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### **USA: ICJ calls for full acceptance of rights under the Geneva Conventions and International Human Rights law**

Following a new Pentagon memorandum accepting some minimum standards under the Geneva Conventions, the ICJ today called for the US Government to recognize the full set of rights contained in the four Geneva Conventions and in international human rights treaties.

In a memorandum issued on July 7, 2006, the US Department of Defence instructed that Common Article 3 of the four Geneva Conventions shall apply as a matter of law to the 'conflict with Al Queda'.

"The US administration cannot continue to cherry pick some international obligations it is willing to implement and ignore others that are more burdensome," said Gerald Staberock, Director of the Global Security and Rule of Law Programme.

Prisoners that have been captured in an international armed conflict, such as in Afghanistan, are either civilians or prisoners of war. They benefit from the Third or Fourth Geneva Conventions and not merely from the minimum standards contained in Common Article 3. Current United States policy and yesterday's memorandum mean for example that they continue to be deprived of an independent determination of their status as prisoners of war as prescribed in the Third Geneva Convention, and continue to be held as 'illegal enemy combatants'.

The memorandum also fails to acknowledge that many persons held in US custody around the world, including at Guantanamo Bay, have not been detained in the context of any armed conflict. They must enjoy their full rights under international human rights law binding on the United States, such as those enshrined in the UN Convention against Torture and the UN Covenant on Civil and Political Rights, treaties that the United States have ratified.

The Department of Defence memorandum does in effect concede that some international law applies in the 'war against terror' and reverses earlier assertions by the

The ICJ is an international non-governmental organisation comprising sixty of the world's most eminent jurists and has a worldwide network of national sections and affiliated organisations

Department of Defence that prisoners captured in Afghanistan are not entitled to any sort of protection of the Geneva Conventions. It recognizes that the United States has a legal, and not only moral, obligation to treat anybody in US custody humanely (outrages upon personal dignity, in particular humiliating and degrading treatment), a formal acknowledgment long overdue.

However, the memorandum does not apply to detention and interrogation by the Central Intelligence Agency (CIA) and it suggests that there is no need to change the existing Department of Defence policies. On the contrary, given the revelations about treatment of detainees in custody of the Department of Defence the US Government should now undertake an independent and transparent review and overhaul of all its interrogation and detention policies, guidelines and regulations to ensure compliance with international standards.

The memorandum by the Department of Defence follows the decision of the US Supreme Court in *Hamdan versus Rumsfeld*, which had invalidated trial by military commissions. The ICJ is concerned about proposals to resurrect the fundamentally flawed system of military commissions through legislation. Any prisoners held in Guantanamo who are alleged to have committed criminal offences must be brought to justice before regularly constituted courts providing guarantees of a fair trial.

“Unless detainees are accorded prisoner of war status, international law requires that they are brought before ordinary civilian courts providing all guarantees of a fair trial. Experience around the world has also clearly shown that civilian courts are fully equipped to try such persons,” concludes Gerald Staberock.

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