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USA: All allegations of torture must be investigated

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The US Department of Defense's partial publication of the transcript of Khalid Sheikh Mohammed's hearing before a Combatant Status Review Tribunal (CSRT) in Guantánamo again raises serious concerns about the USA's treatment of detainees in the "war on terror".

The CSRTs were devised in June 2004 for use in Guantánamo, more than two years after detentions began there. These tribunals consist of three military officers who can rely on secret evidence or evidence coerced under torture or other ill-treatment in making their determinations of a detainee's status. The burden is on the detainee, without legal representation and generally denied the possibility of obtaining witnesses or evidence, to disprove his "unlawful enemy combatant" status, loosely defined. Khalid Sheikh Mohammed, for example, was denied his request to present two Guantánamo detainees as witnesses. The President of the CSRT ruled that their testimony was "not relevant". Confirmation of a detainee's "unlawful enemy combatant" status renders him eligible for trial by military commission, tribunals with the power to hand down death sentences.

Khalid Sheikh Mohammed is one of 14 so-called "high-value" detainees transferred from years of secret CIA custody to Guantánamo in September 2006 for the stated purpose of trial by military commission. Described by the US government as the "mastermind" behind the attacks of 11 September 2001, Khalid Sheikh Mohammed was arrested in Pakistan in 2003. He was held incommunicado in secret CIA detention for three and a half years. The CIA's interrogation methods remain classified "top secret", but among those allegedly used against this and other detainees has been "water-boarding", in effect mock execution by drowning.

Six months after their transfer to Guantánamo, these 14 detainees are still being denied access to lawyers even as the government builds its criminal case against them. The military commissions can admit coerced evidence. The government may introduce evidence while keeping secret the methods used to obtain it. The CSRTs for these 14 detainees are being held in closed session because the 14 detainees "might divulge highly classified information" about the CIA secret detention program. This presumably would be the same at their trials by military commission, if they occur. The military judge can close proceedings to prevent disclosure of classified intelligence activities.

The redacted transcript of Khalid Sheikh Mohammed's CSRT hearing indicates that he has raised allegations of torture. The CSRT President refers to a written statement "regarding alleged abuse or treatment that the Detainee received". The following exchange then occurs:

President: ...D-d appears to be a written statement regarding certain treatment that you claim to have received at the hands of agents of the United States government as you indicated from the time of your capture in 2003 up until coming here to Guantanamo in September 2006.

President: Is that correct?

Detainee: Yes.

President: Alright... Were any statements that you made as the result of any of the treatment that you received during that time frame from 2003 to 2006? Did you make those statements because of the treatment you receive from these people?

Detainee: Statement for whom [sic]?

President: To any of these interrogators.

Detainee: CIA peoples. Yes. At the beginning when they transferred me [REDACTED].

President: What I'm trying to get at is any statement that you made was it because of this treatment, to use your word, you claim torture. Do you make any statements because of that?

After another exchange, the dialogue continues:

President: People made false statements as a result of this?

Detainee: I did also.

In November 2006, six retired US federal judges, in a brief submitted in federal court, emphasized that, according to the publicly available record of the CSRT hearings that had already been held for hundreds of other Guantánamo detainees:

“The CSRT panels did little to evaluate the probity of allegedly coerced evidence, even when evidence such as medical records was readily available. Some CSRTs found the torture allegations credible enough to warrant investigation by other military authorities, but the panels nevertheless found the detainees to be enemy combatants without awaiting the outcome of the investigation... A number of CSRTs simply ignored testimony that the detainee's prior statements to interrogators were the result of torture... On occasion, CSRTs probed the torture allegations, but to demonstrate that US forces did not participate in the torture, not to determine whether the ‘confession’ was reliable or the product of coercion.”

Amnesty International recognizes that Khalid Sheikh Mohammed stands accused of and has reportedly accepted responsibility for a series of serious crimes, including planning the 11 September 2001 attacks, which Amnesty International considers to be a crime against humanity. At the same time, the US government is alleged to have committed serious human rights violations against him and other detainees, including the international crimes of torture and enforced disappearance.

The organization calls for Khalid Sheikh Mohammed to be charged with recognizable criminal offences and brought to trial in an independent and impartial court – not a military commission – or else released. Any information obtained by torture or other ill-treatment should not be admitted at trial, except as evidence against those responsible for such treatment. Amnesty International urges the USA not to pursue the death penalty against Khalid Sheikh Mohammed or any other person.

The CSRT President stated that Khalid Sheikh Mohammed's allegations “will be reported for any investigation that may be appropriate”. Amnesty International reiterates its concern about the inadequacy of previous investigations into allegations of torture and ill-treatment by US personnel in the “war on terror”, and calls on the USA to initiate a prompt and impartial investigation into Khalid Sheikh Mohammed's allegations of torture and other ill-treatment, and into the evidence that he was subjected to enforced disappearance. The findings must be made public and anyone allegedly responsible for any such treatment brought to justice.

Khalid Sheikh Mohammed and all detainees should be granted access to lawyers and to an independent and impartial court to be able to challenge the lawfulness of their detention.

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