



USA: HOLD THE APPLAUSE ON THE GUANTÁNAMO CLOSURE PLAN

On the face of it, it might seem cause for celebration. On 22 July 2015, the White House press secretary said that the administration was in “the final stages of drafting a plan to safely and responsibly close the prison at Guantánamo Bay and to present that plan to Congress.” That can only be good, right?

Wrong.

The plan will most likely include relocating to indefinite detention in military or maximum security facilities on the US mainland those detainees whom the USA refuses to release or prosecute, the ultimate number of whom is as yet unknown. According to the Assistant to the President for Homeland Security and Counterterrorism on 25 July, this group will be “whittled down” to an “irreducible minimum”. Not to zero, however.

Six and a half years ago, after President Barack Obama ordered his administration to close the Guantánamo detention facility “as soon as practicable” or at the latest by 22 January 2010, we [wrote](#):

“Amnesty International has for years said that the closure of Guantánamo must not result in the transfer of the human rights violations elsewhere. The unlawfulness of the Guantánamo detentions must not be re-created in any other form or under any other name.”

The USA looks set to fail this test under its current closure plan which – as was the case at the conception of this ill-begotten facility – will likely be based not on human rights principles but on the USA’s flawed “law of war” framework and narrow notions of national interest. Closing Guantánamo “safely and responsibly” appears to exclude being motivated to close it with the USA’s human rights obligations front and centre.

If President Obama is interested in leaving a human rights legacy, he should once and for all drop this war paradigm – what his predecessor dubbed the “global war on terror” and which the Obama administration adopted in all but name. As part of closing the book on Guantánamo, he should ensure that the USA turns to the ordinary criminal justice system for trials in civilian courts, while ensuring safe and lawful releases, including into the USA if necessary, of any Guantánamo detainee it does not intend to prosecute.

It seems that military commissions will remain part of the equation under the current plan being drafted. These commissions do not meet international fair trial standards. In his briefing on 22 July, the White House press secretary said “we need to be able... to continue to carry out prosecutions of detainees who can be charged in the military commission system.” Six detainees are currently facing capital trials by military commission. The carrying out of death sentences handed down at trials falling short of international fair trial standards violates the absolute prohibition under international law of the arbitrary deprivation of life.

Amnesty International calls for trials of human rights violations and crimes under international law to take place before civilian courts, not military courts, and opposes the trial of civilians by military courts. While the UN Human Rights Committee has not yet held that trials of civilians before military courts are altogether prohibited, it has stated, on the right to a fair trial under article 14 of the International Covenant on Civil and Political Rights (which the USA ratified in 1992), that the trial of civilians (anyone who is not a member of a state’s armed forces) by special or military courts must be strictly limited to exceptional and temporary cases where the government can show that resorting to such trials is “necessary and justified by objective and serious reasons”, and where “with regard to the specific class of individuals and offences at issue the regular civilian courts are unable to undertake the trials”. The US government cannot point to any such rationale. It can only point to domestic politics. The military commissions are not by any measure tribunals of demonstrably legitimate necessity, but creations of political choice. They should be abandoned.

Even if it were to transpire that the administration has had a change of heart and is in the final stages of drafting a fully human rights compliant plan, we (or more importantly, the detainees and their families) are being told to wait for it, maybe for months. Yet every day that the indefinite detentions continue is another day of deep injustice. This injustice has gone on for almost 5,000 days. For someone held without charge or without any idea of when he might be brought to trial or released, that is an eternity, as is half of that time, or a quarter, or a 50th.

Again, responding to President Obama's 2009 closure order, we wrote,

“the order leaves open the possibility of detainees being held without charge in the Guantánamo facility for up to another year. This would be unacceptable... Fair trial or release of the more than 200 detainees still held at Guantánamo is already years overdue... Specifics as well as speedy action are now of the essence. The executive order contains little in terms of specific commitments or criteria for deciding the fate of individual detainees. Amnesty International looks forward to the administration making public further details of its plans as soon as possible”.

As we head towards the 14th anniversary of this detention facility, the administration's plan will at some point be presented to Congress for approval. It could yet face opposition from legislators who have repeatedly placed obstacles in the way of closure. For too long, inter-branch tensions and disagreements have been used as an excuse for the inexcusable. Under international law, all branches of government are bound to ensure that the country meets its international human rights obligations.

Those international obligations not only include resolution of the detentions in a human rights compliant manner, but also ensuring that while detentions continue that conditions of confinement meet international standards, and that full accountability and access to remedy for any human rights violations to which the detainees have been subjected is brought about. As Amnesty International [pointed out](#) earlier this year, at least 29 of the current 116 detainees still held at Guantánamo were held in secret custody by the Central Intelligence Agency (CIA) prior to their transfer to the naval base. Some or all were subjected to enforced disappearance, as well as to interrogation techniques or detention conditions that violated the prohibition of torture and other cruel, inhuman or degrading treatment. Accountability and redress for crimes under international law and other human rights violations has remained all but absent in relation to this CIA programme.

A case in point is that of Mustafa Ahmed al-Hawsawi, a Saudi Arabian national subjected to three and a half years of enforced disappearance in the CIA secret detention programme prior to being brought to Guantánamo in 2006. He is currently facing capital charges in a trial by military commission.

On 7 July 2015, the Inter-American Commission on Human Rights called on the USA to take action on his case, including in relation to his conditions of detention and medical treatment, as well as on investigating the human rights violations committed against him. His lawyers had reported that he is being held in solitary confinement without adequate medical care for his chronic health issues – some of which are likely a consequence of his torture or other ill-treatment in CIA custody.

According to the summary of the Senate Select Committee on Intelligence review into the CIA program, released in December 2014, Mustafa al-Hawsawi was subjected to cold “water dousing” in CIA detention in a manner that may have been “indistinguishable” from the torture technique known as “water-boarding”. It also found that he had been subjected to excessive force during rectal examination, and was later diagnosed with “chronic haemorrhoids, an anal fissure, and symptomatic rectal prolapse.”

The Senate report found that he had suffered serious medical problems in 2006 when held in a secret detention facility believed to have been in Lithuania. His lawyers have been seeking accountability in Lithuania and Poland, where he also alleges he was held. Concern for his health and well-being continue to this day.

The months following release of the Senate summary last December have been marked by inaction, continuing government secrecy, and attempts to block release of the full 6,700 page Senate report on the secret programme.

While it declines to have such information from the “black sites” (of which Guantánamo was once one) brought into the light of day, the USA has continued to issue critiques of other governments. It has published 14 global human rights surveys since it has been running the Guantánamo detention facility. Fourteen times, it has had a press launch to promote its condemnation of arbitrary detentions, enforced disappearances, torture and other ill-treatment, unfair trials, impunity and absence of remedy in other countries. If the Guantánamo detentions had been the brainchild of another government, they presumably would have featured in each of those 14 reports.

So, hold the applause. The Guantánamo detentions continue today as they did last week, and hundreds of weeks before that. There is not yet an end in sight to the USA's human rights failure in relation to these detentions.