



## Shelving the truth

### George W. Bush Presidential Library and Museum opens in Dallas

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On 1 May 2003, President George W. Bush stood on the deck of a US aircraft carrier off the coast of southern California and declared an end to “major combat operations” in Iraq. In his “address to the nation” he proclaimed:

“The battle of Iraq is one victory in a war on terror that began on September the 11th, 2001, and still goes on... From Pakistan to the Philippines to the Horn of Africa, we are hunting down Al Qaeda killers. Nineteen months ago, I pledged that the terrorists would not escape the patient justice of the United States.”<sup>1</sup>

Exactly a decade later, on 1 May 2013 in Dallas, Texas, the George W. Bush Presidential Library and Museum will open to the public.<sup>2</sup> The stated goal of this 13<sup>th</sup> presidential library is to be “a resource for the study of the life and career of George W. Bush, while also promoting a better understanding of the Presidency, American history, and important issues of public policy”.<sup>3</sup> Its collection will inevitably include materials relating to the attacks of 11 September 2001 and to the “global war on terror” which President Bush announced in response to that crime against humanity.

While there will be some references to counter-terrorism detentions in the library’s publicly accessible materials, the degree to which George W. Bush was personally responsible for crimes under international law committed against detainees taken into US custody around the world – from Azerbaijan to Mauritania, from Pakistan to Dubai, from Macedonia to Thailand, from Djibouti to Iraq – is unlikely to be in the version of history promoted by this institution.

It would, of course, not be the first institution in the USA to turn a blind eye to this issue. A shameful aspect of this period of US history and of current US public policy is that truth, remedy and accountability relating to human rights violations committed by US forces during the Bush presidency – including the crimes under international law of torture and enforced disappearance – have been shelved. This remains a case of absent rather than patient justice.<sup>4</sup>

A few weeks after his speech from the deck of the *USS Abraham Lincoln*, President Bush issued a proclamation against torture. The USA, he said, was leading the global struggle against torture “by example”. He called on “all governments to join with the United States and the community of law-abiding nations in prohibiting, investigating, and prosecuting all acts of torture”. In the absence of the necessary investigations by the US authorities of torture, enforced disappearances, and other human rights violations that occurred at the hands of US personnel in spite of such presidential proclamations, Amnesty International has issued a memorandum laying out the international obligations upon other countries to investigate the former US President should he travel to their shores.<sup>5</sup>

“Notorious human rights abusers”, President Bush said in his 26 June 2003 statement against torture, “have long sought to shield their abuses from the eyes of the world by staging elaborate deceptions and denying access to international human rights monitors. Until recently, Saddam Hussein used similar means to hide the crimes of his regime.”<sup>6</sup> What is now known is that from well before he issued this proclamation, and for years afterwards, the USA was seeking to hide from the world’s eyes human rights violations carried out under his presidential authority. To this day, the US authorities are still hiding what happened.

Armed with President Bush’s authorization, given to its Director George Tenet on 17 September 2001, the Central Intelligence Agency (CIA) developed and operated a programme of secret detention and interrogation. Dozens of detainees labelled “high-value” were held incommunicado in solitary confinement at undisclosed locations in this programme, some of them for years. Among the “enhanced interrogation techniques” authorized for use by the CIA

were prolonged sleep deprivation, stress positions, various types of physical assault, confinement in a box, and “water-boarding”, effectively mock execution by interrupted drowning or in a word, torture. If libraries and museums have a role in helping societies not to forget, the Bush institution would do well to stock materials relating to how US courts before 11 September 2001 convicted individuals who engaged in water-boarding for the crime of torture.<sup>7</sup>

A spokesperson has said that the materials in the library will include a video featuring Condoleezza Rice, who served as National Security Advisor and Secretary of State under the Bush administration, explaining and defending the Bush administration’s decision to turn to the use of “enhanced interrogation techniques”.<sup>8</sup> Any such candour is hardly surprising given that this issue was touched upon unapologetically in George W. Bush’s own memoirs published in 2010. It was publication of these memoirs – “Decision Points” – that prompted Amnesty International to call for the former President to be the subject of a criminal investigation.<sup>9</sup>

In his book, George W. Bush recalled the case of Abu Zubaydah, a stateless Palestinian taken into custody in Pakistan in March 2002 and transferred to secret US custody. Abu Zubaydah was resisting interrogation, recalled the former President; “CIA experts” drew up a list of “enhanced interrogation techniques”; “I took a look at the list of techniques. There were two that I felt went too far, even if they were legal. I directed the CIA not to use them. Another technique was waterboarding, a process of simulated drowning... Had I not authorized waterboarding on senior al Qaeda leaders, I would have had to accept a greater risk that the country would be attacked... I approved the use of the interrogation techniques”.<sup>10</sup>

