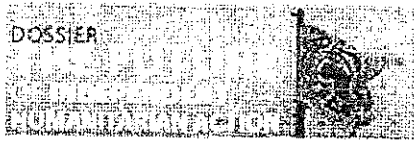




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26-07-2004 Operational update

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## US detention related to the events of 11 September 2001 and its aftermath - the role of the ICRC

The article explains the purpose of the ICRC visits and its procedures, and outlines its concerns, including the fate of people held at undisclosed locations.

The terrible events of 11 September 2001 shocked the world including the ICRC, which immediately condemned the attacks on the United States (see [Press release, 11 September 2001](#)).

The ICRC recognises the significant challenge the United States and other countries face in defending their citizens against terrorist attacks. Nevertheless, there are serious divergences of opinion about the relevant laws which apply to the US government's response to terrorism. The ICRC is especially concerned about the fact that the US detains an unknown number of people outside any legal framework.

Many of those captured in the context of the so-called War on Terror are being held at US detention facilities in Bagram and Kandahar in Afghanistan and in Guantanamo Bay, Cuba. A small number of persons are furthermore detained in Charleston, USA. According to public statements by official US sources, a number of detainees are also being held incommunicado at undisclosed locations.

The ICRC has been visiting detainees in Bagram and Kandahar, Guantanamo Bay, and in Charleston. The ICRC has also repeatedly appealed to the American authorities for access to people detained in undisclosed locations.

### ICRC in Bagram, Afghanistan

The ICRC has been visiting detainees at the US-run Bagram military airbase since January 2002. Most of them are Afghans captured by the US-led coalition in Southern and Eastern Afghanistan. As of late June 2004, some 300 detainees were held at Bagram. In 2003, the ICRC facilitated the exchange of about 670 Red Cross Messages between detainees and their families.

### ICRC in Kandahar, Afghanistan

The ICRC visited the US detention facility in Kandahar from December 2001 when it opened until its closure in June 2002. It requested renewed access to the detention place in early June after it resumed its function as a recognised US facility to help persons deprived of freedom. The first ICRC visit to Kandahar detention facility took place in late June 2004.

### ICRC in Guantanamo Bay, Cuba

The ICRC has been visiting detainees held at Guantanamo Bay, Cuba since January 2002. There are currently just under 600 detainees from roughly 40 countries speaking about 17 different languages. As of June 2004, the ICRC had facilitated the exchange of nearly 10,000 Red Cross messages between the detainees and their families.

## Aim of the visits

People held in connection with armed conflicts such as the war in Afghanistan fall under the regime of international humanitarian law (IHL), and should be treated accordingly. Those persons detained outside of a situation of armed conflict have rights enshrined in a number of other bodies of law such as international human rights law and relevant provisions of domestic law.

The ICRC's visits to Bagram, Kandahar and Guantanamo Bay are a continuation of the work the organisation had been carrying out in detention places in Afghanistan during the war in 2001.

The role of the ICRC, as an independent and neutral humanitarian organisation with a mandate conferred on it by States, is to regularly assess the conditions of detention, the treatment of detainees and respect of their fundamental judicial guarantees. The ICRC offers observations and makes recommendations for improvements - where appropriate - in the course of its ongoing dialogue with the US authorities. While the ICRC monitors the situation at Bagram, Kandahar and Guantanamo Bay, the responsibility for ensuring that persons held there are indeed treated in accordance with IHL and other applicable bodies of law lies with the US authorities.

## Why the ICRC?

The ICRC has been visiting people detained in connection with armed conflicts since 1915 when its delegates first negotiated access to tens of thousands of prisoners of war held during World War One. The ICRC's practice of visiting prisoners of war - combatants captured during an international armed conflict - was codified in the Geneva Conventions of 1949, to which 191 states are party. Common Article Three of the Four Geneva Conventions also gives the ICRC the right to request access to persons detained in non-international armed conflicts such as civil wars. Under the statute of the International Red Cross and Red Crescent Movement, the ICRC can moreover request access to persons detained in connection with situations of violence less intense than armed conflict.

In 2003, the ICRC visited nearly 470,000 detainees, held in nearly 80 countries around the world. Of these, nearly 127,000 were individually registered and followed (see *Protecting prisoners and detainees in wartime*).

## Procedures

ICRC detention visits are usually carried out by a team of specialised delegates as well as interpreters and medical personnel when appropriate. The organisation follows the same standard working procedures wherever it visits detainees. These include:

- ICRC delegates insist on speaking in total privacy to each and every detainee held; delegates should be able to inspect all cells and other facilities.
- Visits should be carried out at a frequency of the ICRC's choice and for as long as people are held in detention.
- All detainees should have the opportunity to write to their families using the Red Cross message system and to receive Red Cross messages from their next of kin.
- Delegates conduct confidential discussions with the camp authorities before and after each visit to raise concerns and make recommendations where appropriate.
- The ICRC should be allowed to individually register the identities of detainees falling within its area of concern. This makes it possible to monitor the situation of each detainee throughout his or her period in detention.

## Dialogue with the US authorities

The ICRC regularly discusses its findings concerning Bagram, Kandahar and Guantanamo Bay with the

military authorities in the camps as well as with the appropriate US representatives in Kabul and Washington. While the ICRC has felt compelled to make some of its concerns public, notably regarding the legal status of the detainees, the primary channel for addressing issues related to detention remains its direct and confidential dialogue with the US authorities.

## **Confidentiality. Why?**

Wherever the ICRC visits places of detention, its findings and observations about the conditions of detention and the treatment of detainees are discussed directly and confidentially with the authorities in charge. Bagram, Kandahar and Guantanamo Bay are no exceptions. The ICRC's lack of public comment on the conditions of detention and the treatment of detainees must therefore not be interpreted to mean that it has no concerns.

