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UNITED STATES OF AMERICA

Holding human rights hostage

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According to the USA's National Security Strategy, "America must stand firmly for the non-negotiable demands of human dignity", including "the rule of law" and "limits on the absolute power of the state".¹ Its National Strategy for Combating Terrorism concludes by saying much the same thing, and adds: "We understand that a world in which these values are embraced as standards, not exceptions, will be the best antidote to the spread of terrorism. This is the world we must build today".²

Instead the USA built a prison camp at its military base in Guantánamo Bay in Cuba and filled it with detainees from around the world, including a number of children.³ Two years after the first of these prisoners arrived, Camp X-Ray and its successor Camp Delta have become synonymous with a government's pursuit of unfettered executive power and disregard for the rule of law. As detainees enter their third year held in tiny cells for up to 24 hours a day without any legal process, it seems that the current US administration views human dignity as far from non-negotiable when it comes to "national security".

The first prisoners, transferred from Afghanistan on 20-hour flights in conditions of sensory deprivation and heavy use of restraints, arrived in Guantánamo Bay on 11 January 2002. A photograph released by the Pentagon at this time has become an icon of unacceptable US exceptionalism. It shows detainees in orange jumpsuits, kneeling before US soldiers, shackled, handcuffed, and wearing blacked-out goggles over their eyes and masks over their mouths and noses. Sayed Abbasin has recalled: "I arrived tied and gagged; it was the act of an animal to treat a human being like that. It was the worst day of my life".⁴ For some, like Sayed Abbasin, the transfer to Cuba followed weeks of harsh treatment in US custody elsewhere.⁵

International law has been flouted from the outset. None of the detainees was granted prisoner of war status or brought before a competent tribunal to determine his status, as the Geneva Conventions require.⁶ None has been granted access to a court to be able to challenge the lawfulness of his detention, as the International Covenant on Civil and Political Rights demands.⁷ Lawyers have been denied access to the detainees, as have relatives. Hundreds of distressed families have become the "collateral damage" of this shameful policy.

The International Committee of the Red Cross has taken the unusual step of going public about the deterioration in mental health it has witnessed among many of the detainees as a result of the indefinite and isolating incarceration regime. While some prisoners have been released, without charge or apology, and more releases are awaited, the US authorities have yet to address the issue of compensation for unlawful detention.⁸ Secretary of State Powell recently acknowledged that some of the detainees still held may have done nothing wrong.⁹

Other senior US officials have shown contempt for the presumption of innocence. The Guantánamo detainees are "among the most dangerous, best-trained, vicious killers on the face of the earth" according to the Secretary of Defence,¹⁰ while his deputy has labelled them

as “dangerous people... a special breed of person”.¹¹ “The only thing I know for certain”, President Bush added in July 2003, “is that these are bad people.”¹²

This pattern of public commentary is not harmless. It can only have added to the dangers that some of the detainees may face if returned to their countries.¹³ Furthermore, these three US officials will have overall control of the military commissions which may yet try some of those held in Guantánamo. The lack of independence of these commissions, together with the restriction on the rights to an effective defence, their power to hand down death sentences, and the denial of the right of appeal to any court, has rightly led to international condemnation. A judge on the United Kingdom’s highest court, for example, has suggested that any trials before these “kangaroo courts” will be a “stain on American justice”.¹⁴

Secretary of Defence Rumsfeld has rejected concern about Guantánamo as “based on the shrill hyperventilation of a few people who didn’t know what they were talking about”.¹⁵ Among the voices of concern have been two United Nations High Commissioners for Human Rights, the UN Working Group on Arbitrary Detention, the UN Special Rapporteur on the independence of judges and lawyers, the Inter-American Commission on Human Rights, and the Parliamentary Assembly of the Council of Europe. In the introduction to his administration’s National Security Strategy, President Bush stressed that the USA “is committed to lasting institutions” like the United Nations and the Organization of American States, as well as to “long-standing alliances”. It seems that this commitment does not extend to heeding their calls for the USA to respect international law and standards.

