



## USA: Human rights, the missing ingredient for closing Guantánamo

The USA's failure to fulfil President Barack Obama's first-term promise to close the Guantánamo detention facility was the predictable result of its failure to adhere to its legally binding international human rights obligations, or even to recognize the existence of such obligations in this context.

Rather than this month marking the third anniversary of the closure of the Guantánamo prison camp, as would have been the case if the President's promise had been met, the detentions are about to enter their 12<sup>th</sup> year with 166 men still held, most without charge, and with six of them facing possible death sentences after unfair trials by military commission.

Without a genuine and substantive change in approach, one that applies international human rights law and principles, the Guantánamo detentions or some relocated version of them will remain part of the USA's legal landscape throughout President Obama's second term, and beyond. The same applies to the continuing absence of accountability and remedy for human rights violations committed in the counter-terrorism context.

There has been a great deal of official energy devoted in recent weeks to preventing a possible US plunge off the so-called "fiscal cliff", but little or no attention to the fact that the USA fell off a "human rights cliff" a decade ago and that it is still not where it should be.

The USA's oft-heard claim that it resides on human rights high ground cannot survive the Guantánamo detentions, the military commission trials, or the absence of accountability and remedy for past abuses by US personnel, including the crimes under international law of torture and enforced disappearance.

International human rights principles fell victim to what the Bush administration dubbed the "war on terror" after the attacks of 11 September 2001. Torture, secret detention, arbitrary detention and secret detainee transfers were among the human rights violations that ensued.

While President Obama ended the Central Intelligence Agency's use of "enhanced" interrogation techniques and long-term secret detention in facilities known as "black sites", he adopted his predecessor's "global war" paradigm and accepted indefinite detentions under this framework. While he committed his administration to closing the Guantánamo detention facility, the absence of a human rights framework meant that even if this goal had been achieved, dozens of indefinite detentions would simply have been relocated not ended.

Meanwhile, broad acceptance of the "global war" paradigm across all three branches of the US federal government, the shielding of officials through immunity provisions, and the continuing use of secrecy, have contributed to those "co-equal" branches effectively collaborating to block accountability and remedy for abuses committed at Guantánamo, in the secret CIA detention and rendition programmes, and elsewhere.

The Obama administration has blamed its failure to close the Guantánamo detention facility on Congress, which has indeed repeatedly moved to put obstacles in the way of the USA meeting its human rights obligations in this context. The latest blocking measures come in the form of provisions under the National Defense Authorization Act (NDAA) which President Obama nonetheless signed on 2 January 2013 while expressing his opposition to such provisions, as he had a year earlier when signing the 2012 NDAA.

International law does not accept the notion of one branch of government blaming another for failure to comply with the country's human rights obligations, however. Each branch must comply with such obligations.

A human rights approach – on which the three branches should collaborate, not block – here means dropping military commission trials in favour of fair trials in ordinary civilian courts, releasing those detainees whom the USA has no intention of prosecuting – into the USA or any safe alternative – and ensuring full accountability and access to a remedy for human rights violations. Moreover, the US authorities should drop any pursuit of the death penalty against anyone, regardless of the forum in which they are tried.

When he first took office, President Obama pledged to resolve the Guantánamo detentions and close the US detention facility in Cuba by 22 January 2010. That month, his administration announced that four dozen of the Guantánamo detainees could neither be prosecuted nor released, but should remain in indefinite military detention without charge or criminal trial under the USA's unilateral and flawed interpretation of the laws of war. The administration also imposed a moratorium on repatriation of Yemeni detainees, who make up almost half of the detainee population.

The recent death, reportedly by suicide, of a Yemeni detainee held for over a decade in indefinite detention without charge or trial has served as a reminder of the cruelty of this detention regime.

In 11 years of detentions at Guantánamo, seven men from the nearly 800 who have been held at the base, have been convicted by military commission, five as a result of pre-trial agreements under which they pled guilty in return for the possibility of release from the base. Four have since been repatriated. Only one Guantánamo detainee has been transferred for trial in ordinary civilian federal court in the USA. He is now serving a life sentence.

Six detainees are currently facing the possibility of death sentences after trials by military commission which do not meet international fair trial standards. All six were held in secret CIA custody prior to their transfer to Guantánamo in early September 2006. All six were subjected to enforced disappearance by the USA, a crime under international law for which no-one has been brought to justice. At least two of these detainees were subjected to the torture technique known as “water-boarding”, effectively mock execution by interrupted drowning. Again, no-one has been brought to justice for the torture and other ill-treatment to which these men and others held in the CIA programme were subjected.

Further pre-trial proceedings in the case of the five “9/11” defendants is scheduled to take place at Guantánamo later this month (a pre-trial hearing due in mid-January in the case of the sixth man was postponed on 7 January). The US authorities continue to classify at the highest level of secrecy the details of where such detainees were held in CIA custody and how they were treated. Last month the military judge overseeing the trial of the five men charged with involvement in the 9/11 attacks signed a protective order to prevent disclosure of such details during their trial, purportedly on national security grounds.

Information concerning gross violations of human rights or serious violations of international humanitarian law should never be subject to withholding from the victims or the public on national security grounds.

Respect for and adherence to human rights law and principles was the ingredient missing from the Obama administration's effort to end the Guantánamo detentions by 22 January 2010 and during the remainder of his first term. This is what must change in President Obama's second term, due to begin on 21 January 2013, 10 days after the 11<sup>th</sup> anniversary of these notorious detentions beginning at the naval base.

**FOR FURTHER INFORMATION**

**Truth, justice and the American way? <http://www.amnesty.org/en/library/info/AMR51/099/2012/en>**

**Guantánamo: A decade of damage to human rights <http://www.amnesty.org/en/library/info/AMR51/103/2011/en>**