

*Open Society Foundations
Regional Policy Initiative on Afghanistan and Pakistan*

Confinement Conditions at a U.S. Screening Facility on Bagram Air Base



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Introduction

Since its creation in 2002, the Bagram Theater Internment Facility (BTIF) in Afghanistan (originally named the Bagram Collection Point) has come under scrutiny from human rights groups, the media, and other civil society organizations for allegations of detainee abuse. More recently though, criticism over detainee abuse in Afghanistan has decreased due to greater adherence to the legal prohibition on torture, increased dedication to transparency, and the new Detention Facility in Parwan (DFIP).

In September 2009, Defense Secretary Robert M. Gates created a joint task force (JTF 435) that focused on implementing new detention policies and practices in Afghanistan and devoted substantial resources toward the effort.¹ Changes to the way the military decides whom to hold and whom to release, through new Detainee Review Boards, have brought about several due process improvements—although the Open Society Foundations remains particularly concerned about the use of classified evidence and the absence of legal representatives.² The United States has also expressed its intent to hand the bulk of its detention operations over to Afghan authorities. This holds the potential to reduce Afghan anger toward international military forces and civilian personnel, and to ease international criticism of U.S. detention policies.

In contrast to these measures, media outlets in late 2009 and 2010 reported allegations of detainee abuse at a smaller facility on Bagram Air Base which Afghans refer to as the “Tor Jail” or “Black Jail” that is physically distinct from DFIP or the BTIF.³ (“Tor” is Pashtu for “black”). These reports included accusations of sleep deprivation, holding detainees in cold cells, forced nudity, physical abuse, detaining individuals in isolation cells for longer than 30 days, and restricting the access of the International Committee of the Red Cross (ICRC)—all of which raise serious concerns about U.S. compliance with domestic and international rules on detainee treatment.⁴ Media reports and commentators have described the facility as associated with Joint Special Operations Command, under the command of Vice Admiral William H. McRaven, and Defense Intelligence Agency agents from the Defense Counterintelligence and Human Intelligence Center.⁵

Due to the classified nature of the facility, government officials have not publicly responded to the allegations of abuse at Tor Jail. In August 2009, a Pentagon official, answering a journalist’s questions about the facility stated, however, that detainees were not to be held at “Special Operations camps” for more than 14 days.⁶

In July 2010, the Open Society Foundations conducted research into the conditions of confinement at the facility to determine if the allegations in the media were ongoing and widespread. The Open Society Foundations interviewed over 20 former detainees, 18 of whom stated that they passed through the facility. Of these 18, half claimed to have been detained as recently as 2009 or 2010 while the facility was

operating under the Obama Administration. The other half stated that they passed through the facility in 2007 or 2008.

Based on those interviews, the vast majority of the detainees repeatedly and consistently described the following types of treatment, many of which appear inconsistent with specific U.S. military rules on detention:

- Exposure to excessive cold
- Exposure to excessive light
- Inappropriate and inadequate food
- Inadequate bedding and blanketing
- Disorientation and lack of natural light
- Sleep deprivation due to an accumulation of circumstances
- Denial of religious duties
- Lack of physical exercise
- Nudity upon arrival
- Detrimental impact from an accumulation of confinement conditions
- Facility rules and relevant Geneva Conventions rules/rights not posted
- Lack of transparency and denial of International Committee of the Red Cross access to detainees

Given the consistency of the accounts, the Open Society Foundations believes these are genuine areas of concern, and not outliers, that run counter to U.S. rules on detainee treatment and the administration's strong public support for Common Article 3 of the Four Geneva Conventions of 1949, which prohibits "cruel treatment and torture," and "outrages upon personal dignity, in particular humiliating and degrading treatment."⁷

The experience of Afghans who pass through this facility also seriously damages Afghan perceptions of U.S. detention operations, despite the current administration's efforts to enact important reforms. Afghans interviewed who were detained at the facility claimed that they were subject to unacceptable treatment. The implication of this perception is, as the military recognizes, contrary to the United State's counterinsurgency (COIN) strategy in Afghanistan. As the Army's counterinsurgency field manual states:

A key part of any insurgent's strategy is to attack the will of the domestic and international opposition. One of the insurgents' most effective ways to undermine and erode political will is to portray their opposition as untrustworthy or illegitimate. These attacks work especially well when insurgents can portray their opposition as unethical by the opposition's own standards. To combat these efforts, Soldiers and Marines treat noncombatants and detainees humanely, according to American values and internationally recognized human rights standards. In COIN, preserving noncombatant lives and dignity is central to mission accomplishment. This imperative creates a complex ethical environment.⁸

Methodology

The information in this report is based on interviews conducted in July 2010 with over 20 former U.S. detainees, 18 of whom stated they were detained at Tor Jail. Half of those 18 stated that they passed through the facility in 2009 or 2010. The interviews were conducted throughout Kabul City and other locations outside Kabul Province. The majority of the interviews were conducted in private with the assistance of an Afghan interpreter. Each interview lasted between one to two hours, with the investigator

taking detailed notes in the first person. After an initial review of the notes, the interpreter contacted several of the interviewees with a small number of follow-up questions. Nearly all detainees asked that their identities remain confidential for fear of retribution by the United States, which the Open Society Foundations has respected.