A year after Abu Zubaydah was detained, Khalid Sheikh Mohammed was arrested in Pakistan and also transferred to secret CIA custody. In his memoirs, Bush recalled: “George Tenet asked if he had permission to use enhanced interrogation techniques, including waterboarding, on Khalid Sheikh Mohammed... ‘Damn right,’ I said.”<sup>11</sup> It had already been officially confirmed that these two detainees were among those to have been subjected to this torture technique – declassified documents point to Abu Zubaydah having been subjected to more than 80 “applications” of water-boarding, and Khalid Sheikh Mohammed to more than 180.

Under presidential authority, the CIA subjected Abu Zubaydah to four and a half years of enforced disappearance, Khalid Sheikh Mohammed to three and a half. Both were transferred in early September 2006 to military custody at the US naval base at Guantánamo Bay in Cuba, where they remain today, the former held without charge, the latter facing unfair trial by military commission and the prospect of the death penalty. A number of others previously held in the CIA programme are also now held in the naval base, while others remain unaccounted for. Accountability for any crimes under international law they endured is wholly absent and their experiences blanketed by secrecy.<sup>12</sup>

This yawning accountability gap leaves the USA in violation of its international human rights obligations. It also perpetuates double standards, something the administration of President Barack Obama said it would not countenance. In 2009, then Secretary of State Hillary Clinton said that “a commitment to human rights starts with universal standards and with holding everyone accountable to those standards, including ourselves.”<sup>13</sup> Citing this stance, the State Department Legal Adviser said that a prong of the “Obama-Clinton doctrine” was that the USA would follow “universal standards, not double standards”.<sup>14</sup>

The USA’s continuing failure to disclose the truth about what was done in the CIA’s secret programmes of rendition, interrogation and detention, to bring those responsible for the crimes committed in this context, and to ensure genuine access to meaningful remedy for those who were subjected to these violations, drains the credibility from the USA’s claims to be committed to its human rights obligations. It should not be surprised if its criticisms of the human rights records of other countries are met with accusations of hypocrisy. For the past two years, for example, the Iraq entry in the Department of State’s annual global human rights assessment has contained the following line:

“A culture of impunity has largely protected members of the security services, as well as those elsewhere in the government, from investigation and successful prosecution of human rights violations”.

Iraq is one location where human rights violations by US forces, including secret detention at the hands of the CIA and other US agents, has resulted in little accountability, and certainly not in the case of any high level officials.<sup>15</sup>

In a then classified report issued in May 2004 on his review of CIA detention and interrogation activities after 11 September 2001, the CIA Inspector General pointedly referred to the USA’s repeated condemnations of “harsh interrogation techniques utilized by foreign governments”. He quoted from the entry on Saudi Arabia in the Department of State’s 2002 report, which condemned such practices as “suspension from bars by handcuffs, and threats against

family members, ...[being] forced constantly to lie on hard floors [and] deprived of sleep..." He also pointed to other entries criticizing hooding and stripping of prisoners.<sup>16</sup> Now the CIA was using such techniques.

That entry on Saudi Arabia noted that the "past failure to criticize human rights abuses has contributed to the public perception that security forces may commit abuses with impunity". Impunity is a theme that features in many entries in the State Department's human rights reports. Clearly, when it comes to other countries, the USA sees accountability as a human rights obligation. The latest report, published on 19 April 2013, includes the following:

- **Belarus:** "Authorities at all levels operated with impunity and failed to take steps to prosecute or punish officials in the government or security forces who committed human rights abuses".
- **Côte d'Ivoire:** "The government seldom took steps to prosecute officials who committed abuses, whether in the security services or elsewhere in the government. Security force impunity, particularly for crimes committed during the 2011 post-electoral crisis, was a problem".
- **Cuba:** "Most human rights abuses were official acts committed at the direction of the government. Impunity for the perpetrators remained widespread".
- **Democratic Republic of Congo:** One of the "three most important human rights issues" was impunity "for many serious abuses, including unlawful killings, disappearances, torture, rape, and arbitrary arrests and detention".
- **Jordan:** "Impunity remained widespread, and the government did not take steps to investigate, prosecute, or punish officials who committed abuses".
- **Mexico:** "widespread impunity for human rights abuses by officials remained a problem in both civilian and military jurisdictions".
- **Pakistan:** "Abuses often went unpunished, fostering a culture of impunity. Authorities punished government officials for human rights violations in very few instances".
- **Russia:** "The government failed to take adequate steps to prosecute or punish most officials who committed abuses, resulting in a climate of impunity".
- **Syria:** "the government did not attempt to punish, arrest, or prosecute officials who violated human rights. The regime often sheltered those in its ranks who committed human rights abuses".
- **Turkmenistan:** "Officials in the security services and elsewhere in the government acted with impunity. There were no reported prosecutions of government officials for human rights abuses".
- **Yemen:** "Impunity for security officials remained a problem as the government was slow to act against officials implicated in committing abuses."

