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USA: Daily injustice, immeasurable damage

**Presidential advisers may urge U-turn on civilian trials for 9/11 suspects;
Senate 'enemy belligerent' bill unveiled**

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Twelve weeks ago, US Secretary of State Hillary Clinton made a speech proclaiming the USA's commitment to human rights. When injustice anywhere is ignored, she said, justice everywhere is denied.

Justice denied for one day is bad enough.

It is now more than 400 days since President Barack Obama ordered his administration to resolve each and every case of the detainees held at the US Naval Base in Guantánamo Bay in Cuba, and to close the detention facilities there "as soon as practicable" and in any case no later than 365 days after his order. Today more than 180 detainees remain held at the base, with an interagency review having apparently concluded that nearly 50 of them should continue to be held in indefinite detention without charge or trial.

Amnesty International reiterates that the Guantánamo detainees must immediately be brought to fair trials – which should be before civilian courts not military commissions – or released. Where detainees for release cannot be returned to their home countries because of the risk of human rights violations they would face and no other appropriate state is willing to receive them immediately, they should be released in the USA, at least until another solution is found.

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More than 100 days have passed since Attorney General Eric Holder announced that the Department of Justice would prosecute in US federal court five Guantánamo detainees accused of involvement in the attacks of 11 September 2001, reversing the policy decision of the Bush administration to try them before military commissions. However, the five are today still in Guantánamo, with the issue becoming bogged down in domestic politics, including efforts within Congress to have all such trials conducted before military commissions.

Now it seems that President Obama's advisers may be about to recommend that the trial of the five be returned to the military commissions, as part of a political deal – as opposed to a human rights solution – to win congressional funding and legislative support for closing Guantánamo. President Obama and the Attorney General should reject any such recommendation.

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It is now more than 600 days since the UN Committee on the Rights of the Child called on the USA to conduct any criminal proceedings against children detained in armed conflict promptly and in accordance with minimum fair trial standards, and not before military tribunals. Today, Canadian national Omar Khadr, now in his eighth year in Guantánamo, is still facing a military commission trial for acts he is accused of committing when he was 15 years old or younger.

It is also over 600 days since the US Supreme Court ruled that the Guantánamo detainees had the constitutional right to a "prompt" habeas corpus hearing to challenge the lawfulness of their detention. Most of those who have sought such a hearing have still not yet had one.

More than 1,200 days have passed since President George W. Bush confirmed for the first time that the USA had been operating a secret detention program for the previous four and a half years. No one has yet been brought to account for authorizing or perpetrating the enforced disappearances at the core of that program, that, like torture, constitute crimes under international law.

More than 400 days after President Obama committed his administration to an “unprecedented” level of transparency in order to promote accountability, the administration continues to block release of information about who was held in the secret program, where they were held, and what interrogation techniques and conditions of detention they were subjected to.

Some 500 days have passed since the Director of the Central Intelligence Agency (CIA) confirmed publicly for the first time that the agency had used “water-boarding” against three detainees held in secret custody, and more than 2,000 days have gone by since the CIA Inspector General found that two of the detainees had been subjected to this technique more than 150 times between them.

Again, no one has been brought to justice for authorizing or carrying out this torture or other interrogation methods and detention conditions employed in the CIA program that violated the international prohibition of torture and other cruel, inhuman or degrading treatment. This failure flies in the face of an explicit and absolute obligation under international treaties such as the UN Convention against Torture to carry out full investigations into human rights violations and ensure accountability, including specifically by referring for prosecution every case of torture where the accused is not extradited.

The failure – by all branches of the US government – to address these issues under a human rights framework are continuing to leave the USA on the wrong side of its international obligations.

President Obama said in his Nobel Lecture on 10 December 2009, the 61st anniversary of the adoption of the Universal Declaration of Human Rights (UDHR), “America – in fact, no nation – can insist that others follow the rules of the road if we refuse to follow them ourselves. For when we don’t, our actions appear arbitrary...” The drafters of the UDHR, he also noted, had recognized that “if human rights are not protected, peace is a hollow promise”. Human rights are the route to security, not the obstacle to it.

Four days later, Secretary Clinton cited President Obama’s speech, asserting that the USA’s values were at one with the principles articulated in the UDHR, but that the gap between the promises of the UDHR and reality meant that “now, we must finish the job”. Six decades ago, she said, “the world’s leaders proclaimed a new framework of rights, laws, and institutions that could fulfill the vow of ‘never again.’ They affirmed the universality of human rights through the Universal Declaration and legal agreements.”

Then, at the UN Human Rights Council in Geneva on 1 March 2010, the USA reasserted its commitment “to apply consistently international human rights law to all countries in the world, including ourselves. We seek to lead by example, by meeting our own obligations under both domestic and international law.” About 300 days earlier, in support of its bid for a seat on the Human Rights Council, the USA had committed itself, among other things, to “meeting its UN treaty obligations”.

On almost every front – fair trial of those accused of involvement in attacks on civilians, immediate release of detainees at Guantánamo whom US courts have found to be held without justification, and accountability of US agents for human rights violations and crimes under international law – measures enacted by Congress are only throwing up further obstacles to even the most modest efforts to bring US practices in line with its international obligations.

On 4 March 2010, US Senators John McCain and Joe Lieberman introduced a bill – the Enemy Belligerent Interrogation, Detention, and Prosecution Act of 2010 – into the Senate. The USA is engaged in a “war” against terrorism, Senator McCain’s statement emphasised, while avoiding the phrase “war on terror”. He said that the bill would authorize detention without charge “for the duration of hostilities” of anyone labelled as an “unprivileged enemy belligerent”. It would prohibit any such individual from being provided a lawyer after arrest – “we should not be providing suspected terrorists” with defence lawyers, Senator McCain said. If it eventually was decided to hold a criminal trial in such a case, he added, his

bill would mandate military commissions as the forum. Criminal prosecution “must be secondary” in such cases, Senator McCain asserted. He could have said “second-class”, for that is what military commissions are. He urged his fellow Senators to support the legislation.

But injustice for one day is bad enough.

Each day that passes without accountability, remedy and resolution of detainee cases in line with US human rights and humanitarian law obligations compounds the damage done to the vision of the Universal Declaration of Human Rights already wrought by actions taken by the USA in the name of “countering terrorism” over recent years. An end to the injustice is long overdue. The US administration and Congress must do the right thing now.

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