The Open Society Foundations has worked on conflict-related detention issues in Afghanistan since 2008, with activities including interviews with dozens of former detainees, relatives of detainees, legal aid providers, and Afghan government officials. The Open Society Foundations has also toured the DFIP (without detainees present) and observed Detainee Review Boards, and is in regular contact with U.S. military and civilian personnel working on detention issues, including officials from the U.S. military's Combined Joint Interagency Task Force 435.

Main Findings

A. Location and nature of the facility

Bagram Air Base

The United States military does not publicly disclose the locations of its transitory and screening facilities for detainees in Afghanistan. Former detainees interviewed for this report, who described being ear-muffled and hooded when outside their cells, bathrooms, and interrogation rooms at the facility, often also did not know where they were detained. The Open Society Foundations was, however, able to verify that those interviewed had been held at a facility located on Bagram Air Base that was physically distinct from the BTIF or DFIP.

The location of the facility is not of primary concern to the Open Society Foundations. But knowledge of its location is important for ensuring that authorities are made aware of exactly where detainees are subjected to objectionable conditions of confinement.

In many cases the former detainees stated that after being held for a few days in isolation cells near their initial point of capture they were placed on a plane or helicopter and brought to a second detention facility. Most interviewees said that after being held for differing time spans at this second facility they were then driven a short distance to the BTIF, indicating that their previous location was located on Bagram Air Base. These detainees also gave corroborating testimony about their conditions of confinement, cells and interrogation rooms, and interrogators at Tor Jail.

**“They drove me outside the base and dropped me off, and that’s when I realized I was at Bagram.”
(Detainee, 2008)**

The location of the facility was confirmed by other detainees who, when released without being transferred to the BTIF or DFIP, discovered they had been released just outside Bagram Air Base. A man detained in 2010 said that after several days at the facility he was put in a car and after a short distance reached the main street outside the base. Another detainee held at the facility in 2008 said, “They drove me outside the base and dropped me off, and that’s when I realized I was at Bagram.” A man who said he was detained at the facility in 2007 stated that when the military released him he was handed over to a driver who drove him to the detainee’s home town. The detainee recalled the conversation he had with the driver, recounting, “I asked where I was and he said I was at Bagram. He said he has a three year contract with the military and when he gets a call he knows to come to Bagram and to pick up detainees.”

In the limited number of cases in which there is uncertainty over where exactly the detainee was held, the detainees provided similar accounts of their conditions of confinement and treatment. This would suggest that 1) they were in fact held at a transit or screening facility on Bagram Air Base, or 2) they were held at a separate facility outside the air base where the military employed equally troubling confinement techniques. For the Open Society Foundations, the classification and location of confinement is a secondary concern to the treatment of detainees at U.S. detention sites in Afghanistan.

“Screening” and “Separation”

The interviewees consistently described being held in a location where they were interrogated and held in small single person cells that prohibited verbal and visual communication with other detainees. This strongly suggests that the detainees were “screened” and subjected to interrogation methods described in Appendix M of the U.S. Army’s *Human Intelligence Collector Operations Field Manual 2-22.3*, which allows detaining authorities to physically separate detainees from other detainees and the outside world for the purposes of intelligence gathering—a technique known as “separation.”⁹

Appendix M in the U.S. Army’s *Field Manual 2-22.3* allows detainees to be held in isolation for up to 30 initial days, and longer upon further approval.