Given the USA’s criticism of the human rights record of Cuba, it is deeply ironic that it is violating fundamental rights on Cuban soil, and seeking to rely on the fact that it is on Cuban soil to keep the US courts from examining its conduct.¹⁶ Better late than never, however, there are signs that the courts will not take this lying down. On 18 December 2003, the US Court of Appeals for the Ninth Circuit issued a decision in a case brought for Libyan national Faren Gherebi, among the first transferred to Cuba and still held there: “Even in times of national emergency – indeed, particularly in such times – it is the obligation of the Judicial Branch to ensure the preservation of our constitutional values and to prevent the Executive Branch from running roughshod over the rights of citizens and aliens alike.” The Court continued: “Under the government’s theory, it is free to imprison Gherebi indefinitely along with hundreds of other citizens of foreign countries, friendly nations among them, and to do with Gherebi and these detainees as it will, when it pleases, without any compliance with any rule of law of any kind... Indeed, at oral argument, the government advised us that its position would be the same even if the claims were that it was engaging in acts of torture or that it was summarily executing the detainees... It is the first time that the government has announced such an extraordinary set of principles – a position so extreme that it raises the gravest concerns under both American and international law”.¹⁷

The US Supreme Court will shortly consider the question of whether the US courts have jurisdiction over the Guantánamo detainees. It would be a dangerous moment if the Supreme Court were to answer this question in the negative. It would be promoting a world in which arbitrary, unchallengeable detention becomes acceptable. Security does not lie down that path. As Secretary Powell has said: “States which demonstrate a high degree of respect for human rights are likeliest to contribute to international security and well being”.¹⁸

The Ninth Circuit noted that senior US officials “have made it clear that the detainees may be held in their present circumstances until this country’s campaign against terrorism ends. The administration has, understandably, given no indications whether that event will take place in a matter of months, years, or decades, if ever.” The Guantánamo scandal has already gone on for far too long. The US administration should bring it to an end now.

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- ¹ The National Security Strategy of the United States of America, September 2002.
- ² National Strategy for Combating Terrorism, February 2003.
- ³ See *USA: Rights of children must be respected*. AI Index: AMR 51/058/2003, 25 April 2003. <http://web.amnesty.org/library/Index/ENGAMR510582003> and *USA: The threat of a bad example: Undermining international standards as "war on terror" detentions continue*, AI Index: AMR 51/114/2003, August 2003. <http://web.amnesty.org/library/Index/ENGAMR511142003>
- ⁴ BBC TV Newsnight, 5 June 2003. Sayed Abbasin, arrested for being a taxi driver in the wrong place at the wrong time, is now attempting to rebuild his life in Afghanistan after a year in US custody. His friend and fellow cabdriver, Wazir Mohammed, remains in Camp Delta, having been transferred there more than a year ago, in effect, apparently, for having sought information on Sayed Abbasin's whereabouts. See <http://web.amnesty.org/pages/usa-190803-action-eng>
- ⁵ *USA: The threat of a bad example*, op cit.
- ⁶ Article 5 of the Third Geneva Convention.
- ⁷ "Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful." (Article 9.4). The Human Rights Committee, the expert body established by the Covenant to oversee its implementation, has stated in an authoritative interpretation that "in particular the important guarantee laid down in paragraph 4, i.e. the right to control by a court of the legality of the detention, applies to all persons deprived of their liberty by arrest or detention", even those detained "for reasons of public security". General Comment 8.
- ⁸ "Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation." Article 9.5, International Covenant on Civil and Political Rights.
- ⁹ Secretary Powell said of seven UK nationals held in Camp Delta that: "*they have not yet gone through the entire intelligence and interrogation process that exists in Guantánamo to determine whether or not they have done something wrong*". Interview with European Newspaper Journalists. Washington, DC, 25 November 2003.
- ¹⁰ American Forces Information Service, 27 January 2002.
- ¹¹ Paul Wolfowitz, Interview with Jim Lehrer, News Hour, 21 March 2002.
- ¹² President Bush, Prime Minister Blair Discuss War on Terrorism, Press Conference of President Bush and British Prime Minister Tony Blair, The Cross Hall, Washington DC, 17 July 2003.
- ¹³ See AI Urgent Action, <http://web.amnesty.org/library/Index/ENGAMR511472003>
- ¹⁴ *Guantánamo Bay: The legal black hole*. Johan Steyn, Lord of Appeal. Twenty-seventh F.A. Mann Lecture, 25 November 2003.
- ¹⁵ Interview with Sunday Times (UK). Department of Defence News Transcript, 21 March 2002.
- ¹⁶ In its most recent criticism of the human rights situation in Cuba, the US State Department commented that the Cuban Constitution "states that all legally recognized civil liberties can be denied to anyone who actively opposes the decision of the Cuban people to build socialism. The authorities routinely invoked this sweeping authority to deny due process to those detained on purported state security grounds." In the name of national security, the US Government is now denying due process to hundreds of detainees in Guantánamo Bay and elsewhere.
- ¹⁷ *Gherebi v Bush*, No. 03-55785. D.C. No. CV-03-01267-AHM. Appeal from the US District Court for the Central District of California.
- ¹⁸ Remarks at briefing on the State Department's 2002 Country Reports on Human Rights Practices, Secretary Colin L. Powell, Washington, DC, 31 March 2003.