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USA: Missing from the US 'human rights agenda': accountability and remedy for 'war on terror' abuses

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"A commitment to human rights starts with universal standards and with holding everyone accountable to those standards, including ourselves... When injustice anywhere is ignored, justice everywhere is denied. Acknowledging and remedying mistakes does not make us weaker, it reaffirms the strengths of our principles and institutions."

Not Amnesty International's words, but those of US Secretary of State Hillary Clinton last month in an address on the Obama administration's "Human Rights Agenda for the 21st Century".¹ Accountability, she said, was elemental to the administration's approach, and it was under this principle that President Barack Obama had ordered an end to CIA torture and closure of the Guantánamo detention facility.

While Secretary Clinton's words are welcome, the fact is that a year into the new administration, almost 200 individuals remain detained without fair trial at the Guantánamo prison camp, and accountability and remedy for the human rights violations committed against these and other detainees in what the USA previously called the "war on terror" remain more myth than reality.

It is nearly eight years, for example, since Abu Zubaydah was arrested in Pakistan. He was hidden away in secret CIA custody for the first four and a half years, subjected to torture and enforced disappearance, crimes under international law for which no-one has been brought to justice. For the past three years he has been in Guantánamo, still held without charge or access to remedy. The Obama administration continues to resist disclosure of what happened to him and others held in secret CIA custody.

Information which the administration had wanted to keep classified emerged in federal court earlier this month in the case of Ahmed Khalifan Ghailani, namely that he had been subjected to "enhanced interrogation techniques" for 14 hours over five days at some point in secret CIA custody. In its written briefing to the court, the Obama administration argued that its predecessor had "justifiably" treated Ghailani as an "intelligence asset" rather than a criminal defendant, despite a pre-existing indictment in US federal court against him at the time of his arrest in Pakistan in 2004. It added that the Bush administration had made the "entirely reasonable" decision to continue to hold Ghailani without charge as an "enemy combatant". Ahmed Ghailani was held in secret CIA custody for two years, and in Guantánamo for nearly three more years, before being transferred to New York for trial in June 2009. No one has been brought to account for the human rights violations perpetrated against him.

The impunity goes well beyond abuses in the CIA program. Shortly before President Obama took office, for example, the Bush administration's Convening Authority for military commissions confirmed that Saudi Arabian national Mohamed al Qahtani had been tortured in military custody at Guantánamo. Despite this admission, a year later, with Mohamed al Qahtani still held without charge in Guantánamo, no criminal investigation is known to have been opened into the torture allegations.

Earlier this month, a US federal judge found "credible" the allegations that Yemeni national Musa'ab al Madhwani had been subjected to acts amounting to torture and other ill-treatment in a secret US facility

in Kabul before his transfer to Guantánamo where he remains detained without charge more than seven years later. What accountability will there be for this abuse? None, it would seem, unless the current administration has a rethink about whether accountability and adherence to the USA's international human rights obligations will truly be among its governing principles.

In litigation implicating the USA's international obligations to ensure accountability and remedy for past human rights violations, the Obama administration has all too often adopted a stance that promotes impunity and blocks remedy. For example, in its first year it has

- invoked the state secrets privilege to seek dismissal of a lawsuit brought by five detainees for the human rights violations, including crimes under international law, they say they were subjected to in the CIA "rendition" program;
- opposed a lawsuit brought by four UK nationals for the torture and arbitrary detention to which they say they were subjected in Guantánamo, the administration arguing that it was "not clearly established" at the time of the men's detention that they had the rights they said were violated and that the officials concerned were therefore "shielded" from civil liability. In December, the US Supreme Court sided with the administration and declined to take the case;
- intervened to petition a federal court to dismiss a lawsuit filed against John Yoo, a former Deputy Assistant Attorney General in the US Justice Department, for the role the lawsuit claims he played in unlawful detention conditions and interrogation techniques. The Obama administration argued that the context of "the detention and treatment of those determined to be enemies during an armed conflict... implicating matters of national security and war powers" counselled against the "judicial creation of a money-damage remedy";²
- maintained the Bush administration's denial of and opposition to access to lawyers and courts for those held at the US airbase in Bagram in Afghanistan, cementing the accountability gap for abuses committed there and the detainees' lack of effective remedy for them;
- refused to release of photographs and other documentary material relating to detainee abuses.

When the USA assumed its seat on the UN Human Rights Council in 2009, the Obama administration said: "Make no mistake; the United States will not look the other way in the face of serious human rights abuses. The truth must be told, the facts brought to light and the consequences faced".³ A year on, the administration continues to look the other way when it comes to full disclosure of and remedy for human rights violations perpetrated by the USA in the name of "countering terrorism".

The change of tone the Obama administration has brought to the USA's pronouncements on human rights is welcome. It must now match these words with concrete action, including on accountability, remedy, and ending the Guantánamo detentions in line with its international human rights obligations.

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USA: Still failing human rights in the name of global 'war', 20 January 2010, <http://www.amnesty.org/en/library/info/AMR51/006/2010/en>

USA: Investigation, prosecution, remedy: Accountability for human rights violations in the 'war on terror', 4 December 2008, <http://www.amnesty.org/en/library/info/AMR51/151/2008/en>

USA: Blocked at every turn: The absence of effective remedy for counter-terrorism abuses, 30 November 2009, <http://www.amnesty.org/en/library/info/AMR51/120/2009/en>

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<sup>1</sup> Remarks on the Human Rights Agenda for the 21<sup>st</sup> Century. Hillary Rodham Clinton, Secretary of State, Georgetown University's Gaston Hall, Washington DC, 14 December 2009.

<sup>2</sup> This position flies in the face of the obligations expressly adopted by the USA under the International Covenant on Civil and Political Rights, article 9(5) ("Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation", and the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, article 14 ("Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation including the means for as full rehabilitation as possible").

<sup>3</sup> Remarks before the high-level session of the Human Rights Council, Esther Brimmer, Assistant Secretary, Bureau of International Organization Affairs, US Department of State, 14 September 2009.