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**Proposed Revisions to Detainee Review
Procedures in Afghanistan**

**OUSD(P)/Office of Detainee Policy
May 13, 2009**

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Bagram-Policy 9



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Proposed Revisions to Detainee Review Procedures in Afghanistan

- DoD is working to enhance the existing detainee review process, both substantively and procedurally**
- Existing detainee review procedures (UECRBs) were established to support GTMO transfer decisions**
 - High-Level/Low-Level Enemy Combatant status determinations are tied to GTMO transfer criteria; but linkage between the BTIF and GTMO has been severed over time
- Enhanced procedures will improve DoD's ability to assess:**
 - Whether each detainee meets the criteria for lawful detention
 - Level of threat the detainee poses
 - Detainee's potential for rehabilitation, reconciliation and reintegration
- Proposed revisions also enhance the detainee's ability to challenge his or her detention**
- Concurrently, DoD is working to transition BTIF operations to the TIFRC model used successfully in Iraq**
 - New BTIF to open in Fall of 2009
 - (b)(1), Sec. 1.4(a)
 - New detainee review procedures designed to facilitate this shift

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Overview of Proposed Changes

❑ Substantive changes:

- Authority to detain mirrors definition in DOJ's March 13 habeas filing
- (b)(1), Sec. 1.4(a)
- Status determinations and threat assessments no longer tied to GTMO transfer criteria
- Board makes final status determination (not just recommendation to the commander)

❑ Procedural changes:

- Judge Advocates participate in capturing unit's initial, 72-hour review and BTIF commander's review of request to transfer detainee to BTIF for internment
- Requirements of AR 190-8 serve as baseline for initial and periodic review boards, plus several features not required by AR 190-8:
 - Board follows written script to ensure detainee's meaningful participation
 - Open proceedings, except during deliberations/voting or for security reasons
 - Detainee allowed to call reasonably available witnesses and present relevant documentary evidence
 - Personal representative appointed to assist detainee (including during closed sessions)
 - Enhanced notification procedures, to ensure detainee fully understands the basis for his detention, the review process, and his role in the process
 - Judge Advocate serves as legal advisor to the board, as required
 - Judge Advocate conducts legal sufficiency review of board determinations

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Comparison of Detainee Process Models

	Article 5 (AR 190-8)	UECRB (existing)	UECRB (proposed)
Purpose	To determine whether person is EPW	To recommend combatant status and disposition	To determine whether detainee meets criteria for internment and recommend disposition
Nature	Non-adversarial	Non-adversarial	Non-adversarial
Standard	Article 4, GPW	Unlawful Enemy Combatant	Detainable Person, as defined in March 13, 2009 DOJ filing
Possible Findings	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 criteria for internment, plus threat assessment <input type="checkbox"/> Disposition: continued internment at the BTIF, transfer for prosecution or reconciliation, release w/o conditions
Timing	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 Detainee Process Models (cont.)

	Article 5 (AR 190-8)	UECRB (existing)	UECRB (proposed)
Composition	<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
Legal Advisor	No	No	Yes
Personal Rep.	No	No	Yes; authorized access to all relevant information
Open/ Closed	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
Witnesses	Yes, if reasonably available	No	Yes, if reasonably available
Legal sufficiency review	Yes	No	Yes