The field manual describes “screening” as:

[T]he process of evaluating and selecting human sources and documents for the prioritized collection of information based on the collection requirements and mission of the unit conducting the screening or its higher headquarters.¹⁰

The manual describes “tactical screening,” a specific form of screening, as being:

[C]onducted in support of combat or contingency operations. It can include the screening of EPWs [Enemy Prisoners of War] or detainees at the point of capture, the screening of refugees, or the screening of local civilians in cordon and search. At the tactical level, there is no time for elaborate approach techniques so the degree of cooperation becomes a prime concern. Tactical area screening is characterized by rapidly changing requirements, the need to evacuate noncombatants and detainees to a secure area, and the need to collect priority tactical information while operations are in progress.¹¹

The manual explains that the purpose of “separation” is to:

[D]eny the detainee the opportunity to communicate with other detainees in order to keep him from learning counter-resistance techniques or gathering new information to support a cover story; decreasing the detainee’s resistance to interrogation.¹²

The manual also states,

Separation involves removing the detainee from other detainees and their environment, while still complying with the basic standards of humane treatment and prohibitions against torture or cruel, inhuman, or degrading treatment or punishment, as defined in the Detainee Treatment Act of 2005 and addressed in GPW [Geneva Convention Relative to the Treatment of Prisoners of War] Article 3 (Common Article III).¹³

B. Conditions of confinement

Despite the government's insistence that Appendix M meets the minimum requirements for the protection of detainees under international law, analysts from the Open Society Foundations have expressed concerns with *Field Manual 2-22.3* prior to this research, especially with regard to its authorization of sleep deprivation, refusing to classify stress positions as torture, and the deletion of key policy statements that, prior to the 2006 update of the manual, had informed interrogators that "[e]xperience shows that the use of prohibited techniques is not necessary to gain the cooperation of interrogation sources."¹⁴ As this report demonstrates, additional concerns with the *Field Manual 2-22.3* are warranted.

Open Society Foundations analysts are also concerned with conditions of confinement that appear inconsistent with other detention safeguards, such as those found in Department of Defense (DoD) Directive 2310.1E (2006), which guided the department's detainee program.¹⁵ Based on the findings, rules in both of these documents are either not being implemented properly or are being interpreted in such a loose fashion that they make detainees susceptible to mistreatment. As such, conditions of confinement at the facility appear to run counter to the UN's Standard Minimum Rules for the Treatment of Prisoners and the administration's publicly stated commitments to treating detainees in accordance with Common Article 3 of the Four Geneva Conventions.¹⁶

Exposure to excessive cold

- Appendix M explicitly prohibits exposing detainees to "excessive or inadequate heat."¹⁷
- The UN's Standard Minimum Rules for the Treatment of Prisoners holds that "[a]ll accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic *conditions* and particularly to cubic content of air, minimum floor space, lighting, *heating* and ventilation."¹⁸ (Emphasis added).

Several detainees stated that the temperature in their cell caused them to shiver, made their teeth chatter, and prevented them from sleeping. Most detainees recalled that the cold air was coming through a vent in the cell, while a small number of detainees stated that the temperature was not very cold. This suggests that detention cells may not have a centralized heating system and that each detainee can be targeted with climate control. If climate control is not being used, it remains a problem that detainees are not being properly protected from cold temperatures.

Each former detainee was asked about the temperature in his cell. The following are some of the responses: "It was cold even with the blanket." (Detainee, 2010); "The room was cold—I was shivering with cold." (Detainee, 2010); "It was hot outside the cell but cold in the cell. I would start shivering when I entered the cell." (Detainee, 2009); "I was shivering cold and ill." (Detainee, 2009); "It was so cold that my teeth were chattering...I couldn't sleep because it was too cold, even with the extra blanket." (Detainee, 2008); "Cells were very cold and I couldn't sleep...The cold made it difficult to sleep. I couldn't sleep due to the cold." (Detainee, 2008); "It was like sleeping in the fridge." (Detainee, 2008); "The temperature in the cell was moderate, but it felt cold before interrogations. I was interrogated many times and it got cold almost each time before the interrogation." (Detainee, 2007)

Exposure to excessive light

- Appendix M restricts the use of excessive light.¹⁹

Several detainees described the 24-hour light in their cell as “strong” and had to use the blanket to cover their eyes to sleep.

Inappropriate and inadequate food

- *Field Manual 2-22.3* prohibits, “[d]epriving the detainee of necessary food, water, or medical care.”²⁰
- DoD Directive 2310.1E (2006) states that all detainees in DoD custody shall be allowed “adequate food.”²¹
- The UN’s Standard Minimum Rules for the Treatment of Prisoners holds that “[e]very prisoner shall be provided by the administration at the usual hours with food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served.”²²

Detainees described the food at the facility, which was thrown through a small window in the cell door, as “horrible,” “bad,” and “smelling awful.” As a result, detainees limited their food intake, often choosing the biscuits over the other food items. Two former detainees stated that their food was supplemented with fruit (apples and bananas), but it is unclear if this was done for purposes of incentives, for dietary needs, or simply to fulfill a detainee’s request. Whatever the case may be, the baseline food provisions at the facility raise serious concerns as to whether U.S. personnel provide the detainees with adequate and appropriate food that take into account customary and dietary requirements.

