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USA: Attorney General orders 'preliminary review' into CIA detention cases – full investigation long overdue

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What do we know? Or, to quote a former US Secretary of Defense, what are the “known knows”?

- We know that detainees in secret CIA custody since 2002 were tortured. Torture is a crime under international law.
- We know that detainees were subjected to enforced disappearance, also a crime under international law.
- We know that no one has been prosecuted for authorizing or committing these crimes.

We knew this before yesterday's publication of the CIA Inspector General's review of CIA counterterrorism detention and interrogation “activities”. We knew this despite the report, covering the period September 2001 to October 2003, having been suppressed for more than five years. We know it despite parts of it remaining classified Top Secret and having been redacted from the public version released yesterday.

In a statement to agency employees, CIA Director Leon Panetta called the (partial) release of the Inspector General's 2004 report “an old story”, because the “outlines of prior interrogation practices, and many of the details”, were public already.

He is right.

Allegations of crimes under international law committed as a part of the CIA detention program have been in the public realm for years. It is over four years since the leaking of a Department of Justice memorandum written for the CIA in mid-2002, arguing that “under the current circumstances” necessity or self-defense could justify interrogation methods amounting to torture under US law. The third anniversary of President George W. Bush's speech confirming the existence of the secret detention program, effectively admitting that the USA had been conducting a program of enforced disappearance, is fast approaching. It is now a year and a half since the then CIA Director, General Michael Hayden, confirmed that “water-boarding”, a torture technique under which the perception of drowning is induced in the victim, had been among the “enhanced” techniques used against detainees in CIA custody. It is four months since it was revealed that Abu Zubaydah had been subjected to waterboarding at least 83 times in August 2002, and Khalid Sheikh Mohammed some 183 times in March 2003.

Please excuse us, then, if the welcome we give yesterday's announcement by US Attorney General Eric Holder that he has ordered a “preliminary review into whether federal laws were violated in connection with the interrogation of specific detainees at overseas locations” remains less than whole hearted. The announcement is unquestionably a significant step forward from the years of total denial and the consequent climate of near-zero accountability or remedy that has prevailed to date. But it is not nearly enough to satisfy US obligations under international human rights and humanitarian law, including the most basic notions of accountability and remedy for gross and systematic human rights violations.

The Attorney General's announcement was itself qualified by comments that seem to continue to fail to recognise the grave implications of the facts that have been plainly laid before the US and global public for years now: “I want to emphasize that neither the opening of a preliminary review nor, if evidence warrants it, the commencement of a full investigation, means that charges will necessarily follow”, he said. He added that “we must, to the extent possible, look forward and not backward when it comes to

issues such as these". However, the USA has a basic legal obligation, expressly provided for by treaties such as the UN Convention against Torture and the Geneva Conventions, not to look away from crimes such as torture but rather to bring the full force of the criminal justice system to bear upon them. Refusing to bring to justice perpetrators of "issues" such as torture is simply not tenable if the USA is to live up to its obligations.

This is not to say that everything is known about what has gone on in the CIA or other US detention programs since 2001. Far from it. Indeed, to continue in the words of former Secretary of Defense Donald Rumsfeld in June 2002, "There are known unknowns. That is to say there are things that we now know we don't know. But there are also unknown unknowns. There are things we don't know we don't know".

The USA should establish an independent commission of inquiry to investigate all aspects of the USA's detention practices in what the previous administration called the "war on terror". The establishment and operation of such a commission, however, must not be used to block or delay the prosecution of any individuals against whom there is already sufficient evidence of criminal wrongdoing.

Amnesty International has been calling for this for years. It is an old story, but it is one that will not go away.

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