



USA: Truth, remedy and accountability must be addressed in President Obama's second term

In a new report issued as President Barack Obama's second term in office approaches, Amnesty International highlights the continuing absence of truth, remedy and accountability in relation to human rights violations committed by the USA in the counter-terrorism context since the attacks of 11 September 2001.

Early in his first term, President Obama said that he opposed the creation of an independent commission to investigate human rights violations committed in what his predecessor had dubbed the "war on terror", because he believed that the USA's "institutions are strong enough to deliver accountability". Yet over the past decade, in a far from virtuous circle, the three branches of the US government have effectively collaborated to block truth, accountability and remedy in the counter-terrorism context, thereby leaving the USA in serious breach of its international legal obligations.

- ☒ The **executive** has actively opposed lawsuits seeking a remedy for human rights violations including torture, and has undermined efforts at accountability more generally. The Department of Justice has closed investigations into the CIA secret detention programme operated under the Bush administration, perpetuating the impunity for crimes under international law that has characterised the CIA's detention, rendition and interrogation programmes.
- ☒ The **legislature** has taken steps to facilitate impunity and block remedy, including in the "good faith" defence it provided interrogators under the Detainee Treatment Act of 2005. This provision was further entrenched under the Military Commissions Act in 2006, a law which also stripped the courts of jurisdiction to hear lawsuits brought by former detainees. Given the government's use of secrecy in the name of national security, it remains to be seen how much, if any, of a 6,000-page report by the Senate Intelligence Committee on the CIA detention programme will be published following the Committee's approval of the still-classified report in December 2012.
- ☒ The **judiciary** has generally passed the issues of accountability and remedy back to the elected branches.

Amnesty International's new report looks back at four cases in which federal courts in 2012 blocked lawsuits brought by former detainees alleging torture, unlawful detention and other abuses in US military custody. Unusually, the plaintiffs were US citizens, and the cases could thus be said to be the exceptions to the more general rule – namely that most of those subjected by US military and other personnel since 11 September 2001 to such abuses have been foreign nationals. Efforts to obtain redress and accountability for human rights violations against foreign nationals have also been systematically blocked.

This report outlines the court rulings on these civil cases brought by US citizens and inserts them into a chronology together with cases in which claims brought by foreign nationals have been stymied. This timeline illustrates how, from the outset, officials sought to build immunity for US government personnel involved in detentions and interrogations. Against this backdrop, the blocking of lawsuit after lawsuit, combined with the failure to bring about criminal investigations into these allegations, highlights the institutionalized nature of the accountability gap that now stretches back over a decade.

The right to an effective remedy is recognized in all major international and regional human rights treaties. International law requires that remedies not only be available in theory, but accessible and effective in practice. Victims are entitled to equal and effective access to justice; adequate, effective and prompt reparation for harm suffered; and access to relevant information concerning violations and reparation mechanisms. Full and effective reparation includes restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

The United Nations, among others, has formally recognized "the importance of respecting and ensuring the right to the truth so as to contribute to ending impunity and to promote and protect human rights", referring in part to "the right of victims of gross violations of human rights and serious violations of international humanitarian law, and their families and society as a whole, to know the truth regarding such violations, to the fullest extent practicable, in particular, the identity of the perpetrators, the causes and facts of such violations, and the circumstances under which they occurred". The blocking of remedy at every turn has deprived victims, and the general public, of this right.

Meanwhile, the USA's resort to a "global war" framework continues. In a speech on 30 November 2012, the General Counsel of the US Department of Defense, Jeh Johnson, pointed out that

"all three branches of the United States government – including the two political branches elected by the people and the judicial branch appointed for life (and therefore not subject to the whims and political pressures of the voters) – have endorsed the view that our efforts against al Qaeda may properly be viewed as an armed conflict."

The fact that the USA's "global war" paradigm has gained acceptance across the three branches of its government renders it no less an unacceptably unilateral departure from the very concept of the international rule of law generally, and the limited scope of application of the law of armed conflict in particular. The message sent is that a government can ignore or jettison its human rights obligations and replace them with rules of its own whenever it deems the circumstances warrant it. Under its global war framework, the USA has resorted, among other things, to enforced disappearance, torture, secret detainee transfers, indefinite detention, unfair trials and a policy that permits extrajudicial executions. As the global war theory has gained acceptance across the three branches of government, truth, accountability and remedy have been sacrificed.

And as has become the norm for a US official speaking about the USA's "global war" framework, Jeh Johnson made no explicit reference to human rights. Also familiar was his assertion that the Obama administration had acted "in a manner consistent with our laws and values" in its counter-terrorism efforts. The Bush administration had made the same claims, even as it authorized and carried out a range of human rights violations. As Amnesty International has repeatedly pointed out, while appeals to national values and tradition is a part of political debate in every country, they can feed unhelpful myth-building and self-satisfaction over a country's laws and institutions as much as they can facilitate constructive self-criticism.

Jeh Johnson suggested that there would come a "tipping point" at some moment in the future when "we must be able to say to ourselves that our efforts should no longer be considered an 'armed conflict' against al Qaeda and its associated forces". At that point, the USA would return to a "law enforcement and intelligence" approach and would have to "face the question of what to do with any members of al Qaeda who still remain in US military detention without a criminal conviction and sentence."

An answer to that question has long been articulated by those who never accepted the USA's "global war" paradigm. That answer is to apply international human rights principles.

In a speech on 20 November 2012, US Secretary of Defense Leon Panetta asserted that "since September 11, 2001, our country has worked relentlessly to bring those responsible for the worst terrorist attacks in our history, to justice". Yet those who have long been accused by the US authorities of being responsible for the attacks have still not been brought to trial despite having been in US custody for a decade. Not only that, they are facing unfair trial by military commission, with the Obama administration intending to seek the death penalty against them.

For the first three and a half to four years of their detentions they were subjected to enforced disappearance, and to torture or other cruel, inhuman or degrading treatment. In the pursuit of "justice" under the USA's global war framework, no-one has been held accountable for these crimes, and remedy and truth remain largely absent. This is not justice recognized under the Universal Declaration of Human Rights and the international law and standards that have followed.

Application of human rights principles means to resolve the Guantánamo detentions by releasing those who are not to be charged and brought to fair trial in ordinary civilian courts, abandoning military commissions, and rejecting the death penalty. At the same time a human rights compliant approach means ensuring full accountability for the human rights violations, including crimes under international law, that have occurred since 11 September 2001 at the hands of US personnel, and ensuring genuine access to meaningful remedy to those who have been subjected to them. Moreover, both victims and the public have the right to know the truth about the human rights violations that have occurred in the context of counter-terrorism.

Realising these rights means not only allowing access to remedy in the cases documented in this report and other cases including those concerning foreign nationals, but also carrying out thorough full, independent, impartial, thorough and effective investigations in which the perpetrators are brought to justice. All three branches of government have a role to play in achieving these ends, and between them have the means to do it.

Ensuring accountability and genuine access to meaningful remedy as well as to the truth are binding international obligations that the US authorities must meet. President Obama's first term began with the promise of real change, yet to be fulfilled, both in terms of ongoing detentions, the commitment to transparency, and the continuing lack of accountability and remedy. As his second term begins, Amnesty International urges the US authorities finally to recognize and meet their obligations under international human rights law. It is time for that real change.

See: USA – Chronicle of immunity foretold, 17 January 2013, <http://www.amnesty.org/en/library/info/AMR51/003/2013/en>