“The food was bad. There were some biscuits, and round chips. I had to eat it because I had no other option. I could eat only biscuits. I could not eat the other food because it was hard for digestion.” (Detainee, 2009)

The following are descriptions that former detainees provided about their food: “The food was bad. The food was in plastic bags made in Dubai. It had some biscuits and vegetable. I did not eat it because it smelled horrible. I ate only some biscuits, but very few. I could not eat anything else.” (Detainee, 2010); “I was vomiting because of the food and I was nauseous.” (Detainee, 2009); “The food was bad. There were some biscuits, and round chips. I had to eat it because I had no other option. I could eat only biscuits. I could not eat the other food because it was hard for digestion.” (Detainee, 2009); “They gave me the food that was in a bag; it had two biscuits, some vegetables, and sunflower seeds. I ate only the biscuits.” (Detainee, 2009); “It was bad food at Tor Jail, but there was Afghan food and tea at Bagram ... The food was no good [at Tor Jail]. There were big and small packets. When you opened a packet, it smelled awful. There were two wheat biscuits and that’s all I could eat.” (Detainee, 2007).

Inadequate bedding and blankets

- Appendix M instructs detaining authorities to ensure that each detainee is not exposed to “inadequate bedding and blankets.”²³

➤ The UN’s Standard Minimum Rules for the Treatment of Prisoners holds that “Every prisoner shall, in accordance with local or national standards, be provided with a separate bed, and with separate and sufficient bedding which shall be clean when issued, kept in good order and changed often enough to ensure its cleanliness.”²⁴

Due to the cold temperatures in the cell, many detainees felt the bedding and blanketing was inadequate. Nearly every detainee stated that their cell contained one mattress and one blanket. There was no pillow and some detainees stated that the blankets were “thin” and “dirty.” A few detainees stated that they had to request a second blanket due to the cold. Facility personnel usually gave detainees a second blanket in the cases when a detainee requested one. However, given the general restrictions on communication in the facility, it is very likely that detainees who needed additional bedding and blanketing may not have made the request.

Disorientation and lack of natural light

➤ Appendix M states that “separation does not constitute sensory deprivation, which is prohibited. For the purposes of this manual, sensory deprivation is defined as an arranged situation causing significant psychological distress due to a prolonged absence, or significant reduction, of the usual external stimuli and perceptual opportunities. Sensory deprivation may result in extreme anxiety, hallucinations, bizarre thoughts, depression, and anti-social behavior. Detainees will not be subjected to sensory deprivation.”²⁵

➤ The UN’s Standard Minimum Rules for the Treatment of Prisoners holds that there should be windows in the cells that are “large enough to enable the prisoners to read or work by natural light, and shall be so constructed that they can allow the entrance of fresh air whether or not there is artificial ventilation.”²⁶

“I was interrogated maybe three times. They would walk me shackled, blindfolded, and ear-muffled from my cell to the interrogation room.” (Detainee, 2009)

➤ The detention facility and the tactics used there on detainees leads to significant disorientation due to a lack of “usual external stimuli and perceptual opportunities.” It is difficult for the Open Society Foundations to know if detaining authorities are intentionally creating an “arranged situation” of sensory deprivation. But, without exception, every detainee stated that they were placed in a cell that had a light on 24 hours a day and that they were not exposed to daylight. With the exceptions of being in their cell, in the interrogation room, and in the bathroom, detainees were walked through the facility handcuffed and shackled with their vision and hearing obstructed. They were also not allowed to communicate with other detainees. As a result of these factors, nearly every detainee stated that they did not know whether it was day or night, the time of day, where they were held, or how many days they spent at the facility.

The following are statements from former detainees demonstrating their disorientation: “I didn’t know day from night.” (Detainee, 2009); “I didn’t know the time. I did not know between day and night.” (Detainee, 2009); “I did not know the time at all.” (Detainee, 2009); “I didn’t know the time and couldn’t tell between day and night.” (Detainee, 2008); “They put me in a cell and I asked for the time and they wouldn’t tell me...The whole time I didn’t know whether it was day or night.” (Detainee, 2008).