Like Iraq, Afghanistan is a country where, during the Bush administration, US forces carried out enforced disappearance and other violations, for which accountability has been minimal. When recording in relation to Afghanistan that "official impunity for those who committed human rights abuses" is a "serious" problem in that country, however, the USA is not applying the standards it sets for Afghanistan to itself.

The preface to this latest report notes that the Department of State was including for the first time an entry on the "world's newest country", South Sudan. That entry included the assessment that the government there "seldom took steps to punish military or civilian officials who committed abuses, and impunity was a major problem". On this issue, the newest country should not follow the example of the USA, which claims to be "committed to holding accountable persons responsible for human rights violations and war crimes", but fails to do so.<sup>17</sup>

The curators of a museum dedicated to a better understanding of the USA's history and its presidency should be interested in the fact that it is unusual for a former President of any country to admit (in George W. Bush's case, in print and on primetime television) to having authorized agents to carry out acts that constitute crimes under international law.

The presidential library system is overseen by the Office of Presidential Libraries in the National Archives and Records Administration. In its public materials, the National Archives asks the question - 'Why should taxpayers support presidential libraries?' - to which it responds:

"The papers and records created by, for, or about Presidents, Vice Presidents, and their administrations document the key decisions, policy and activities of the institution of the Presidency – the highest policy level of government. Additionally, these papers and records document the only individuals in the government of the United States elected nationally.

The documents not only inform society about the President as an individual and about his term in office, but also provide insights into the American experience. Without systematic preservation of and access to these materials, the very history of our nation would be incomplete. These records provide knowledge important in conducting the ongoing business of the Presidency and are a vital record for posterity in documenting the knowledge of past decisions so necessary in making thorough judgements about current issues.”<sup>18</sup>

While the George W. Bush Presidential Library and Museum is unlikely to stock any of the many human rights reports sent by non-governmental organizations to the Bush administration on human rights concerns relating to US actions – it should be noted that that administration was generally unresponsive in any positive sense to such reports<sup>19</sup> – there is a document that Amnesty International suggests the library should seek for its collection if it wants to provide a more complete picture of this presidency. It is a report on the CIA secret detention and interrogation programme produced by the US Senate Select Committee on Intelligence and approved by it in December 2012.

The Chairperson of the Committee, Senator Dianne Feinstein, has said that the report is more than 6,000 pages long, with 35,000 footnotes, that it “uncovers startling details” and is “a comprehensive review of the CIA’s detention program that includes details of each detainee in CIA custody, the conditions under which they were detained, how they were interrogated, the intelligence they actually provided and the accuracy – or inaccuracy – of CIA descriptions about the program to the White House, Department of Justice, Congress and others.” Senator Feinstein said that she believed the report to be “one of the most significant oversight efforts in the history of the United States Senate, and by far the most important oversight activity ever conducted by this committee.”<sup>20</sup> The absence of this report from the Bush library would surely be inconsistent with this institution’s mission statement to provide a better understanding of the Bush presidency and matters of public policy.

The report is currently secret. The US authorities should declassify and publish as much of it as possible, and certainly any and all parts of it that provide any detail or shed any light on crimes under international law and other human rights violations. The Obama administration is after all supposedly committed not only to respect for universal human rights but to an “unprecedented” level of transparency in the stated interest of promoting accountability.<sup>21</sup> The Office of Presidential Libraries should add its voice to those calling for public release of the report. A copy of the report should then be made accessible to virtual or actual visitors to this library.

Meanwhile the report and the issues that it and other materials describe should not gather dust on a government shelf. They should form part of the long-missing investigation into human rights violations during the Bush administration. Those responsible for crimes under international law, whatever their level of office, should be brought to justice. Ensuring accountability, and access to remedy for victims, is a matter of legal obligation upon the US government – all three branches of it.