Confidentiality is an important working tool for the ICRC in order to preserve the exclusively humanitarian and neutral nature of its work. The purpose of this policy is to ensure that the ICRC obtains and, importantly, maintains, access to tens of thousands of detainees around the world held in highly sensitive situations of armed conflict or other situations of violence.

The ICRC is also concerned that any information it divulges about its findings could easily be exploited for political gain.

## **Red Cross messages**

For most detainees in Bagram, Kandahar and Guantanamo Bay and their families, Red Cross messages are the only means of maintaining regular contact. As the feeling of isolation and uncertainty about their future has increased among the detainees, particularly in Bagram and Guantanamo Bay, these messages have become more and more valuable for them and their families. Red Cross messages are strictly intended for the exchange of personal and family news and are routinely censored by the US authorities. This corresponds to standard worldwide practice wherever the ICRC visits places of detention.

The Red Cross message service for detainees and their families is a major logistical exercise, involving a number of ICRC delegations worldwide, as well as national Red Cross and Red Crescent societies in the detainees' home countries. Every message is delivered by hand to the detainees and their families. The logistics involved and the censorship of the messages by authorities can unfortunately slow down the process.

## **Juveniles at Guantanamo Bay**

The ICRC believes that the US continues to detain two juveniles i.e. detainees under 18 years of age at Guantanamo Bay. International law recognises that juveniles in detention have special needs and must therefore be treated differently from adults.

## **Military Commissions for Guantanamo Bay detainees**

The US has publicly announced its plans to set up military commissions to try at least some of the detainees at Guantanamo Bay.

International Humanitarian Law provides for the prosecution of people suspected of having committed war crimes or any other criminal offence. It requires that the individuals concerned be afforded essential judicial guarantees. These include the presumption of innocence, the right to be tried by an impartial and independent tribunal, the right to qualified legal counsel and the exclusion of any evidence obtained as a result of torture or other cruel, inhuman or degrading treatment.

The ICRC is closely following the development of the legal framework related to the military commissions.

It has communicated its preliminary comments and observations to the US authorities and seeks to be able to discuss the proposed proceedings with them before deciding whether or not to attend the military commission proceedings as an observer.

## Releases or transfers of detainees

The ICRC insists on interviewing in private any detainee about to be transferred out of Guantanamo Bay before his departure to allow him the opportunity to raise any possible fears of persecution should he be sent home or to a third country. The ICRC then relays the detainee's comments to the detaining authorities and makes appropriate recommendations as to how to proceed. This procedure is designed to ensure respect for the internationally recognised principle of non-refoulement which prohibits the transfer or return of a person to a country where he or she has reason to fear for his or her life, physical or mental integrity, or might be subject to other serious human rights violations.

The ICRC follows up on all cases of detainees transferred from Guantanamo Bay to third countries, particularly if they are subsequently rearrested and deprived of their liberty. The ICRC aims to visit these detainees in their new place of detention to ensure that their treatment and the conditions of detention are in conformity with international legal requirements.

The ICRC has regularly provided support to detainees released from Guantanamo Bay. Whenever needed, ICRC delegates are present during these releases and provide clothes and transport fares to enable the freed detainees to return to their families.

## ICRC concerns

For the ICRC, the question of the legal status of the persons detained by the US at Bagram, Guantanamo Bay or at so-called undisclosed locations, as well as the legal framework applicable to them remains unresolved (see *IHL and terrorism: questions and answers*).

For many detainees at Guantanamo Bay more than two and a half years have passed since their arrest. The ICRC has always maintained that those detainees remaining in Guantanamo Bay should either be charged and tried, released, or be placed within a legal framework that governs their continued detention. On 28 June 2004, the United States Supreme Court ruled that 14 Guantanamo Bay detainees could file for writs of habeas corpus – that is, challenges to the legality of their detention – in US federal courts. This decision has opened the door for other detainees at Guantanamo Bay to challenge the legality of their detention in US courts. The ICRC is closely following developments in the wake of the Supreme Court decision.

The ICRC believes that the uncertainty about their fate has been a contributing factor to the mental and emotional health problems among the detainees at Guantanamo Bay observed by its delegates and reported by other sources.

The ICRC has had regular access to the persons detained at Bagram, but not immediately after their arrest. Initially detainees were only held for limited periods of time before being transferred to Guantanamo Bay or released. However, since mid-2003 many persons have been detained for longer periods at Bagram, in some cases for more than a year. Therefore, the ICRC is increasingly concerned by the fact that the US authorities have not resolved the questions of their legal status and of the applicable legal framework.

The ICRC's observations regarding certain aspects of the conditions of detention and treatment of detainees in Bagram and Guantanamo have not yet been adequately addressed.

The US authorities state that the detainees in Afghanistan and Guantanamo Bay are of important intelligence value. The Geneva Conventions do not preclude the interrogation of persons deprived of liberty. However, since the detainees, particularly in Guantanamo Bay, have been subjected to unusually long periods of interrogation, the ICRC closely monitors the impact this has on them. Any interrogation

has to be conducted in accordance with basic humanitarian standards.

Beyond Bagram, Kandahar and Guantanamo Bay, the ICRC is increasingly concerned about the fate of an unknown number of people captured as part of the so-called global war on terror and held in undisclosed locations. For the ICRC, obtaining information on these detainees and access to them is an important humanitarian priority and a logical continuation of its current detention work in Afghanistan and Guantanamo Bay. Dialogue continues with the US authorities to resolve this issue.


*To find out more about the ICRC's detention work in Iraq see [operational update of 31 May 2004](#)*

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