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# ***Bagram Theater Internment Facility (BTIF) Policy Review***

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**OUSD(P)/Detainee Policy Office  
April 22, 2009**

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## Overview of BTIF Population

- ❑ **BTIF operations support US Forces operating under OEF authority only**
  - Individuals captured by US Forces under ISAF are transferred to the Afghan NDS in 96 hours
- ❑ **Population as of April 20, 2009:**
  - BTIF Total: 563
    - BTIF population has stayed in 550-650 range for past several years
  - Third Country Nationals: 31 (includes 22 Pakistanis)
  - Detainees Captured **Outside** Afghanistan: (b)(1), Sec 1.4(a), Sec. 1.4(d)
- ❑ **Out of theater transfers to Bagram currently limited to 60 days for screening and exploitation purposes only – no long-term detention**
  - None of the (b)(1), Sec 1.4(a), Sec. 1.4(d) detainees referenced above entered Bagram after March, 2004



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# DoD Policy Review of BTIF Procedures

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- ❑ **OSD, OGC, Joint Staff, and CENTCOM are currently working to revise both substantive and procedural aspects of the BTIF review process**
- ❑ **Detainee review procedures at the BTIF (UECRBs) were originally established to support GTMO transfer decisions**
  - Review processes originated in 2002-2004 timeframe
  - High-level/Low-Level Enemy Combatant Status tied to GTMO transfer criteria
- ❑ **Linkage between the BTIF and GTMO severed over time**
- ❑ **DoD is working to transition current BTIF operations to the TIFRC model used successfully in Iraq**
  - New facility to open in October 2009
  - Shift in orientation from confinement to reconciliation programs (and COIN inside-the-wire)
  - Requires reorientation of review and release processes to support this model

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# Changes Under Consideration

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## Substantive:

- Revision of EC definition to adopt definition used in DOJ filing
- Explicit incorporation of security threat criteria derived from GC Art. 78 to support detention decisions (threat determinations currently implicit in NLEC criteria, but not detailed)
- Consideration of reconciliation/reintegration criteria in review process
- Revising current HLEC/LLEC definitions to use Enduring Security Threat criteria

## Procedural:

- Ensure detainee is present at all review boards (not just the first)
- Ensure detainees fully understand review process and their role in the process
- Utilization of MNFRC "script" to ensure meaningful participation by the detainee
- Appointment of a personal representative to assist the detainee in the review process
- Legal review of review determinations and review report

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# Takeaways from April 22 Discussion

- ❑ **As discussed during the April 22 meeting, DoD is revising detainee review procedures in Afghanistan**
- ❑ **The draft guidance includes specific points discussed in the April 22 meeting, including**
  - The process to implement Article V Tribunals outlined in Army Regulation 190-8 provides the baseline standard
    - The 190-8 process is supplemented by additional procedures (e.g., enhanced notice procedures, personal representatives)
    - Final procedures are the equivalent of the procedures used to screen (b)(1), Sec. 1.4(a)
  - Quasi-advocate role for personal representative (act in “best interest” of the detainee and present information in “the light most favorable” to the detainee)
  - Policy specifically directs certain positive actions already part of operational practice (efforts by personal representatives will not negatively impact their careers, early initial review by capturing unit, no detentions based on intel value alone)
- ❑ **We anticipated have new policy guidance signed by the end of May, and are still on that timeline**



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# Summary of Changes

## □ Substantive:

- Revision of *enemy combatant* definition to adopt definition used in DOJ filing
- [REDACTED] (b)(5)
- Consideration of reconciliation/reintegration criteria in review process
- [REDACTED] (b)(1), Sec. 1.4(a)
- For releases, board makes a final determination (not a recommendation to the commander)

## □ Procedural:

- Incorporation of Judge Advocate review to initial, 72-hour, review of new captures
- Additional screening of detainees by BTIF commander (and Judge Advocate) prior to intake into the BTIF
- Adoption of process in 190-8, with the following supplemental procedures:
  - Utilization of review board script to ensure meaningful participation by the detainee
  - Opportunity to present reasonably available witnesses and documentary evidence
  - Appointment of a personal representative to assist the detainee (including during closed portions of the proceedings)
  - Enhanced notification procedures to ensure detainees fully understand the basis of their detention, the review process and their role in the process
  - Utilization of Judge Advocate to advise the board, as required
- Legal sufficiency review of board determinations

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# Comparison of Process Models

	Article 5 (AR 190-8)	UECRB (current)	UECRB (future)
<b>Purpose</b>	To determine whether person is EPW	To recommend combatant status and disposition	To determine combatant status and recommend disposition
<b>Nature</b>	Non-adversarial	Non-adversarial	Non-adversarial
<b>Standard</b>	Article 4, GPW	Unlawful Enemy Combatant	Combatant (as defined in March 13, 2009 DOJ filing)
<b>Possible Findings</b>	EPW, RP, innocent civilian, CI	<input type="checkbox"/> Status: HLEC, LLEC, NLEC <input type="checkbox"/> Disposition: GTMO, continued detention at the BTIF, transfer, release w/o conditions	<input type="checkbox"/> Status: does/does not meet combatant criteria (plus threat assessment) <input type="checkbox"/> Disposition: continued detention at the BTIF, transfer for prosecution or reconciliation, release w/o conditions
<b>Timing</b>	Not specified	Capturing unit review within 72 hours; transfer request within 14 days; initial board within 75 days; periodic boards every 6 months	Capturing unit review within 72 hours (w/ JAG); transfer request within 14 days (w/ JAG); initial board within 60 days; periodic reviews every 6 months

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## Comparison of Process Models (cont.)

	Article 5 (AR 190-8)	UECRB (current)	UECRB (future)
<b>Composition</b>	<input type="checkbox"/> 3 officers, at least 1 field grade <input type="checkbox"/> Senior officer is President <input type="checkbox"/> Non-voting recorder (preferably JAG)	<input type="checkbox"/> 3 officers, at least 1 field grade <input type="checkbox"/> Senior officer is President <input type="checkbox"/> Non-voting recorder	<input type="checkbox"/> 3 field grade officers authorized access to all relevant information <input type="checkbox"/> Senior officer is President <input type="checkbox"/> Non-voting recorder
<b>Legal Advisor</b>	No	No	Yes
<b>Personal Rep.</b>	No	No	Yes; authorized access to all relevant information
<b>Open/ Closed</b>	Open except for deliberation and voting, security; person whose status is to be determined allowed to attend open sessions	Closed; detainee allowed to appear at initial board	Open except for deliberation and voting, security; detainee allowed to attend open sessions
<b>Witnesses</b>	Yes (if reasonably available)	No	Yes (if reasonably available)
<b>Legal sufficiency review</b>	Yes	No	Yes

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