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Damage done: US assurances on 'war on terror' detentions lack credibility

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Assurances provided by the USA that it is committed to its legal obligations in relation to the detention, transfer, treatment and trial of individuals suspected of involvement in international terrorism must be treated with extreme caution.

Recent revelations – contrary to earlier US assertions – about the use of the UK territory of Diego Garcia during secret detainee transfers, and official confirmation that the US administration has authorized and used an interrogation technique, “waterboarding”, that constitutes a form of water torture and reserves the right to do so again, are just the latest evidence of the unreliability of US assurances in relation to “war on terror” detentions. Scepticism has become a reasonable response to US claims that it is committed to the rule of law and respect for human rights in this context. President Bush’s vetoing on 8 March 2008 of legislation aimed at bringing the Central Intelligence Agency’s treatment of detainees into compliance with the US Army Field Manual on interrogations can only increase such scepticism, despite the President’s statement at the time of the veto that he is “committed to following international and domestic law regarding the humane treatment of people in [US] custody”.

Amnesty International fully recognizes the duty of governments to bring to justice alleged perpetrators of serious crime, including terrorist offences, and that international cooperation may be necessary to meet this goal. At the same time, all governments must adhere to internationally-recognized principles of human rights and the rule of law, including when responding to threats or acts of terrorism.

Before 11 September 2001 and the USA’s response to those events, Amnesty International would generally not have had concerns about the extradition of suspects to US custody once the appropriate assurances were obtained by the sending country that any such person would not face the death penalty in the USA. Such assurances were considered reliable. The law and past practice nurtured such confidence.

Since the 9/11 attacks – acts which Amnesty International has condemned as a crime against humanity – certain US policies, practices and legislation relating to the detention, interrogation, and trial of individuals in connection with counter-terrorism efforts have called into serious question the USA’s commitment to its international human rights obligations in this context.

A new Amnesty International report – *USA: To be taken on trust? Extraditions and US assurances in the 'war on terror'* – has as its starting point the USA’s request to the UK government to extradite two UK nationals suspected of involvement in international terrorism. The US government has provided diplomatic assurances that the two will be tried in federal court and not designated as “enemy combatants” or subject to trial by military commission. An earlier version of Amnesty International’s report was provided in January 2008 to the European Court of Human

Rights which is considering a challenge brought by the two men against their extradition to the USA.

The report details how the USA's public assurances and its assurances given to other governments asserting the humane and lawful treatment of detainees in US custody have been found wanting. It also examines the authority that has been attributed to the US President in the context of the "war on terror". Against this backdrop, Amnesty International concludes that, as long as the USA's "war" paradigm and ascribed legal framework remain in place, diplomatic assurances do not provide a guarantee of internationally lawful conduct by the USA, and would not prevent the designating of transferred detainees as "enemy combatants", with all the consequences that such designation potentially entails, if the President determined that national security required the bypassing of such an assurance.

A central plank of the USA's "war on terror" detention policy has been to remove certain foreign nationals from the reach of the ordinary courts. The experience of numerous detainees has demonstrated that the US government is not committed to trials in federal court – even when an individual has previously been indicted in such courts – when national security considerations under its global war paradigm are deemed to take priority.

The USA has treated hundreds of individuals it has taken into its custody as potential sources of intelligence or risks to security rather than agents with criminal liability, even as it has accused them publicly of involvement in terrorism. Secret detention, enforced disappearance, unlawful detainee transfers, indefinite detention without trial, and torture and other cruel, inhuman or degrading treatment have been outcomes of this policy. Unfair trials by military commission are now looming. Six detainees accused of involvement in the 9/11 attacks – five of whom were subjected to the CIA's secret detention program, while the sixth was subjected to torture and other ill-treatment in Guantánamo – are facing the possibility of execution after such trials, even as impunity is enjoyed by those who have committed crimes against them in US custody.

The US government itself has said that in assessing the credibility of diplomatic assurances it receives from other countries on detainee transfers, it considers "all available information about the compliance of the potential receiving state with its international obligations", the requesting state's "human rights record", and "political or legal developments in the requesting State that would provide context for the assurances provided". In the context of "war on terror" detentions, the USA's own general disregard for international law and standards is now well documented.

The rule of law requires transparency, predictability, consistency and adherence to fundamental human rights principles. Until this becomes a hard and fast rule in the USA's approach to terrorism-related detentions, its diplomatic assurances are an unsafe basis on which to approve detainee transfers to the USA in this context.

The USA must abandon those domestic laws, policies and practices which fail to comply with its international obligations on the transfer, treatment and trial of detainees. Other governments must not become complicit in US conduct that violates international law.

For further information, see *USA: To be taken on trust? Extraditions and US assurances in the 'war on terror'*, AI Index: AMR 51/009/2008, March 2008, <http://www.amnesty.org/en/library/info/AMR51/009/2008>.

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