Sleep deprivation due to an accumulation of circumstances

➤ Appendix M states that the “[u]se of separation must not preclude the detainee getting four hours of continuous sleep every 24 hours.”²⁷

➤ The UN’s Standard Minimum Rules for the Treatment of Prisoners holds that “[a]ll accommodation provided for the use of prisoners and *in particular all sleeping accommodation* shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation.” (Emphasis added).²⁸

Few detainees were able to provide clear estimates of how often they were awake or asleep due to their general disorientation. Many former detainees interviewed stated that the accumulated conditions of confinement restricted their ability to sleep, which mostly included cold temperature, loud noises (Appendix M expressly prohibits “excessive noise”) and, in some cases, the constant light.²⁹

Former detainees noted: “I wouldn’t be able to sleep well with the light on and the cold. I always covered my face to block the light with the blanket, which reduced the light some.” (Detainee, 2009); “Three things deprived me of sleep: the cold temperature, the noise, and the pain I had from being beaten [when I was first captured].” (Detainee, 2009); “I was in this place for about four days. I couldn’t sleep because it was too cold, even with the extra blanket. The light wasn’t a problem for sleeping, but the noises were.” (Detainee, 2008); “The cells were very cold and I couldn’t sleep.” (Detainee, 2008); “I couldn’t sleep and they switched the room temperature from hot to cold. It was too hot and then I’d be shivering from the cold.” (Detainee, 2008); “I couldn’t sleep because of the cold and the dirty blanket and mattress. It was like sleeping in the fridge. I got maybe two to three hours of sleep every 24 hours.” (Detainee, 2008); “I was there maybe 17 to 18 days... I couldn’t sleep in this cell for more than maybe three to four hours at a time.” (Detainee, 2007); “They didn’t let me sleep. They made big noises outside the room and made loud noises with a chain. They did it intentionally to stop us from sleeping. Guards made noises, playing with each other to stop us from sleeping.” (Detainee, 2007).

Denial of religious duties

➤ DoD Directive 2310.1E (2006) states that all detainees in DoD custody shall be allowed “free exercise of religion, consistent with the requirements of detention.”³⁰

➤ The UN’s Standard Minimum Rules for the Treatment of Prisoners holds that, “[s]o far as practicable, every prisoner shall be allowed to satisfy the needs of his religious life by attending the services provided in the institution and having in his possession the books of religious observance and instruction of his denomination.”³¹

Former detainees interviewed expressed concern over their inability to appropriately perform their daily religious duties while at the facility. Most stated that there was a Koran in their cell and many saw a painting in their cell that pointed to the direction of Mecca. While these provisions are necessary, they are insufficient. Detainees consistently stated that their inability to know the time made it difficult to offer their daily prayers. They were also not provided with appropriate water for ablution, which either limited their ability to carry out their religious duties or left them performing *tayammum* (ablution with dust).

“My clothes were dirty and I got to my cell and cried for not making ablution and I prayed crying, asking God for forgiveness.” (Detainee, 2008)

Field Manual 2-22.3 specifically prohibits the denial of water as an interrogation technique.³² While this rule ensures that detainees do not suffer from dehydration or other medical problems due to a lack of water (DoD Directive 2310.1E [2006] refers only to “drinking water”³³), it is important to consider that water for ablution is a religious necessity that detaining authorities should provide.

Lack of physical exercise

➤ The UN’s Standard Minimum Rules for the Treatment of Prisoners holds that, “[e]very prisoner who is not employed in outdoor work shall have at least one hour of suitable exercise in the open air daily if the weather permits.”³⁴

No detainees said they were allowed to leave the cell to perform physical exercise. This is especially problematic for detainees who are held at the facility in separation for extended periods of time. Although the facility’s location and secrecy may not lend itself to easily allowing exercise, practicable solutions need to be found to ensure compliance with this international standard.

Nudity upon arrival

➤ Common Article 3 prohibits, “outrages upon personal dignity, in particular humiliating and degrading treatment.”³⁵

The majority of interviewees said they were given a medical exam upon entry to the facility, during which time they were required to remove all their clothes. This was articulated by several former detainees as one of their most humiliating experiences while at the facility. A man detained in 2009 recalled:

They took all my clothes off, I was completely naked. I refused to do this, but they did it by force. They did a medical exam while I was naked and then they gave me my clothes. I said this behavior is absolutely inhumane. The translator said the doctor wants to check you and I said he could do it without taking off my clothes.

While detaining authorities have a legitimate and genuine need to conduct medical examinations of detainees upon entry into a facility, they must balance this with the fact that Muslims and Pashtuns in particular, are extremely sensitive about revealing the naked body. Any measures that are deemed necessary for medical exams should therefore be conducted in accordance with Common Article 3 so as to prevent humiliating and degrading treatment. This should be done by giving the utmost care for the religious and cultural norms and sensitivities that accompany nudity.

