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USA: The assault on international law continues – another secret detainee transferred to Guantánamo

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Last week, on 11 March 2008, asserting that the "freedoms enshrined in the United Nations Universal Declaration of the Human Rights... are the basic endowments of all human beings" and the "foundation of freedom, justice and peace", the US government released its annual human rights assessment of the rest of the world.

The US State Department's annual Country Reports on Human Rights Practices, as this year's report itself explains, "cover internationally recognized individual, civil, political and worker rights, as set forth in the Universal Declaration of Human Rights. These rights include freedom from torture or other cruel, inhuman or degrading treatment or punishment, from prolonged detention without charges, from disappearance or clandestine detention, and from other flagrant violations of the right to life, liberty and the security of the person." This latest report, for example, criticizes the authorities in Iran for maintaining "secret prisons and detention centres outside the national prison system, where abuse reportedly occurred". In Syria "in cases involving political or national security offences, arrests were often carried out in secret... Suspects were detained incommunicado for prolonged periods without charge or trial and denied the right to a judicial determination regarding pre-trial detention. Unlike defendants in regular criminal and civil cases, security detainees did not have access to lawyers prior to or during questioning". In North Korea, "the government was responsible for disappearances", and there was evidence that state security personnel had "apprehended individuals suspected of political crimes and sent them, without trial, to political prison camps."

Three days later, with no self-criticism and no apology, the USA revealed that its own secret detention and interrogation program was continuing to operate. It announced that Muhammad Rahim al-Afghani, an Afghan national who it said was "a high-level member of *al-Qa'ida* captured in the war on terror", had been transferred from the secret custody of the Central Intelligence Agency (CIA) to the US military prison camp at Guantánamo Bay in Cuba. The Pentagon's announcement gave few details, including where or when Muhammad Rahim was taken into detention, or whether any other detainees remained in CIA custody.[1] It has separately been reported that Muhammad Rahim was detained by Pakistani government forces in Lahore in July or August 2007 and soon thereafter transferred to CIA custody. If true, this means that he spent up to eight months in secret incommunicado detention without, as far as Amnesty International is aware, access even to the International Committee of the Red Cross (ICRC) which has repeatedly sought access to detainees in CIA custody.

In its 11 March 2008 human rights report, the USA criticized Myanmar, Cuba and other states for not allowing the ICRC unfettered access to detainees. In the case of Uzbekistan, the USA noted that throughout 2007, the ICRC had negotiated with the government there to secure

[1] Muhammad Rahim's transfer caused the Pentagon to revise its figures for the number of people held at Guantánamo to jump from "approximately 275" to "approximately 280". The Pentagon has only ever provided approximate figures for the Guantánamo detainee population, imprecision which Amnesty International has pointed out could facilitate the secret transfer of detainees to and from the base.

such access, but that "no agreement was reached". On 13 March 2008 the ICRC announced that its negotiations with Uzbekistan had borne fruit: "We've reached an agreement with the authorities that enables us to conduct our visits in Uzbekistan, as elsewhere in the world, in accordance with standard ICRC working procedures. This means that we will be able to talk with detainees in private and will have access to all detainees and to all premises in the places of detention." As far as Amnesty International is aware, the USA has yet even to tell the ICRC where it operates secret detention facilities, let alone provide access to detainees held in them.

In 2006, both the UN Human Rights Committee and the UN Committee Against Torture, the treaty monitoring bodies for, respectively, the International Covenant on Civil and Political Rights (ICCPR) and the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, told the USA that secret detention violated the USA's obligations under these treaties. The USA has rejected the conclusions of these expert UN bodies, stating that (its own unilateral interpretation of) the law of war was the "applicable legal framework", not these human rights treaties. The US government told the Human Rights Committee in February 2008 that this framework allows it to move "enemy combatants to secret locations" for interrogation in incommunicado detention. This is the same government that told the same Committee in July 2006 that the ICCPR "is the most important human rights instrument adopted since the UN Charter and the Universal Declaration of Human Rights, as it sets forth a comprehensive body of human rights protections."

According to the reported timing of Muhammad Rahim's capture, the CIA took custody of him shortly after President Bush issued an executive order on 20 July 2007 authorizing the agency to continue its secret detention and interrogation program. Where Rahim was held, what his conditions of confinement were, or what interrogation techniques he faced during his period of CIA custody were not revealed by the US authorities. Even in the absence of such details, however, Amnesty International reiterates that his treatment was in clear violation of international law. Indeed, he appears to have become a victim of enforced disappearance, a crime under international law.

