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Single day, double standards

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On the morning of 6 March 2007 in Washington, DC, the US Department of State released its annual report on human rights in other countries. The 1,800 page publication reports on a range of human rights violations committed in countries around the world, including torture, arbitrary detention, enforced disappearance, secret detention and unfair trials.

The entry on Iran, for example, notes that “in recent years authorities have severely abused and tortured prisoners in a series of ‘unofficial’ secret prisons and detention centres outside the national prison system”, with common methods of torture including “prolonged solitary confinement with sensory deprivation”. The entry on North Korea states that “the government was responsible for cases of disappearance...There are no restrictions on the ability of the government to detain and imprison persons at will and to hold them incommunicado.” The entry on Uzbekistan reports that “coerced confessions and testimony were commonplace”, and the entry on Cuba notes that “the government did not permit independent monitoring of prison conditions by international or national human rights groups...The government has denied prison visits by the International Committee of the Red Cross [ICRC] since 1989.”

Releasing the country reports, Secretary of State Condoleezza Rice said that they “speak to America’s continued support for those fundamental freedoms embodied in the Universal Declaration of Human Rights...These basic rights should be the source of justice in every society....”

Five hours later, on the afternoon of 6 March 2007, the Department of Defence held a briefing in Washington, DC, to announce the start of Combatant Status Review Tribunals (CSRTs) for the 14 detainees transferred in September 2006 from years of secret CIA custody in undisclosed locations to the US Naval Base in Guantánamo Bay in Cuba.

The CSRT is the administrative procedure set up by the US government in mid-2004 to review the “enemy combatant” status of detainees held in Guantánamo, many of whom had already been held for more than two years without charge or trial. The CSRTs consist of panels of three military officers who can rely on secret evidence and evidence extracted under torture or other ill-treatment in making their determinations. The detainee is denied access to a lawyer and generally to witnesses and is presumed to be an “enemy combatant” unless he can prove otherwise.

These 14 men had been held for up to four and half years in secret facilities outside the USA before being taken to Guantánamo. They had been held incommunicado for all that time, including being kept from the ICRC. They were subjected to “alternative” interrogation techniques, widely reported to include methods that violate the international legal prohibition on torture or other cruel, inhuman or degrading treatment. Such techniques would feature in State Department reports if used by countries other than the USA.

The CSRTs for the 14 men are due to begin, in secret, on 9 March. The USA's treatment of the 14 over the years has transformed them from individuals with allegedly high intelligence value to detainees with information about possible government crimes, including enforced disappearance. The authorities have classified as "top secret" details of the CIA secret detention program, including interrogation techniques, location of detention facilities, and detention conditions, the disclosure of which could cause "exceptionally grave damage" to national security. The effect, if not the purpose, of this classification is to conceal human rights violations.

The detainees were transferred to Guantánamo for the stated purpose of bringing them to trial by military commission. A CSRT determination of "enemy combatant" status renders a detainee eligible for trial by military commission under the Military Commission Act (MCA), signed into law by President Bush on 17 October 2006.

In trials under the MCA, the prosecution may introduce information extracted under cruel, inhuman or degrading treatment; or under treatment that violated the state's obligation to treat all detainees with humanity and with respect for the inherent dignity of the human person; or under treatment that amounted to "outrages upon personal dignity, in particular degrading and humiliating treatment" under Article 3 common to the four Geneva Conventions of 1949. At the same time, the MCA prohibits the defendant from invoking the Geneva Conventions as a source of rights. In addition, the USA considers that international human rights law does not apply in the "war on terror".

In military commission trials, the prosecution may also introduce evidence while protecting from disclosure "the sources, methods, or activities" by which the USA acquired it, if the military judge finds that the evidence is "reliable" and the sources, methods or activities classified. Amnesty International fears that the military commissions will lack the independence and impartiality to conduct the necessary searching inquiries into government conduct. If they do not, the commissions will become a forum in which government abuses are whitewashed.

Meanwhile, six months after these 14 detainees were brought out of years of secret custody, they are still being denied access to lawyers even as the government builds its criminal case against them. Now it intends to put them through a secret and clearly flawed administrative review process, in violation of their right to challenge the lawfulness of their detention in a court of law.

At the press briefing to launch the State Department's report on 6 March, Assistant Secretary of State for Democracy, Human Rights and Labor, Barry Lowenkron, said: "We recognize that we are issuing this report at a time when our own record and actions we have taken to respond to the terrorist attacks against us have been questioned. We will continue to respond to the concerns of others, including by means of the reports we submit to meet our obligations under various human rights treaties".

This is far from reassuring. For example, it was only a matter of weeks after the UN Committee against Torture and the UN Human Rights Committee told the US government in mid-2006 that secret detention violates the USA's international treaty obligations that President Bush publicly confirmed and endorsed the CIA's secret detention and interrogation program.

The double standards must end. The USA must bring its detention and interrogation laws, policies and practices fully into compliance with international law and standards.

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