Cumulative impact of confinement conditions

➤ Appendix M states, “General controls and safeguards contained in this manual must be applied during the use of separation, in conjunction with the safeguards specific to the separation technique. Planning must consider the possible cumulative effect of using multiple techniques and take into account the age, sex, and health of detainees, as appropriate.”³⁶

➤ *Field Manual 2-22.3* states, “[w]hile using legitimate interrogation techniques, certain applications of approaches and techniques may approach the line between permissible actions and prohibited actions. It may often be difficult to determine where permissible actions end and prohibited actions begin.”³⁷

➤ Common Article 3 prohibits, “outrages upon personal dignity, in particular humiliating and degrading treatment.”³⁸

Department of Defense interrogation rules recognize that for the United States to properly assess whether its interrogations are respecting the prohibition against torture and cruel, inhuman, and degrading treatment, it must take into account the accumulated impact of all methods. The impact that interrogation methods have on detainees cannot be measured in a disjunctive manner.

The importance of ensuring that the United States is respecting this prohibition is not only a matter of legal deference. The Detainee Review Boards taking place at the DFIP prohibit the submission of information and evidence obtained through the use of torture and cruel, inhuman, and degrading treatment. If detainees are being held in conditions at an interrogation facility that rises to this level of abuse, the information obtained from those detainees should be rejected by the Detainee Review Boards.

Based on the interviews conducted by the researchers for this report, the totality of the conditions of confinement at the facility raise serious concerns about a disconnect between detainee treatment at this facility and the United States’ stated commitment to the humane treatment of detainees, be it under U.S. or international law. This is especially true for detainees who are subjected to a combination of the following treatments:

- Exposure to excessive cold
- Inappropriate and inadequate food
- Inadequate bedding and blanketing
- Excessive exposure to light
- Disorientation and lack of natural light
- Sleep deprivation due to an accumulation of circumstances
- Denial of religious duties
- Lack of physical exercise
- Nudity upon arrival

Facility rules and relevant Geneva Conventions rules/rights not posted

The vast majority of former detainees interviewed stated that they did not see posted rules for the facility, relevant provisions of the Geneva Convention, or other detainee rights. Most detainees said that they were informed of the facility’s rules verbally, but these rules focused on what detainees were not allowed to do, such as spitting, or how to ask to go to the bathroom. To ensure greater accountability and understanding of all of the rules of the facility—both for the detainees and U.S. personnel—the restrictions, rights, and safeguards of detainees should be posted and explained verbally in a language that detainees understand. These should include, in particular, Common Article 3, Appendix M, and procedures for reporting detainee abuse.

Lack of transparency and denial of International Committee of the Red Cross access to detainees

United States government officials treat the screening facility on Bagram Air Base with extreme sensitivity, refusing to publicly discuss the facility’s location, or acknowledge or deny its existence. This void of information leaves room for speculation, which comes at a high cost to the United States’ human rights reputation at home and abroad. The Open Society Foundations acknowledges the U.S. policy of keeping the location of some of its transit and screening detention sites classified from the general public, but the Department of Defense’s unwillingness to explain to the public the purpose of this site and how it operates, including explaining what specific safeguards are in place to prevent detainee abuse, is in stark

contrast to this administration's commitments toward detention policy transparency and the spirit of Executive Order 13491 of January 22, 2009, which ends secret CIA detention operations.³⁹

Our research found that, although the specific details about the facility have remained largely unknown to the media and international human rights groups, the facility is well-known and discussed among Afghans. As such, much of the secrecy surrounding operational aspects of the screening facility on Bagram Air Base is uncontainable due to the fact that Afghan detainees who pass through the facility routinely share their experiences "downstream" at DFIP with other detainees, and with their friends and relatives once released. In other words, the cat is out of the bag, while the insistence on secrecy is doing considerable harm to the reputation of the United States.

Two men interviewed who were detained at the BTIF starting in 2003 but did not pass through Tor Jail, said that after about two years they started hearing detainees talking about the jail. One man remembered: "They were deprived of sleep. Interrogators screamed and banged on the table and walls. Prisoners said Tor Jail was like hell on earth. There was horrible food, sleep deprivation. They were given water but not taken to the bathroom a lot." The other stated that detainees who passed through Tor Jail said, "the food was horrible—just some biscuits. They were in small cells without toilets. Prisoners from Tor Jail could call to go to the bathroom but the guards wouldn't come until long after they called. They had one blanket, and United States would reduce the temperature in cells to get them to confess."