No one has been held accountable for crimes, including torture, committed against detainees held in the CIA program. The USA takes issue with such impunity in other countries. The entry on Zimbabwe in its 11 March report, for example, notes that "security forces rarely were held accountable for abuses". Earlier this month, another UN treaty monitoring body, the Committee on the Elimination of Racial Discrimination, called on the USA to "guarantee the right of foreign detainees held as 'enemy combatants' to judicial review of the lawfulness and conditions of detention, as well as their right to remedy for human rights violations". The Committee rejects the US government's position that the International Convention on the Elimination of all Forms of Racial Discrimination is not applicable to those foreign detainees it holds as "enemy combatants".

Muhammad Rahim will likely be held in Guantánamo's Camp 7, along with 14 other detainees transferred from CIA custody to the base in September 2006 and a 15th in April 2007. The detention conditions in Camp 7 remain classified, but if Camps 5 and 6 are any guide, the detainees in Camp 7 are held in total isolation. Muhammad Rahim will not be allowed to challenge the lawfulness of his detention in a *habeas corpus* petition to a US court. Instead his status will at some time, at the choosing of the military authorities, be reviewed by a Combatant Status Review Tribunal (CSRT), a panel of three military officers who can rely on secret information or information obtained under torture or other ill-treatment in deciding whether the detainee is "properly detained" as an "enemy combatant". If the CSRT affirms this status – all but a foregone conclusion – the US government will maintain it can hold him indefinitely without charge or trial.

When it occurs elsewhere, the USA protests such detention. Its new human rights report condemns the Myanmar government for holding "persons under the Emergency Act of 1950, which allows for indefinite detention. In practice many persons were held for years without being informed of the charges against them." It similarly criticizes Libya's security services for

holding detainees indefinitely: "in practice security services detained persons for indefinite periods without a court order." The USA also takes issue with China's use of "administrative detention without charge, trial, or judicial review".

If charged and tried, Muhammad Rahim would be brought before a military commission, the procedures of which do not comply with international fair trial standards. In violation of international law, for example, the commission can admit information coerced under cruel, inhuman or degrading treatment. Five former CIA secret detainees – subject to enforced disappearance for up to three and a half years – have had charges sworn against them with the government intending to pursue the death penalty against them and a sixth "high-value" detainee who was subject to torture and other ill-treatment in Guantánamo under a "special interrogation plan" authorized in late 2002 by the then US Secretary of Defense. Two other "enemy combatants" who were children when they were taken into custody over five years ago faced military commission proceedings last week, even as the US government was criticizing unfair trials in other countries. Eritrea for example was singled out in the State Department report for "the use of a special court system to limit due process", and Equatorial Guinea's military tribunals were denounced as a system "with limited due process and procedural safeguards" which can try individuals suspected of "crimes against the state", "regardless of whether the defendant is civilian or military."

In a speech in London on the day that the Pentagon was announcing the transfer of Muhammad Rahim to Guantánamo, US Attorney General Michael Mukasey acknowledged that the military commissions are "regarded as controversial by some of our allies", but asserted that although the "commissions accommodate military necessity and security concerns, they do not compromise fundamental principles of justice." Amnesty International believes that the Attorney General is wrong. The USA has already compromised justice by its treatment of detainees. Enforced disappearance, secret detention, secret detainee transfers, prolonged incommunicado detention, torture and other ill-treatment, indefinite detention without trial, and denial of *habeas corpus* are not the route to justice. Military commissions – part of a detention regime developed to avoid independent judicial scrutiny of government conduct – are a politically expedient creation with the power to whitewash human rights violations.

The preamble to the 1948 Universal Declaration of Human Rights (UDHR) states: "recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world" and these "human rights should be protected by the rule of law". Freedom from arbitrary detention, discrimination, torture and other cruel, inhuman or degrading treatment, as well as the right to a fair trial, to equality before the law, and to effective remedy for violations of human rights are among the rights contained in the UDHR.

Sixty years on, the USA is measuring the human rights record of other countries against the yardstick of the UDHR while undermining the Declaration through its own detention policies abroad. The USA must apply to itself the standards it says it expects of others. Its assault on international law must end.

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