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Guantánamo: Any and all interrogation tapes must be preserved

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At some point during a meeting of US military and other personnel on 2 October 2002 on the development of harsh interrogation techniques for use in Guantánamo, the discussion moved on to whether or not “aggressive” interrogation sessions should be videotaped. According to the paraphrased minutes of the meeting, recently made public, an official with the Defense Intelligence Agency (DIA) said that videotapes were subject to “too much scrutiny in court”. A senior counterterrorism lawyer with the Central Intelligence Agency (CIA) suggested that the videotaping of even legal techniques would look “ugly”, a view with which the DIA official agreed. It is not known how many interrogations the USA has subsequently taped.¹

Five years later, on 6 December 2007, the CIA Director, General Michael V. Hayden, revealed that videotapes of interrogations conducted in 2002 against two detainees, Abu Zubaydah and ‘Abd al-Nashiri, held in the CIA’s secret detention program had been destroyed by the agency in 2005. The tapes may have included a record of the use of the torture method known as “waterboarding”, simulated drowning, and other so-called “enhanced” interrogation techniques used by the CIA. As such, the destruction of the tapes may have concealed government crimes. Concealing evidence of a crime is a criminal offence, and can constitute complicity in the crime itself.

The CIA Director only acknowledged the destruction of the tapes after the agency was informed by the media that the story was about to be made public. In a message to CIA staff, General Hayden said that the tapes were destroyed because were they ever to leak into the public domain, it would expose agents “to retaliation from *al-Qa’ida* and its sympathizers”. Amnesty International pointed out that if the tapes contained evidence of criminal wrongdoing they would have exposed those involved to criminal liability. Moreover, the destruction of the tapes falls into a pattern of measures taken by the government that block accountability for human rights violations authorized or carried out by US personnel during the “war on terror”.²

¹ The UN Special Rapporteur on torture has stated: “All interrogation sessions should be recorded and preferably video-recorded, and the identity of all persons present should be included in the records. Evidence from non-recorded interrogations should be excluded from court proceedings.” UN Doc.: E/CN.4/2003/68, para. 26.

² USA: Destruction of CIA interrogation tapes may conceal government crimes, 7 December 2007, <http://www.amnesty.org/en/for-media/press-releases/usa-destruction-cia-interrogation-tapes-may-conceal-crimes-20071207>.

The question of interrogation tapes is once again in the news. According to the *Washington Post*, the US authorities may be in possession of hundreds or thousands of hours of tapes of interrogations between detainees held at the US Naval Base in Guantánamo Bay in Cuba, and representatives of their governments. According to documents obtained by the newspaper, members of other governments' intelligence and law enforcement agencies were informed that their questioning of their nationals held by the USA would be recorded on audio and videotape.³ No detainee has had access to legal counsel during interrogations in Guantánamo.

Amnesty International believes that detainees and their lawyers must have access to any such tapes of their interrogations in Guantánamo, whether conducted by agents of the USA or other governments.⁴ Blocking access to such tapes effectively obstructs any investigations into alleged human rights violations, accountability for them, and the detainee's right to remedy. Governments must take all means necessary to ensure that no claim of confidentiality on grounds of national security, state secrecy, diplomatic relations, or witness protection, is or may be asserted as justification for failure to disclose information or evidence of serious human rights violations, in any investigation or inquiry, prosecution, hearing of a human rights complaint, civil or administrative case.

In May 2004, Amnesty International raised with the US government allegations that agents of the Chinese government had been in Guantánamo in 2002 and had directed the ill-treatment of Uighur detainees, including by sleep deprivation, threats and environmental manipulation.⁵ The organization never received any direct reply to its concerns. The following month, US Army General James T. Hill, Commander of Southern Command (SOUTHCOM, under which Guantánamo falls) during the period in question was asked about these allegations and would only state that government "delegations" from various countries "have come and they have talked to their detainees, but they do so, following our rules and under our direct supervision and never by themselves." In May 2008, the Office of the Inspector General of the US Justice Department revealed that an FBI agent had reported that "several Uighur detainees were subjected to sleep deprivation or disruption while being interrogated at Camp X-Ray by Chinese officials prior to April 2002". One of the detainees had alleged that "the night before his interrogation by Chinese officials, he was awakened at 15-minute intervals the entire night and into the next day". The Inspector General's report stated that "some Chinese officials visited GTMO and were granted access to these detainees for interrogation purposes".

In another case, Amnesty International reported allegations that in 2005 a Libyan detainee had twice been interrogated by Libyan agents in Guantánamo, on 9 and 11 September 2004. He alleged that the US military authorities took him to an interrogation room with the air-

³ US may have taped visits to detainees. *Washington Post*, 5 August 2008.

⁴ For example, Principle 23 of the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment states: "1. The duration of any interrogation of a detained or imprisoned person and of the intervals between interrogations as well as the identity of the officials who conducted the interrogations and other persons present shall be recorded and certified in such form as may be prescribed by law. 2. A detained or imprisoned person, or his counsel when provided by law, shall have access to the information described in paragraph 1 of the present principle."

⁵ See Amnesty International Urgent Action, <http://www.amnesty.org/en/library/info/AMR51/090/2004/en>.

conditioning on maximum and left him there for several hours, shackled and freezing cold. Eventually, at around midnight on 9 September 2004, four Libyan agents and three US personnel in civilian clothes entered the room. He was interrogated for around three hours by the Libyan agents, and again two days later. The agents allegedly made veiled threats of violence and death against him if he should ever be returned to Libya, and showed him pictures of severely beaten Libyan dissidents.⁶ In another case, an Egyptian national has alleged that he was interrogated on a number of occasions in late 2004 by a delegation from Egypt. These Egyptian agents allegedly threatened him that he would be “disappeared” or subjected to other harm after he was returned to Egypt.⁷ Again, Amnesty International has never received any response from the US government to these allegations.

The question now is, are there tapes of such activities by foreign agents in Guantánamo? As with the CIA tapes, any such recordings could contain evidence of human rights violations, by agents of the USA or other governments. They should be preserved and provided to the lawyers of detainees and form part of the much-needed commission of inquiry into all the USA's detention and interrogation policies and practices in the “war on terror”, and part of the right of detainees to remedy for any human rights violations committed against them. Any official against whom there is evidence of involvement in any violations should be brought to justice.

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⁶ USA: Guantánamo and beyond: The continuing pursuit of unchecked executive power, May 2005, <http://www.amnesty.org/en/library/info/AMR51/063/2005/en>.

⁷ Memorandum to the US Government on the report of the UN Committee Against Torture and the question of closing Guantánamo, June 2006. <http://www.amnesty.org/en/library/info/AMR51/093/2006>.