enforced disappearance—encompassing arbitrary, secret and incommunicado detention—and torture and other cruel, inhuman and degrading treatment are all prohibited under international human rights law.

Enforced Disappearance

The International Convention for the Protection of All Persons from Enforced Disappearance (the Convention on Enforced Disappearance) defines "enforced disappearance" as:

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 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.⁵⁹

⁵⁹ International Convention for the Protection of All Persons from Enforced Disappearance, adopted by the U.N. General Assembly on December 20, 2006, opened for signature on February 6, 2007, art. 2. The treaty will enter into force 30 days after 20 states have ratified it.

Although the newly adopted convention has yet to enter into force, its definition of enforced disappearance is consistent with definitions contained in a number of earlier international instruments.⁶⁰

When the Convention on Enforced Disappearance was opened for signature on February 6, 2007, 57 countries signed immediately. Yet, although it had actively participated in the drafting of the convention, the United States was not among the signatories. State Department spokesman Sean McCormack said that the United States had not signed because the convention as adopted “was not one that met our needs and expectations,” but he did not further elaborate.⁶¹

International law bans “disappearances” in all circumstances. The Convention on Enforced Disappearance states that, “No exceptional circumstances whatsoever, whether a state of war or a threat of war . . . or any other public emergency, may be invoked as a justification for enforced disappearance.” The convention bars secret detention and requires states parties to hold all detainees in officially recognized places of detention, maintain detailed official records of all detainees, authorize detainees to communicate with their families and legal counsel, and give competent authorities access to detainees.

The practice of enforced disappearance constitutes a grave threat to a number of human rights, including the right to life, the prohibition on torture and cruel, inhuman, and degrading treatment, the right to liberty and security of the person, and the right to a fair and public trial.⁶² The UN Working Group on Enforced

⁶⁰ See “Report Submitted by Mr. Manfred Nowak, Independent Expert Charged with Examining the Existing International Criminal and Human Rights Framework for the Protection of Persons from Enforced or Involuntary Disappearances, pursuant to Paragraph 11 of Commission Resolution 2001/46” (Geneva: United Nations, 2002) E/CN.4/2002/71. For example, the Declaration on the Protection of all Persons from Enforced Disappearance, adopted by the U.N. General Assembly in 1992, states that enforced disappearances occur when:

persons are arrested, detained or abducted against their will or otherwise deprived of their liberty by officials of different branches or levels of Government ... followed by a refusal to disclose the fate or whereabouts of the persons concerned or a refusal to acknowledge the deprivation of their liberty, which places such persons outside the protection of the law.

⁶¹ US State Department, Daily Press Briefing, February 6, 2007.

⁶² See International Covenant on Civil and Political Rights, articles 6(1), 7, 9, and 14(1). For a detailed discussion of the human rights violations committed by “disappearances,” see United Nations Commission on Human Rights, “Report submitted January 8, 2002, by Mr. Manfred Nowak, independent expert charged with examining the existing international criminal and human rights framework for the protection of persons from enforced or involuntary disappearance, pursuant to paragraph 11 of Commission resolution 2001/46,” E/CN.4/2002/71, p. 36.

Disappearances has long recognized that the crime of enforced disappearance “is a continuous crime until the fate or whereabouts of the disappeared person becomes known.”⁶³ Therefore, persons “disappeared” in US custody who have since been transferred elsewhere remain the legal obligation of the United States so long as their fate or whereabouts remain unknown.

Moreover, enforced disappearance not only violates the basic rights of the “disappeared” person, it inflicts severe mental pain and suffering on members of that person’s family.⁶⁴ Besides harming Jabour himself, his secret detention meant that his three children were left not knowing whether they still had a father, and his wife not knowing whether she still had a husband. This uncertainty compounds the impact of the loss.

Notably, the UN Working Group on Arbitrary Detention has expressed grave concern about the US government’s use of secret prisons to hold suspected terrorists, concluding that detention under such conditions is “a serious denial of [the detainees’] basic human rights and is incompatible with both international humanitarian law and human rights law.”⁶⁵

To help guarantee their protection from abuse, detainees should be held in officially recognized places of detention. The prisoners’ names and the place of their detention, as well as the names of the persons responsible for their detention, should be kept in registers readily available and accessible to concerned persons, including relatives and friends. In addition, “accurate information on [the prisoners’] custody and whereabouts, including transfers, [should be] made promptly available to their relatives and lawyers or other persons of confidence.”⁶⁶ Finally, the time and place of all interrogations should

⁶³ See, for example, Report of the Working Group on Enforced or Involuntary Disappearances, Commission on Human Rights, E/CN.4/2006/56, December 27, 2005, para. 10.

