

Open Letter to the Government of the United States of America on the occasion of the 14th anniversary of the opening of the Guantánamo Bay detention facility

11 January 2016

Today marks the 14th year that the Guantánamo Bay detention facility has been operational, despite an executive order from President Barack Obama, issued seven years ago, on 22 January 2009, to promptly effect the appropriate disposition of individuals currently detained and close down the facility within one year.

Despite outreach and recommendations from international bodies* on steps to be undertaken to end impunity for abuses of human rights and international humanitarian law and to close Guantánamo Bay in a manner that upholds international human rights standards, as of 8 January 2016, 104 detainees still languish there. These men have suffered years of arbitrary detention without trial, having been placed outside of the rule of law and the reach of United States regular courts. There has been no accountability from the authorities for the violations they have endured, both physical and mental, or any access to a remedy or compensation.

In January 2009, President Obama prohibited the use of torture under any circumstances, in conformity with existing provisions in the Code of the Laws of the United States of America and in United States Army Field Manual. In autumn of 2015, Congress reaffirmed that prohibition, turned it into US law by passing the 2016 defense authorization bill, and called for the revision of said manual to ensure compliance with international obligations. These measures are welcome; however they fail to fully implement all of the international human rights and international humanitarian law obligations of the United States.

In order to fully implement these obligations, the United States Government must end impunity for the violations of human rights and international humanitarian law committed as part of the so-called “war on terror.” Everyone implicated, including at the highest level of authority, must be held accountable for ordering or executing extraordinary renditions, secret detention, arbitrary arrest of civilians and so-called “enhanced interrogation techniques” in the name of combatting terrorism.

The United States Government must also ensure that current and former Guantánamo detainees, as well as individuals who have been secretly detained, have access to full redress for violations of their freedom from arbitrary detention, torture and ill-treatment.

As the United States and the rest of the world are confronted with on-going threats of further terrorist attacks and acts of violent extremism, it is clear that arbitrary detention and lack of accountability for the mistreatment of current and former



Guantánamo detainees continue to undermine the moral authority with which terrorism must be fought.

A year ago, the Senate Intelligence Committee finally overcame many obstacles and published its in-depth and critical report on the CIA's Rendition, Detention and Interrogation Program. The report concluded that high-level United States officials have promoted, encouraged and allowed the use of torture after the September 11, 2001 terrorist attacks.

Many of those subjected to the serious violations cited in the report are still being held at Guantánamo Bay. They are the forgotten ones as the United States moves from a "war on terror" to a "war on extremism" without having acknowledged, reflected and made amends for past violations of fundamental human rights.

Those in power under the previous Administration have continued to deny their role. Their actions have yet to be called to account by the current Administration. In his last year of office, President Obama, supported by Congress, must insist on the next steps towards accountability and transparency and implement the findings and recommendations of the Senate Intelligence report.

The Senate report is a first step towards the United States Government fulfilling its obligations with respect to the truth. The report should have triggered a robust debate about the institutional and political causes that led the United States to use torture after the September 11 attacks, including about the measures needed to ensure the non-recurrence of such abuses.

To date, there has been little reflection, no lessons learned – there has been only a shift in focus to potential threats in the United States territory, in addition to known threats overseas.

What needs to follow the findings of the Senate report are concrete measures towards fulfilling the United States' obligations under the Convention against Torture (CAT) and the International Covenant on Civil and Political Rights (ICCPR), and under OSCE commitments to ensure accountability by investigating and prosecuting those responsible for violating the prohibition against torture and ill-treatment, as well as to provide victims with an effective remedy. Those obligations have been furthered in the opinions issued by the Working Group on Arbitrary Detention, in the case of those detainees who had approached it. The United States must clean up its own house - impunity only generates more abuses, as States do not feel compelled to stop engaging in illegal practices.

Long term security can be regained if a page is turned on this dark chapter of post-September 11 practices in response to terrorism. Transparency, accountability and the rule of law are tools that must ultimately prevail.

With a new year, we reiterate our call to close the Guantánamo Bay detention facility and address the violations that took place in *all* places of detention – official and non-



official. The United States must demonstrate leadership and commitment to ensure that international law principles are upheld.

In view of the foretold, we call on the US Government:

to promptly close down the Guantánamo Bay detention facility;

to end the prolonged arbitrary detention of all persons held at Guantánamo Bay by promptly releasing them to their home country or to a third country should they be at risk of persecution, or by transferring them to regular detention centers on the United States mainland, in order to promptly try them before ordinary courts in full compliance with all guarantees against arbitrary detention and of due process and fair trial;

to establish an independent oversight mechanism to receive complaints and review all allegations of torture and ill-treatment and provide access to an effective remedy to all those who have endured prolonged arbitrary arrest and/or physical and mental suffering;

to dismantle the military commissions at Guantánamo Bay and transfer the detainees charged with a criminal offence to United States federal facilities on the mainland so they can be prosecuted before ordinary courts, in compliance with international due process and fair trial standards, including those related to the independence of judges and lawyers; and

to investigate, prosecute and punish officials, public servants and military contractors who committed torture and other cruel or inhuman treatment, as well as those high level officials who ordered, tolerated or instigated such crimes.

Juan E. Méndez, *UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*

Ben Emmerson, *UN Special Rapporteur on human rights and counterterrorism*

Mónica Pinto, *UN Special Rapporteur on independence of the judiciary*

Seong-Phil Hong, *Chair-Rapporteur of the UN Working Group on Arbitrary Detention*

Michael Georg Link, *Director of the OSCE Office for Democratic Institutions and Human Rights (ODIHR)*

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(* See, for example, the report of the OSCE, "Report on the Human Rights Situation of Detainees at Guantanamo", <http://www.osce.org/odihr/198721>; and the report of the Inter-American Commission on Human Rights, "Towards the Closure of Guantanamo", <http://www.oas.org/en/iachr/reports/pdfs/Towards-Closure-Guantanamo.pdf>

(**) To learn more about secret detention linked to counter-terrorism, see, for example, the Joint Study of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the Working Group on Arbitrary Detention and the Working Group on Enforced or Involuntary Disappearances, <http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A-HRC-13-42.doc>

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