And there is the question of truth. The pursuit of the truth is an aim which any library or museum could surely sign up to. A presidential museum in the USA holds “some of the most sensitive and high policy level papers and records in the Federal government”.<sup>22</sup> Many will be classified. Any classified information which details the use of torture, enforced disappearance or any other human rights violation, committed against detainees held during the administration of George W. Bush should be declassified and made public.

The USA must ensure realization of the individual and collective right to truth. It has promoted this right, but again fails to apply it to itself. At a panel discussion on the right to truth at the UN Human Rights Council in 2010, the US representative said that “respect for the right to truth serves to advance respect for the rule of law, transparency, honesty, accountability, justice and good governance – all key principles underlying a democratic society.”<sup>23</sup>

President Ronald Reagan described Presidential Libraries as ‘classrooms of democracy’.<sup>24</sup> Will the George W. Bush Presidential Library and Museum become yet one more institution that turns away from the truth about the crimes under international law committed by US forces during that presidency, serving only to compound the injustice and increase the likelihood of history being repeated at some point in the future?<sup>25</sup>

At the recent launch of the latest State Department global human rights assessment, US Secretary of State John Kerry asserted: “These reports send a very clear message that all governments have a responsibility to protect universal human rights”.<sup>26</sup> The US government makes a mockery of such words when it fails, year after year after year, to resolve the detentions at Guantánamo in a human rights compliant manner, and to ensure accountability, remedy and truth in relation to human rights violations committed there and elsewhere since September 2001.

## ENDNOTES

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<sup>1</sup> Address to the Nation on Iraq from the *USS Abraham Lincoln*, President George W. Bush, 1 May 2003, Public Papers of the Presidents of the United States. US Government Printing Office.

<sup>2</sup> The dedication ceremony was held on 25 April 2013. In a speech at that event, President Obama said “As we walk through this library, obviously we’re reminded of the incredible strength and resolve that came through that bullhorn as [President Bush] stood amid the rubble and the ruins of Ground Zero, promising to deliver justice to those who had sought to destroy our way of life.”

<sup>3</sup> Mission statement at <http://www.georgewbushlibrary.smu.edu/About-Us.aspx>. The library/museum “serves as a resource for the study of the life and career of George W. Bush, while also promoting a better understanding of the Presidency, American history, and important issues of public policy. The Library and Museum accomplishes its mission by preserving and providing access to Presidential records and other donated collections, hosting public programs, creating educational initiatives, preserving artifacts, and producing innovative museum exhibits.” Prior to becoming US President, George W. Bush was governor of Texas for several years. During this time, Amnesty International had serious concerns relating to the use of the death penalty in that state, including cases in which executions violated unequivocal principles of international law. See, for example, Letter to Governor Bush, 24 January 2000, available at <http://www.amnesty.org/en/library/info/AMR51/011/2000/en> concerning the upcoming execution of Glen McGinnis in January 2000 for a crime committed when he was 17 years old. The letter read: “On behalf of more than one million Amnesty International members across some 100 countries, I am writing to you in your capacity not only as a Governor who took office on a promise to make Texas a “beacon” state, but also as a presidential contender in a country which claims to be a shining light for human rights in the world. There is indeed no doubt that in the next few hours, a spotlight of an international nature will be focussed on the USA – specifically on your office, and the power invested in you to relieve those condemned to death in Texas. After those hours have passed, citizens and governments across the world will be able to make their own assessment of the respect for global human rights standards held, not only by the highest executive officer of an individual US state, but also by a potential future leader on the world stage.” Governor Bush allowed the execution to proceed.

<sup>4</sup> With former President Bush’s reference to “patient justice” in mind, it could also be pointed out that five detainees currently held at the US naval base, Guantánamo Bay, Cuba, who have been charged with involvement in the attacks of 11 September 2001, have been in US custody for a decade or more and have still not been brought to trial. The reasons for the delays include the Bush administration’s decision not to bring them to trial but to subject them instead to enforced disappearance in CIA custody for years. This was followed by the US government’s continuing decision to bring them to trial before an untried, untested system of military commissions at Guantánamo, rather than in the ordinary federal courts which had been open and operating from day one of these detentions. The failure of the USA to provide the victims and the general public the opportunity to see those accused of responsibility for the 9/11 attacks and other such crimes under international law brought to justice in fair trials has been shameful. It has been inconsistent with the USA’s human rights obligations to the victims, as well as the accused: victims of terrorism and other armed group violence have the right, like all victims of human rights abuses, to respect for and fulfilment of their rights to justice, redress, and the truth.

