



DRACONIAN SECRECY RULES AT GUANTÁNAMO COMPOUND THE FLAGRANT VIOLATIONS OF INTERNATIONAL LAW BY THE USA

REDRESS, ICJ and OMCT submit report to the UN Committee Against Torture in Geneva ahead of its 12-13 November session on the USA

7 November 2014 – The United States has compounded far-reaching violations of international law by constructing an unprecedented system of secrecy around certain detainees, including the six who face capital charges in military trials at Guantánamo Bay, according to a report submitted by REDRESS, the International Commission of Jurists (ICJ) and the World Organisation Against Torture (OMCT) to the UN Committee Against Torture.

The United States claims that a number of detainees held at Guantánamo Bay, whom it refers to as “High Value Detainees” or “HVDs”, are terrorist suspects of high intelligence value. Each was captured or handed over to the US in the years following the 9/11 attacks, and was subjected to enforced disappearance and torture at CIA “black sites” for a number of years until moved to Guantánamo Bay in September 2006. These individuals are now held in a separate facility within Guantánamo Bay, and are almost completely cut off from the outside world.

The report details how an elaborate regime of executive secrecy rules, Military Commission procedural rules, restrictions on lawyers and isolation of the individuals ensure that no information is released to the public about torture and other ill-treatment perpetrated against the detainees by US authorities, or the other States that were involved.

This wall of secrecy is maintained in part through a “Protective Order” issued by the Military Commission preventing the detainees’ own military commission lawyers from disclosing any information about the detainees’ treatment in CIA custody, including their own recollections about where they were held and details of the torture and ill-treatment to which they were subjected.

The report underscores that the secrecy regime “**represents a deliberate system to ensure that no information about torture and other ill-treatment committed against the detainees will be released, to secure impunity for perpetrators of torture, and to ensure that no redress for those tortured is achieved.**” This results in an unequivocal violation of the rights guaranteed to victims of torture under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

The report explains how the secrecy regime not only fatally undermines the fairness of the Military Commission trials, but also has served to obstruct not only

inquiries in the US, but also investigations into allegations that some European countries were complicit in the CIA rendition programme.

REDRESS, one of the organisations behind the report, represents detainee Mustafa al-Hawsawi in proceedings in Europe concerning claims that he was held in secret detention in both Poland and Lithuania. However, because of the secrecy regime at Guantánamo Bay, REDRESS has not been able to speak to Mr al-Hawsawi directly, or to obtain any information from him or his defense lawyers about where he was held or what was done to him. Instead, all work on the investigation has been limited to proceeding on the basis of information in the public domain.

Carla Ferstman, Director of REDRESS, said:

“The United States has taken great measures to ensure that information about the serious human rights violations committed against these individuals during the time they were forcibly disappeared in CIA black sites is not revealed to the public. This not only perpetuates the torture and ill-treatment, but leads to impunity, as it ensures that perpetrators cannot be investigated and prosecuted.”

Ian Seiderman, Legal and Policy Director of ICJ, said:

“Some 13 years after the United States first embarked on its unlawful rendition and secret detention program, the United States has yet to hold any official to account for the ensuing crimes under domestic and international law, nor has it provided any of its many victims with an effective remedy and reparation. As the report shows, the failure to allow for a public accounting whereby the truth surrounding the programme is ventilated has had adverse consequences for the fair and effective administration of justice by the US, particularly in respect of the deeply flawed Military Commissions.”

Gerald Staberock, OMCT Secretary General, said:

“A legal system established to prevent detainees and their advocates to speak about the treatment suffered is truly unprecedented. The rendition system was nothing else but a joint criminal enterprise. Destroying de facto the fundamental right to a remedy has nothing to do with legitimate secrecy grounds. It stays in the same logic of maintaining a legal system of impunity. This is not an issue of the past. It is about the present.”

The organisations have submitted the report in advance of the USA's appearance before the Committee against Torture on 12-13 November in Geneva to face questioning about the extent to which they have complied with their obligations under the Convention Against Torture, which the USA ratified in 1994.

A copy of the report is available at:

<http://www.redress.org/downloads/publications/REDRESS%20ICJ%20OMCT%20Shadow%20report%20to%20CAT%20-%20USA.pdf>

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Notes for editors:

1. Beginning in 2001, the United States administered a program of rendition, secret detention and interrogation involving more than 100 victims, many of whom were subjected to torture and enforced disappearance, both of which are crimes under international law.
2. Among those held as part of the rendition and secret detention program were 14 so-called High-Value Detainees whose detention at Guantánamo Bay, Cuba, was announced by President Bush in September 2006.
3. Six of those “High Value Detainees” are currently facing capital charges before a Military Commission at Guantánamo Bay. Khalid Shaikh Mohammad, Walid Muhammad Bin 'Attash, Ramzi Bin al Shibh, Ammar al-Baluchi and Mustafa al-Hawsawi face charges in connection with the 9/11 attacks. Abd al-Rahim al-Nashiri faces charges in connection with the USS Cole bombing in October 2000. Pre-trial proceedings in these two cases are continuing and the full trials are unlikely to begin any time soon.
4. The complicity of a number of European States in the US rendition and secret detention program has been affirmed by a number of authorities, including in judgments of the European Court of Human Rights and in reports of the European Union and the Council of Europe. In July 2014 the European Court of Human Rights held that Poland had breached its obligations under the European Convention on Human Rights in the case of Abd al-Rahim al-Nashiri, and that of another High Value Detainee Abu Zubaydah, who had been held in secret detention and subjected to torture in Poland during their time in secret CIA custody.
5. Investigations into allegations that other High Value Detainees were secretly held and tortured on European soil have been severely hampered by the secrecy regime in place at Guantánamo Bay that prevents the release of information the detainees themselves hold. The United States has reportedly refused to respond to requests for information from states that are investigating the extent of their own involvement in the CIA's program.
6. REDRESS represents detainee Mustafa al-Hawsawi in proceedings in Lithuania and Poland, seeking investigations into allegations that he may have been secretly detained and tortured in both countries. Prosecutors initially rejected a complaint brought (with the Human Rights Monitoring Institute) in Lithuania, but an investigation was opened following a ruling of the Lithuanian courts overturning that decision in January 2014. Prosecutors have rejected the complaint in Poland on the basis of lack of information, and this is currently on appeal. Further information about the case is available here: <http://www.redress.org/case-docket/al-hawsawi-case-1>.

7. The United Nations Committee Against Torture is an expert body mandated to monitor the implementation of the United Nations Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment by States parties. It meets in Geneva two times a year and examines States' implementation of and compliance with the Convention on the basis of reports received from the State party as well as information from other sources. On 12 and 13 November the Committee will be examining the record of the United States. The last time it did so was in 2006. Proceedings will be publicly webcast at www.treatybodywebcast.org (10:00 CET on 12 November; 15:00 CET on 13 November).

About REDRESS: REDRESS is an international human rights NGO based in the UK with a mandate to assist torture survivors to seek justice and other forms of reparation.

About the International Commission of Jurists: Composed of some 60 eminent judges and lawyers from all regions of the world, the ICJ promotes and protects human rights through the rule of law, by using its unique legal expertise to develop and strengthen national and international justice systems.

About the World Organisation Against Torture: Created in 1986, the OMCT is a key coalition of international NGOs fighting against torture, summary executions, enforced disappearances and other cruel, inhuman and degrading treatment.