The Open Society Foundations is also concerned that all detainees interviewed stated that they were not visited by the ICRC while at Tor Jail. This supports a media report from late 2009 quoting a U.S. government official stating that although the United States does provide the ICRC with the names of all its detainees generally within 14 days, the ICRC was not allowed face to face access to detainees at "Special Operations camps."⁴⁰

This practice occurs, despite the fact that Appendix M of *Field Manual 2-22.3* states that "separation must be employed in accordance with the standards in this manual. These standards include the following.... Access to detainees by the ICRC."⁴¹ Appendix M also makes clear that this access should be allowed no matter where the detainee is held and no matter how long the detainee is subjected to separation. Appendix M specifically states that ICRC access applies to "Physical Separation" (which has a 30 day initial time limit) and "Field Expedient Separation" (which has a 12 hour initial time limit).⁴²

The benefit of ICRC access is multipronged. It demonstrates a higher level of transparency and accountability and allows independent detention monitoring professionals to provide recommendations for reforms to ensure proper detainee treatment.⁴³ Recognizing these benefits, the United States has increased ICRC access to its detainees. The National Defense Authorization Act for 2010 legislated ICRC access to the BTIF;⁴⁴ and since early 2008, the ICRC has also been allowed access to field detention sites in remote areas of the country.⁴⁵

Executive Order 13491 also states:

All departments and agencies of the Federal Government shall provide the International Committee of the Red Cross with notification of, and timely access to, any individual detained in any armed conflict in the custody or under the effective control of an officer, employee, or other agent of the United States Government or detained within a facility owned, operated, or controlled by a department or agency of the United States Government, consistent with Department of Defense regulations and policies.⁴⁶

It remains, however, that ICRC access at the screening facility on Bagram Air Base is too restrictive. While obstacles to ICRC access may arise from insurmountable logistical constraints or security concerns, given that the ICRC is allowed access to field detention sites and the DFIP (and previously the BTIF), it seems both appropriate and possible that the United States should grant the ICRC full access to this facility, especially given the circumstances of confinement described in this paper. Providing the ICRC only with detainee names in Afghanistan is no substitute for allowing the ICRC to visit the facility, regularly talk to detainees in private, and understand how the facility “lives and breathes” with detainees held there.

Recommendations

Based on our findings, the following minimum measures are necessary to ensure compliance with U.S. and international legal obligations relevant to the humane treatment of detainees and the administration’s public commitment to greater transparency in detention operations in Afghanistan. In some cases, these recommendations can be immediately implemented. In other cases, it may be necessary for the Department of Defense to make dramatic structural adjustments to the facility, or build a new facility that meets international detention standards.

1. Conduct a thorough investigation into confinement conditions at the screening facility on Bagram Air Base. Determine if conditions are in accordance with Department of Defense interrogation and detainee treatment rules; and determine if Department of Defense rules, including Appendix M, need to be changed or clarified to ensure proper compliance with international and domestic detainee treatment standards.
2. Cease exposing detainees to excessive temperatures and ensure that temperature is not used as a tool for interrogation. If not already done so, put in place a central heating system to restrict the potential for abuse.
3. Cease exposing detainees to 24 hours of excessive light in their cells.
4. Provide detainees with regular access to natural light.
5. Provide detainees with information about their general location, date, and time of day on a regular basis.
6. Provide detainees with appropriate and adequate food and water, taking into consideration the health conditions of each detainee and their cultural and religious customs. Inform detainees that they can request additional food and water without reprisal.
7. Provide detainees with appropriate and clean bedding and blanketing, taking into consideration the health conditions of each detainee. Inform detainees that they can request additional bedding and blanketing without reprisal.
8. Provide an environment where detainees do not suffer from sleep deprivation.
9. Ensure that detainees are capable of observing their religious duties, by supplementing current policies (such as providing detainees with the direction of Mecca and a Koran) with providing detainees with water for ablution and the time of day and/or announcing prayer time. Inform detainees that they can request additional water for ablution without reprisal.

10. Provide detainees with at least one hour of exercise per day.
11. Ensure that detainees are not exposed to humiliating forms of nudity, including during medical examinations. The number of people who see the detainee nude during the exam should be limited only to the medical professional. Translators and non-medical military personnel in the room should have their view blocked.
12. Post the facility's rules, interrogation rules, and relevant Geneva Conventions rules/rights in languages that the detainees can understand. If detainees are unable to read, these rules and rights should be provided to them verbally in a language they can understand.
13. Increase transparency of the facility by explaining to the public the purpose of transit and screening detention sites and how they operate, including explaining what specific safeguards are in place to prevent detainee abuse.
14. Place the facility under the command of Combined Joint Interagency Task Force 435 to ensure continuity in detention policies and oversight and to establish greater transparency.
15. Allow the ICRC to monitor the screening facility and have access to the detainees at the facility on a regular basis.