⁶⁴ For this reason, the Human Rights Committee, the U.N. body charged with monitoring the implementation of the International Covenant on Civil and Political Rights (ICCPR), has found that enforced disappearances violate article 7 of the ICCPR, which prohibits torture and cruel, inhuman or degrading treatment or punishment. See *Elena Quinteros Almeida v. Uruguay*, Communication No. 107/1981, para. 14 (July 21, 1983). Similarly, the European Court of Human Rights found that the extreme pain and suffering experienced by the mother of a “disappeared” person constituted a violation of article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, which prohibits torture and inhuman or degrading treatment. *Kurt v. Turkey*, Judgment, Eur. Ct. Hum. Rts, Case No. 15/1997/799/1002, para. 134 (May 25, 1998).

⁶⁵ Report of the Working Group on Arbitrary Detention, UN Doc. E/CN.4/2006/7, December 12, 2005.

⁶⁶ Principle 6 of the U.N. Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions.

be recorded, together with the names of all those present, and this information should be available for purposes of judicial or administrative proceedings.⁶⁷

International law also bars incommunicado detention, even when it does not constitute “disappearance.”⁶⁸ And according to the Restatement (Third) of Foreign Relations Law of the United States, a state violates international law if, as a matter of state policy, it practices, encourages, or condones prolonged arbitrary detention.⁶⁹

Torture and Other Ill-Treatment

International human rights law prohibits torture and other mistreatment of persons in custody in all circumstances, during wartime as well as peacetime. Among the relevant treaties are the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture), both of which the United States has ratified.

Prohibitions on torture and other ill-treatment are also found in other international documents, such as the Universal Declaration of Human Rights, the U.N. Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, and the UN Standard Minimum Rules for the Treatment of Prisoners.

International humanitarian law (the laws of war) also prohibits torture and coerced interrogations at all times during armed conflict. This prohibition, which is found in the Geneva Conventions⁷⁰ as well as customary laws of war,⁷¹ is reflected in US military field manuals and training manuals.⁷²

⁶⁷ “ICCPR General Comment 20 (Forty-fourth Session, 1992): Article 7: Replaces General Comment 7 Concerning Prohibition of Torture and Cruel Treatment or Punishment,” A/47/40 (1992) 193, para. 11.

⁶⁸ “ICCPR General Comment 20 (Forty-fourth Session, 1992): Article 7: Replaces General Comment 7 Concerning Prohibition of Torture and Cruel Treatment or Punishment,” A/47/40 (1992) 193, para. 11.

⁶⁹ Restatement (Third) of Foreign Relations Law, § 702, comment a.

⁷⁰ See, for example, Common Article 3 to the Geneva Conventions of 1949.

⁷¹ See International Committee of the Red Cross, *Customary International Humanitarian Law*, (Cambridge: Cambridge Univ. Press, 2005), rule 90.

⁷² See, for example, US Army Field Manual 27-10, Law of Land Warfare (1956), secs. 11 and 502.

On December 2, 2002, Secretary of Defense Donald Rumsfeld approved 16 methods for use in interrogations at Guantánamo Bay, including “stress positions,” hooding, isolation, stripping, deprivation of light, removal of religious items, forced grooming (shaving of facial hair), and use of dogs. On January 15, 2003, following criticism from the Navy general counsel, Rumsfeld rescinded the December 2 guidelines, stating that the harsher techniques in those guidelines could be used only with his approval. Rumsfeld then established a working group to examine which interrogation techniques should be allowed for prisoners in Guantánamo. This study led to Rumsfeld’s promulgation, on April 16, 2003, of a memo outlining techniques that could only be applied to interrogations of “unlawful combatants” held at Guantánamo. Stress positions, stripping and the use of dogs were no longer authorized.⁷³

These interrogation techniques “migrated” —in the words of the Schlesinger report—to Iraq and Afghanistan, where they were regularly applied by US personnel to detainees.⁷⁴ After the Abu Ghraib photos were made public in April 2004, the Bush administration repudiated and eventually replaced the August 1, 2002 Department of Justice memo that had provided the legal rationale for the approved interrogation methods.

