

AMNESTY INTERNATIONAL



Index: AMR 51/011/2012
09 February 2012

UNITED STATES OF AMERICA

The 10th Anniversary of “Law of War” Detentions at Guantánamo: US failure to address as an ongoing human rights issue and to ensure accountability and remedy for past abuses in the counter-terrorism context

*Amnesty International written statement to the 19th session of the UN Human Rights Council
(27 February – 23 March 2012)*

Three years ago, in seeking election to the Human Rights Council, the United States of America pledged as follows:

“As the United States seeks to advance human rights and fundamental freedoms around the world, we do so cognizant of our own commitment to live up to our ideals at home and to meet our international human rights obligations.”

The modern history of the USA indeed includes examples of remarkable advocacy and progress for human rights. One area, however, where there has been zero human rights progress during the three years since the USA’s pledge is with respect to the system of indefinite military detention without charge or fair trial at the US Naval Base at Guantánamo Bay in Cuba. Detentions at the base are now into their 11th year.

The last three years have also seen no real progress towards full accountability for human rights violations, including crimes under international law, committed by US personnel in the counter-terrorism context. This continues despite copious public evidence of the crimes and crystal clear obligations under, for instance, the UN Convention against Torture. Further, US courts have systematically refused to hear the merits of lawsuits seeking redress for egregious human rights violations committed in this context. The courts have done so at the urging of government lawyers, citing national security secrecy and various forms of immunity under US law.

It is nearly six years since five UN Special Procedures addressed the Council jointly to call for all detainees at the Guantánamo detention facility to be expeditiously brought to fair trials or released, and for the detention facilities to be closed without further delay. On 23 January of this year, the UN High Commissioner for Human Rights publicly expressed her deep disappointment at the USA’s failure to close that facility, and its determination instead to entrench a system of arbitrary detention, describing as “disturbing” the USA’s failure to ensure accountability for serious human rights violations, including torture.

Although the US administration blames Congress for the failure to close the Guantánamo detention facility, and Congress has indeed tried to place a variety of obstacles in the way of closure -- there is a near-consensus between these two branches of government that the USA is engaged in a self-defined global “war”, and that human rights obligations are simply inapplicable to many of the key US policies and practices in that “war”.

A seemingly permanent system of indefinite military detention without charge or trial is just one of the many purposes for which the USA has used this doctrine of global and open-ended war, and Guantánamo is just one place where such a regime is applied. Indeed, the current US administration has said that, no matter what happens to the other men currently held at the base, it intends to hold more than 40 of the detainees without trial for the foreseeable future under the “law of war”. In other words, without a fundamental shift in approach, even if the administration were to close the Guantánamo detention facility tomorrow, the Guantánamo-style system of detentions, and many of the detainees themselves, would simply be moved elsewhere. Closing Guantánamo will

represent real improvement in respect for human rights only if it is accompanied by an end to the related practices it has come to symbolize.

The global war doctrine has also been used by the current US administration to revive military commissions for trials of some Guantánamo detainees. Despite amendments under the 2009 Military Commissions Act, these tribunals still fall short of international fair trial standards for such criminal proceedings. The Act specifies that only non-citizens can be subject to their flawed lesser procedural protections, so equality before the law is violated by discrimination on grounds of national origin. Their military character also renders them inherently inappropriate - particularly when the ordinary civilian courts stand readily available. The USA has announced it will seek the death penalty against six detainees it has slated for trials by military commissions. Amnesty International categorically opposes any use of the death penalty as inconsistent with full respect the right to life. Even those who do not share our position must recognise that any imposition of the death penalty after unfair trials before such military commissions would be arbitrary and so violate the right to life.

Clearly among the detainees still held at Guantánamo are individuals who should be prosecuted in relation to acts that are fundamentally incompatible with respect for human rights, such as the 11 September 2001 attacks, which Amnesty International has repeatedly condemned as crimes against humanity. Indeed anyone in respect of whom the USA has sufficient evidence of responsibility for such crimes should have been charged and brought to trial years ago. A fully functioning civilian judicial system, with the experience, capacity and procedures to deal with complex terrorism prosecutions, was available from day one. The failure of the US authorities to turn to that system not only deprived detainees at Guantánamo of their fair trial rights, it has so far deprived the victims of the 11 September attacks and other such crimes of their rights to see those responsible brought to justice and the truth firmly established through prompt, proper and public trials.

The last three years have then been marked by a series of failures by the USA fully to live up to its international human rights obligations and commitments when it comes to countering terrorism. It has failed to end its reliance on a doctrine of pervasive and perpetual war against vaguely-defined opponents. It has failed to end the system of indefinite military detention without trial. It has failed to turn to its ordinary courts rather than ad hoc military tribunals to try those accused of responsibility for the 11 September attacks and other crimes. It has failed to ensure accountability and redress for human rights violations committed by its agents, including crimes as serious as torture and enforced disappearance. Fundamentally, the USA has failed to return to criminal law enforcement and respect for human rights as the governing framework for its actions in countering terrorism, or even to explain clearly when, if ever, its citizens and the world may expect it to do so.

The USA's continuing failures in the specific area of counter-terrorism are not only undermining its impact as a serious and potentially powerful advocate for human rights. It is also providing other governments with political cover for gross human rights violations they perpetrate in the name of countering terrorism. These side effects of the USA's failures to engage with the human rights dimensions of its counter-terrorism measures are doing significant damage to respect for human rights more generally. Amnesty International remains deeply concerned about the continuing problem of attacks targeting civilians in many parts of the world, but we are just as concerned about the "collateral damage" that is being done to respect for human rights when other states respond with the kinds of measures and legal justifications that the USA has adopted. That is an issue that should be of equal concern to all members of this Council, including the United States of America itself.

Amnesty International calls on the friends of the USA to join us in using the Human Rights Council diligently to urge the US government to remove this stain on the USA's human rights record by completely disavowing its reliance on its amorphous and corrosive doctrine of global war to fight terrorism; by closing the detention facility at Guantánamo and ending and outlawing the human-rights-violating practices Guantánamo has come to symbolize; by bringing those responsible for the 11 September attacks to justice in fair and public trials before its ordinary courts, not ad hoc military commissions; and by ensuring accountability and redress for all human rights violations for which it has been responsible during the past decade. Amnesty International urges the USA to inform this Council regularly of its steps to close the Guantánamo facility and end the human-rights-violating practices it has come to symbolize.

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Amnesty International has submitted the above written statement to the 19th session of the UN Human Rights Council.

**See also:** USA: Guantánamo: A decade of damage to human rights, 16 December 2011, at <http://www.amnesty.org/en/library/info/AMR51/103/2011/en>

USA: 'Congress has made no such decision': Three branches of government, zero remedy for counter-terrorism abuses, 6 February 2012, <http://www.amnesty.org/en/library/info/AMR51/008/2012/en>