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U.S.: Detained al-Qaeda Suspects "Disappeared"

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At least 11 al-Qaeda suspects have "disappeared" in U.S. custody, Human Rights Watch said in a report released today. U.S. officials are holding the detainees in undisclosed locations, where some have reportedly been tortured.

The 46-page report, "The United States' 'Disappeared': The CIA's Long-Term 'Ghost Detainees,'" describes how the Central Intelligence Agency is holding al-Qaeda suspects in "secret locations," reportedly outside the United States, with no notification to their families, no access to the International Committee of the Red Cross or oversight of any sort of their treatment, and in some cases, no acknowledgement that they are even being held.

"'Disappearances' were a trademark abuse of Latin American military dictatorships in their 'dirty war' on alleged subversion," said Reed Brody, special counsel with Human Rights Watch. "Now they have become a United States tactic in its conflict with al-Qaeda."

Under international law, enforced disappearances occur when persons are deprived of their liberty and the detaining authority refuses to disclose their fate or whereabouts or refuses to acknowledge their detention, which places the detainees outside the protection of the law.

The report profiles 11 such "disappeared" prisoners. They include Khalid Shaikh Muhammed, the alleged principal architect of the September 11 attacks; Abu Zubayda, reputedly a close aide of Osama bin Laden; Ramzi bin al-Shibh, who but for his failure to get a U.S. visa might have been one of the 9/11 hijackers; and Hambali, an alleged key al-Qaeda ally in Southeast Asia. Some, such as Khalid Shaikh Muhammed, are reported to have been tortured in custody.

U.S. officials have said that many of those held have provided valuable intelligence that has foiled planned terrorist acts. There are also reports that some detainees have lied under duress to please their captors. For instance, ghost detainee Ibn al-Shaikh al-Libi apparently fabricated the claim, then relayed by Secretary of State Colin Powell to the United Nations, that Iraq had provided training in "poisons and deadly gases" for al-Qaeda.

International treaties ratified by the United States prohibit incommunicado detention of persons in secret locations. The Geneva Conventions require that the International Committee of the Red Cross have access to all detainees and that information on those detained be provided to their relatives. Under international human rights law, detainees must be held in recognized places of detention and be able to communicate with lawyers and family members.

Human Rights Watch called on the United States to bring all detainees, wherever they are being held, under the protection of the law. In particular, it demanded that the government grant unrestricted access to the International Committee of the Red Cross to all detainees held pursuant to anti-terrorist operations.

"Those guilty of serious crimes must be brought to justice before fair trials," said Brody. "If the United States embraces the torture and 'disappearance' of its opponents, it abandons its ideals and international obligations and becomes a lesser nation."

Executive Summary

The prisoner was taken away in the middle of the night nineteen months ago. He was hooded and brought to an undisclosed location where he has not been heard of since. Interrogators reportedly used graduated levels of force on the prisoner, including the “water boarding” technique – known in Latin America as the “submarino” – in which the detainee is strapped down, forcibly pushed under water, and made to believe he might drown. His seven- and nine-year-old sons were also picked up, presumably to induce him to talk.

These tactics are all too common to oppressive dictatorships. The interrogators were not from a dictatorship, however, but from the U.S. Central Intelligence Agency (CIA). The U.S.’s prisoner is Khalid Shaikh Muhammad, the alleged principal architect of the September 11 attacks. Muhammad is one of the dozen or so top al-Qaeda operatives who have simply “disappeared” in U.S. custody.

In the aftermath of the September 11, 2001 attacks on the United States, the Bush administration has violated the most basic legal norms in its treatment of security detainees. Many have been held in offshore prisons, the most well known of which is at Guantánamo Bay, Cuba. As we now know, prisoners suspected of terrorism, and many against whom no evidence exists, have been mistreated, humiliated, and tortured. But perhaps no practice so fundamentally challenges the foundations of U.S. and international law as the long-term secret incommunicado detention of al-Qaeda suspects in “undisclosed locations.”

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The CIA’s “disappeared” prisoners also include Abu Zubayda, a close aide of Osama bin Laden, Ramzi bin al-Shibh, who but for his failure to get a U.S. visa might have been one of the 9/11 hijackers, Hambali, a key al-Qaeda ally in southeast Asia, and Abd al-Rahim al-Nashiri, allegedly the mastermind of the U.S.S. Cole bombing.

According to the Independent Panel to Review Department of Defense Detention Operations chaired by former Defense Secretary James Schlesinger, the CIA has been “allowed to operate under different rules” from the U.S. military. Those rules stem in part from an August 2002 Justice Department memo, responding to a CIA request for guidance, which said that torturing al-Qaeda detainees “may be justified,” and that international laws against torture “may be unconstitutional if applied to interrogations” conducted in the war on terrorism.

Some of the detainees, such as Khalid Shaikh Muhammad, are indeed reported to have been tortured in custody. Many are said to have provided valuable intelligence, intelligence that has foiled plots and saved lives. Some are said to have lied under duress to please their captors. (Ibn al-Shaikh al-Libi apparently fabricated the claim, then relayed by Secretary of State Colin Powell to the United Nations, that Iraq had provided training in “poisons and deadly gases” for al-Qaeda.) The United States has acknowledged the detention of many, but not that of others. The one thing all the detainees have in common is that the United States has refused to disclose their whereabouts and has refused to allow them access to their families, lawyers or the International Committee of the Red Cross.

These are not nice men, to say the least. They are alleged to have committed the most diabolical criminal acts. Why, some have argued, should we care about what happens to them? First, because despite the life-saving information apparently gleaned from some of these suspects, overall the U.S. treatment of its prisoners has been a boon rather than a setback for al-Qaeda and has thereby made the world less safe from terror. As the 9/11 Commission recognized, “Allegations that the United States abused prisoners in its custody make it harder to build the diplomatic, political, and military alliances the government will need.”¹ Second, because the U.S.’s torture and “disappearance” of its adversaries invites all the unsavory governments in the

world to do the same – indeed countries from Sudan to Zimbabwe have already cited Abu Ghraib and other U.S. actions to justify their own practices or to blunt criticism.

But the primary concern must stem, first and foremost, from the acceptance of methods which are antithetical to a democracy and which betray the U.S.'s identity as a nation of law. For al-Qaeda, the ends apparently justify the means, means which have included smashing hijacked planes into buildings and bombing train stations and places of worship. The United States should not endorse that logic.

The United States is employed, as it must be, in defending itself and its people against attacks from al-Qaeda and its allies. Human Rights Watch recognizes, of course, the importance of effectively and rapidly gathering intelligence in order to trace the al-Qaeda and other networks, capture other terrorists, and intervene to prevent more catastrophic terror attacks.

However, the use of forced disappearances and secret incommunicado detention violates the most basic principles of a free society. When Argentina tortured and “disappeared” suspected dissidents in the name of fighting what it characterized as “terrorists,” it was wrong. When the United States tortures and “disappears” alleged terrorists, even those suspected of plotting the most terrible attacks, it is also wrong. That the terror being fought by the United States is of a different character does not change the illicit nature of the methods employed to combat it.

This report provides a comprehensive overview of what we know about the United States’ “disappeared,” and includes an appendix detailing the facts of eleven cases for which there is some publicly available information. There may well be several or many more such detainees. The report also provides historical context on “disappearances,” tracing the practice to its roots in Nazi Germany during World War II, and identifies the specific provisions of U.S. and international law that outlaw the practice.