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## USA: Torture acknowledged, question of accountability remains

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Torture is again in the headlines in the USA. *Mohamed al-Qahtani tortured in Guantánamo, says US official*. The news was not that al-Qahtani was tortured – his lawyers, human rights groups and others have long been arguing this – but that a US official has now said so.

The official who has spoken out is Susan Crawford, convening authority for the military commissions at Guantánamo. In May 2008, she dismissed charges against Mohamed al-Qahtani, a Saudi Arabian national then facing a death penalty trial at the prison camp. At the time there was no official explanation for her decision. She has now told the *Washington Post*: “We tortured Qahtani. His treatment met the legal definition of torture. And that’s why I did not refer the case” on for trial.<sup>1</sup> Although she dismissed the charges “without prejudice” – meaning the government could file charges against al-Qahtani in the future – Susan Crawford has now said that she would not allow his prosecution to go forward if he was re-charged.

Two questions arise from the interview. What is to happen to Mohamed al-Qahtani, and where is the accountability for what happened to him?

Torture is a crime under international law. The USA is obliged as a party to the UN Convention against Torture to investigate “wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction”. The same treaty requires it to submit the case to its competent authorities for the purpose of prosecution. The treaty, and international law more generally, precludes the invocation of exceptional circumstances or superior orders as justification for torture. Anyone who has authorized, committed, is complicit or participated in torture must be brought to justice, no matter their level of office or former level of office. Yet the public acknowledgement that the USA has tortured al-Qahtani was not accompanied by any news of efforts to bring those responsible to justice.

Susan Crawford said that all the interrogation techniques used against Mohammed al-Qahtani were authorized. Again this has been long known. There is a case for senior officials and former officials in the US administration and the military to answer.

Amnesty International is calling on the new administration and Congress to establish an independent commission of inquiry into human rights violations in the “war on terror”. The establishment and operation of such a commission must not be used to block or delay the prosecution of any individual against whom there is already sufficient evidence of wrongdoing. A criminal investigation into the torture of Mohammed al-Qahtani is already long overdue.

It is already known that detainees have also been tortured in the USA’s secret detention program. The administration admitted as much by confirming last year that it had authorized and used “water-boarding”, simulated drowning, against at least three detainees held in the program. US Vice President Richard Cheney has been doing a series of media interviews recently in which he

has acknowledged his involvement in the approval of water-boarding. "If necessary", he told CNN on 9 January 2009, "I would certainly recommend it again".

The Vice President and other officials deny that water-boarding is torture. Their denials are based on manipulation of the law. As the Senate Armed Services Committee concluded last month, "senior officials in the United States government solicited information on how to use aggressive techniques, redefined the law to create the appearance of their legality", and had relied upon "deeply flawed interpretations of US and international law". No-one can plausibly deny that water-boarding is torture, and torture is a crime under international law.

In an interview with ABC News on 11 January, President-elect Barack Obama said that he believes that "water-boarding is torture". Amnesty International welcomes this clear statement of principle. Next week, then, the USA will have a President who considers that torture has been committed by the USA. He will be under an obligation to ensure full individual and institutional accountability. There must be no safe havens for torturers, a principle on which the USA itself relied earlier this year when it prosecuted the former head of the Liberian Anti-Terrorist Unit for torture.

In his 11 January interview, the President-elect restated his commitment to closing the Guantánamo detention facility. He said that this goal would "take some time" to achieve, as it would be "more difficult than I think a lot of people realize". He stated that some of those held "may be very dangerous", and that "some of the evidence against them may be tainted". Closing Guantánamo, he said, would have to be done in a way "that doesn't result in releasing people who are intent on blowing us up".

Lawyers for Mohamed al-Qahtani will likely be concerned by this statement. The US authorities have repeatedly alleged that al-Qahtani is a dangerous individual, while failing to bring him to trial. The prospect of a fair trial, as Susan Crawford has now admitted, has been jeopardized by al-Qahtani's treatment at the hands of his US captors.

The solution is straightforward and requires only the political will to see it through. The USA should release Mohamed al-Qahtani unless it promptly recharges him and brings him to trial in accordance with international fair trial standards in an independent and impartial court – not a military commission. No information obtained under torture, cruel, inhuman or degrading treatment should be admitted in any proceedings, except against the perpetrators of any such treatment as evidence that it occurred. The Saudi Arabian authorities should call for Mohamed al-Qahtani's repatriation as long these conditions are not met, and do all they can to ensure that his rights are fully respected, whether in US custody or in Saudi Arabia.

\* See also USA: Where is the accountability? Health concern as charges against Mohamed al-Qahtani dismissed, <http://www.amnesty.org/en/library/info/AMR51/042/2008/en>; and Investigation, prosecution, remedy. Accountability for human rights violations in the 'war on terror', <http://www.amnesty.org/en/library/info/AMR51/151/2008/en>.

<sup>1</sup> Detainee tortured, says US official. Bob Woodward, Washington Post, 14 January 2009.