Nevertheless, such restrictions on interrogation methods apparently did not apply to the CIA. The Bush administration and the Justice Department reportedly gave the CIA the authority to use additional techniques, including “waterboarding” (mock drowning).⁷⁵ In January 2005, Attorney General-designate Alberto Gonzales claimed in a written response during confirmation hearings that the international legal prohibition on cruel, inhuman or degrading (CID) treatment did not apply to US personnel in the treatment of non-citizens abroad, indicating that no law would prohibit the CIA from engaging in CID treatment when it interrogates non-Americans outside the United States.

In December 2005 Congress enacted—over the Bush administration’s objections—the Detainee Treatment Act, which included the “McCain amendment” that prohibits the use of cruel, inhuman, or degrading treatment by any US official operating

⁷³ See generally, Human Rights Watch, “Getting Away with Torture?,” vol. 17, no. 1(G), pp. 11-13.

⁷⁴ James R. Schlesinger, Harold Brown, Tillie K. Fowler, Gen. Charles A. Homer, and Dr. James A. Blackwell, Jr., *Final Report of the Independent Panel to Review DoD Detention Operations* (“Schlesinger report”), August 2004, p. 7.

⁷⁵ Dana Priest, “CIA Puts Harsh Tactics on Hold,” *The Washington Post*, June 27, 2004; James Risen, David Johnston and Neil A. Lewis, “Harsh CIA Methods Cited in Top Qaeda Interrogations,” *The New York Times*, May 13, 2004.

anywhere in the world. And in June 2006, the Supreme Court ruled in *Hamdan v. Rumsfeld* that the US government was required to treat al Qaeda detainees humanely in accordance with the provisions of Common Article 3 to the Geneva Conventions.

The Defense Department then ordered the military to ensure that all its practices complied with these standards and announced new rules repudiating many abusive interrogation methods, including “waterboarding,” painful stress positions, and prolonged sleep deprivation or exposure to cold. However, the Bush administration simultaneously proposed legislation effectively rewriting the humane treatment standards of Common Article 3 to permit the CIA to continue using the abusive interrogation techniques now banned by the Pentagon. Congress ultimately rejected the administration’s proposal, but with mixed results. In the Military Commissions Act of 2006, Congress retained most of the War Crimes Act of 1996, which exposes interrogators to criminal prosecution for torture and “cruel and inhuman treatment” (defined as conduct that causes serious physical or mental pain or suffering). However, the law narrowed prosecutable offenses under the War Crimes Act by creating a higher threshold for inflicting serious physical pain or suffering, preventing prosecution of interrogators for non-prolonged mental abuse occurring prior to the new law.

Notably, even though the US authorities have claimed that detainees in CIA custody were treated in accordance with the law, they have been taking aggressive steps to ensure that the details of their treatment are not disclosed. The government has, to date, barred legal access to Majid Khan, one of the 14 detainees transferred to Guantanamo last September, claiming that because he was previously in CIA custody he may have “come into possession of [classified] information, including locations of detention, conditions of detention, and alternative interrogation techniques.”⁷⁶ Similarly, the Military Commissions Act of 2006 and its Rules of Evidence and Procedure contain a number of provisions meant to protect the CIA’s “methods and activities” from disclosure: methods and activities that are known to include “disappearance,” torture, and other abuses.

⁷⁶ In other words, the government is claiming that because Khan was held in a secret detention center, and “alternative” interrogation techniques were used on him, he should be barred from telling his lawyer about his experiences.

Conclusion

When President Bush announced in September 2006 that, as of that moment, there were no prisoners in CIA custody, he did not say that the CIA's prison program was closing permanently. Indeed, the apparent purpose of his speech was the opposite: he argued that "as more high-ranking terrorists are captured, the need to obtain intelligence from them will remain critical—and having a CIA program for questioning terrorists will continue to be crucial to getting life-saving information."⁷⁷ And when he signed the Military Commissions Act into law a few weeks later, he asserted that the legislation would "allow the Central Intelligence Agency to continue its program for questioning key terrorist leaders and operatives."⁷⁸

President Bush is wrong on the law. Under any reasonable reading of the Detainee Treatment Act and the Military Commissions Act, the abusive treatment of detainees that characterized the CIA's detention and interrogation program is illegal. But perhaps as worrying as the President's misinterpretation of legal standards is his disregard of basic principles.