<sup>5</sup> USA: Bringing George W. Bush to justice. International obligations of states to which former US President George W. Bush may travel, <http://www.amnesty.org/en/library/info/AMR51/097/2011/en>

<sup>6</sup> Statement on the United Nations International Day in Support of Victims of Torture, 26 June 2003.

<sup>7</sup> Evan Wallach, ‘Drop by drop: Forgetting the history of water torture in US courts’, *Columbia Journal of Transnational Law*, Volume 45 (2006-2007), pages 468 to 506.

<sup>8</sup> Bush library includes ‘Decision Points Theater’, artifacts from 9/11, chads and Barney’s ball. Associated Press, 22 April 2013.

<sup>9</sup> US must begin criminal investigation of torture following Bush admission, 10 November 2010, <http://www.amnesty.org/en/news-and-updates/us-must-begin-criminal-investigation-torture-following-bush-admission-2010-11-10>; See also memorandum to the Swiss authorities, 6 February 2011, <http://www.amnesty.org/en/library/info/AMR51/009/2011/en>; and to the Canadian authorities, 12 October 2011, <http://www.amnesty.org/en/library/info/AMR51/080/2011/en>

<sup>10</sup> George W. Bush, *Decision points*, Virgin Books, 2010, page 168-169.

<sup>11</sup> *Ibid.*, page 170-171.

<sup>12</sup> USA: Truth, justice and the American way? Details of crimes under international law still classified Top Secret, 19 December 2012, <http://www.amnesty.org/en/library/info/AMR51/099/2012/en>

<sup>13</sup> See USA: Missing from the US ‘human rights agenda’: Accountability and remedy for ‘war on terror’ abuses, 20 January 2010, <http://www.amnesty.org/en/library/info/AMR51/005/2010/en>

<sup>14</sup> The Obama administration and international law, Harold Hongju Koh, Legal Adviser, US Department of State, Annual Meeting of the American Society of International Law, Washington, DC, USA, 25 March 2010, <http://www.state.gov/s/l/releases/remarks/139119.htm>

<sup>15</sup> USA: ‘Judge us by our actions’: A reflection on accountability for US detainee abuses 10 years after the invasion of Iraq, 15 March 2013, <http://www.amnesty.org/en/library/info/AMR51/012/2013/en>

<sup>16</sup> Special Review: Counterterrorism detention and interrogation activities (September 2001 – October 2003). Central Intelligence Agency Inspector General, 7 May 2004.

<sup>17</sup> UN Doc.: A/HRC/16/11/Add.1, 8 March 2011. Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review: United States of America.

<sup>18</sup> ‘Why should taxpayers fund Presidential libraries?’ Frequently asked questions about Presidential Libraries, National Archives, <http://www.archives.gov/presidential-libraries/faqs/#9>

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<sup>19</sup> See for example, USA: An open letter to President George W. Bush on the question of torture and cruel, inhuman or degrading treatment, 7 May 2004, <http://www.amnesty.org/en/library/info/AMR51/075/2004/en>

<sup>20</sup> Feinstein Statement on CIA Detention, Interrogation Report, 13 December 2012, <http://www.feinstein.senate.gov/public/index.cfm/press-releases?ID=46c0b685-a392-4400-a9a3-5e058d29e635>

<sup>21</sup> Transparency and Open Government. Memorandum to the Heads of Executive Departments and Agencies, signed by President Barack Obama, 21 January 2009, <http://www.whitehouse.gov/the-press-office/transparency-and-open-government>

<sup>22</sup> See 'What are libraries doing to declassify Presidential papers and records?', Frequently asked questions about Presidential libraries, National Archives, <http://www.archives.gov/presidential-libraries/faqs/#26>

<sup>23</sup> Panel discussion on the right to the truth. UN Human Rights Council, 13<sup>th</sup> session, 9 March 2010.

<sup>24</sup> The Presidents are expecting you. Brochure on Presidential Libraries, National Archives, available at <http://www.archives.gov/presidential-libraries/about/brochure.pdf>

<sup>25</sup> See, for example, USA: See no evil. Government turns the other way as judges make finding about torture and other abuse, 3 February 2011, <http://www.amnesty.org/en/library/info/AMR51/005/2011/en>

<sup>26</sup> Remarks on the release of the Human Rights Report, John Kerry, US Secretary of State, 19 April 2013, <http://www.state.gov/secretary/remarks/2013/04/207791.htm>