Notes

- ¹ Deputy Secretary of Defense, “Revised Policy Guidance on Access to Detainees and Detention Facilities in Afghanistan” (Memorandum), February 19, 2010.
- ² Jonathan Horowitz, “New Detention Rules Show Promise and Problems,” *Huffington Post*, April 20, 2010; and Jonathan Horowitz, “New Bagram Prison Procedures Fall Short,” *Huffington Post*, September 21, 2009.
- ³ The Open Society Foundations recognizes that the Department of Defense does not classify this site technically or legally as a “black jail.”
- ⁴ See, Alissa J. Rubin, “Afghans Detail Detention in ‘Black Jail’ at U.S. Base,” *New York Times*, November 28, 2009; Joshua Partlow and Julie Tate, “2 Afghans Allege Abuse at U.S. site,” *Washington Post*, November 28, 2009; and Hillary Anderson, “Red Cross Confirms ‘Second Jail’ at Bagram, Afghanistan,” *BBC News*, May 11, 2010.
- ⁵ Marc Ambinder, “Inside the Secret Interrogation Facility at Bagram,” *The Atlantic*, May 14, 2010.
- ⁶ Eric Schmitt, “U.S. Shifts, Giving Detainee Names to the Red Cross,” *New York Times*, August 22, 2009.
- ⁷ Geneva Convention relative to the Protection of Civilian Persons in Time of War (1949), 75 UNTS 287, (entered into force October 21, 1950), Article 3.
- ⁸ The U.S. Army/Marine Corps Counterinsurgency Field Manual (2007), para 7-25.
- ⁹ Department of the Army, *FM 2-22.3 (FM 34-52) Human Intelligence Collector Operations Field Manual* (2006), Appendix M.
- ¹⁰ *Ibid.*, para. 6-2.
- ¹¹ *Ibid.*, para. 6-8. See also, Department of Defense, Directive Number 3115.09 (DoD Intelligence Interrogations, Detainee Debriefings, and Tactical Questioning), October 9, 2008, p. 20.
- ¹² Department of the Army, *ibid.*, Appendix M, para. M-1.
- ¹³ *Ibid.*, Appendix M, para. M-2.
- ¹⁴ See Stephen Rickard, “Fix the Manual,” *Huffington Post*, August 27, 2009.
- ¹⁵ Department of Defense, Directive Number 2310.01E (Department of Defense Detainee Program), September 5, 2006.
- ¹⁶ United Nations, Standard Minimum Rules for the Treatment of Prisoners (1955).
- ¹⁷ *Supra* note 9, Appendix M, para M-30.
- ¹⁸ *Supra* note 16, Rule 10.
- ¹⁹ *Supra* note 9, Appendix M, para. M-30.
- ²⁰ *Ibid.*, para. 5-75.
- ²¹ *Supra* note 15, para. E4.1.1.2.
- ²² *Supra* note 16, Rule 20(1).
- ²³ *Supra* note 9, Appendix M, para. M-30.
- ²⁴ *Supra* note 16, Rule 19.
- ²⁵ *Supra* note 9, Appendix M, para. M-26.
- ²⁶ *Supra* note 16, Rule 11(a).
- ²⁷ *Supra* note 9, Appendix M, para. M-30.
- ²⁸ *Supra* note 16, Rule 10.
- ²⁹ *Supra* note 9, Appendix M, para. M-30.
- ³⁰ *Supra* note 15, para. E4.1.1.2.
- ³¹ *Supra* note 16, Rule 42.
- ³² *Supra* note 9, para. 5-75.
- ³³ *Supra* note 15, para. E4.1.1.1.
- ³⁴ *Supra* note 16, Rule 21(1).
- ³⁵ *Supra* note 7, Article 3(c).
- ³⁶ *Supra* note 9, Appendix M, para. M-24.
- ³⁷ *Ibid.*, para. 5-76.
- ³⁸ *Supra* note 7, Article 3(c).
- ³⁹ President of the United States, Executive Order 13491—Ensuring Lawful Interrogations, January 22, 2009, Section 4(a).
- ⁴⁰ See, Schmitt, *supra* note 6; and Rubin, *supra* note 4.
- ⁴¹ *Supra* note 9, Appendix M, para. M-17.
- ⁴² *Ibid.*, Appendix M, para. M-29.

⁴³ ICRC, “Persons Detained by the US in Relation to Armed Conflict and the Fight against Terrorism—the Role of the ICRC” (last updated September 14, 2010). Available at: <http://www.icrc.org/Web/eng/siteeng0.nsf/html/united-states-detention>.

⁴⁴ Bill Number H.R.2647 for the 111th Congress (2009-2010), “National Defense Authorization Act for Fiscal Year 2010,” Section 1039.

⁴⁵ *Supra* note 43.

⁴⁶ *Supra* note 39, Section 4 (b).