The CIA program—and the civilian leaders who created it—have inflicted tremendous harm on the reputation, moral standing, and integrity of the United States. It is time, now, to repudiate that program, and to take steps to repair the damage it has caused.

⁷⁷ The White House, "President Discusses Creation of Military Commissions to Try Suspected Terrorists," September 6, 2006.

⁷⁸ Office of the Press Secretary, The White House, "President Bush Signs Military Commissions Act of 2006," October 17, 2006. The President also said: "When I proposed this legislation, I explained that I would have one test for the bill Congress produced: Will it allow the CIA program to continue? This bill meets that test."

Recommendations

The US government should:

- Repudiate the use of secret detention and coercive interrogation as tactics in fighting terrorism, and announce that the CIA's detention and interrogation program is being permanently discontinued;
- Disclose the location and current status of the detention facilities where Marwan Jabour was held, as well as the location and current status of all other secret detention facilities used by the CIA since 2001;
- Disclose the identities, fate, and current whereabouts of all prisoners held for any period of time at facilities operated or controlled by the CIA since 2001, and, for prisoners transferred to the custody of another government, disclose the date and location of the transfer;
- Order the release of any prisoner held in another country's prisons at the behest of the United States, or, if evidence exists of a prisoner's involvement in criminal offenses, transfer the prisoner to the United States for prosecution in US courts in accordance with internationally recognized fair trial standards;
- Hold terrorist suspects only in officially recognized places of detention where they are registered and have access to family members, lawyers, and courts; treat them in accordance with international standards on the treatment of prisoners, and either charge them promptly or release them;
- Acknowledge publicly that US domestic law (including the Detainee Treatment Act, the Military Commissions Act, and the *Hamdan* decision) bars the use of abusive interrogation techniques such as

“waterboarding,” extended sleep deprivation, and forced exposure to extremes of heat and cold;

- Sign and ratify the International Convention for the Protection of All Persons from Enforced Disappearance;
- Ratify the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, which establishes a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other mistreatment.

The US Congress should:

- Hold hearings to investigate the CIA’s secret detention program, with the goal of ascertaining the scope of the program, the manner in which detainees were treated (including the interrogation methods employed on them), and the fate and current whereabouts of every person ever held in the program;
- Compel the White House to provide the House and Senate intelligence committees with the September 17, 2001 presidential finding that authorized the CIA to initiate its program of secret detention and interrogation;
- Repeal the Military Commissions Act of 2006 or, at a minimum, amend it to:
 - ensure that all detainees in US custody, whether held on US territory or abroad, are guaranteed the right to habeas corpus;
 - reform the law’s protections on classified “methods and activities” so that these provisions cannot be used to protect the CIA’s coercive interrogation methods against disclosure;

- bar the use of statements obtained as result of coercion from military commission trials.
- Pass legislation to ensure that all secret detention centers are shut down permanently and that no one is forcibly disappeared into US custody or otherwise held incommunicado;
- Pass legislation to prohibit the return or transfer of persons to countries where they are at risk of torture or other abusive treatment, and to bar the government from relying on “diplomatic assurances” to justify such transfers;
- Press the Department of Justice to vigorously prosecute civilians—including those at high levels of authority—who are responsible for engaging in, authorizing or condoning the mistreatment of detainees.

The government of Pakistan should:

- Close any secret detention facilities that may be operating in Pakistan, register all prisoners in Pakistani custody (including those in the custody of the intelligence services), and ensure that all prisoners are brought before a judge within a short time of their arrest;
- Transfer prisoners to the US authorities in accordance with Pakistani law and only after obtaining written assurances that the prisoners will be brought before US courts, promptly charged or released, and will not be placed in indefinite detention at Guantanamo or elsewhere;
- Initiate a parliamentary investigation of the government’s role in supporting and assisting CIA abuses in Pakistan.

The Italian, German, Spanish, and Portuguese judicial authorities should:

- Continue their investigations of CIA activities in their countries, focusing not only on the actions of low-level operatives, but also on the responsibility of higher-level officials who formulated detention, interrogation, and rendition policies and signed off on operations.

All governments should:

- Refuse to assist or cooperate in any way with CIA detention, interrogation, and rendition operations that violate international human rights norms;
- Disclose any information that they may have about CIA detention, interrogation, and rendition operations.

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