

UN representative expresses “grave concern” over CIA torture, Guantánamo hearings

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Following a visit earlier this month to the US military prison at Guantánamo Bay, a United Nations human rights representative reported ongoing abuse, drumhead judicial proceedings, and other violations of international law. The report by the UN official, charging the US government with widespread criminality, has been almost entirely ignored by the US media.

In a report to the UN Human Rights Council meeting in Geneva December 13, Special Rapporteur on human rights and counterterrorism Martin Scheinin said he believed the CIA continues to engage in so-called “extraordinary rendition,” secret detentions and torture. Scheinin suggested that hundreds of detainees held at Guantánamo were not being prosecuted to keep revelations of abuse from emerging. During his visit, he was not allowed to have unmonitored interaction with detainees.

Of the 305 Guantánamo detainees, about 80 have already been put through combatant status review tribunals (CSRT) and declared not to be “enemy combatants,” although they have not been released. The military has announced that it plans to hold these hearings for another 80 detainees, after which they could ostensibly be convicted by military trial. But for 150 so-called “high value” prisoners, Scheinin said, “There is not enough evidence that could be presented, even to a military commission chaired by a military judge. Partly there may not be evidence and partly the risk of issues of torture being raised is too high.”

“Bringing them to court would bring to the court’s attention the method through which the evidence, including the confessions, were obtained,” Scheinin told the press following his report.

In addition to the recent revelations that the CIA had destroyed interrogation tapes, he said the indefinite

detention without trial “is one further affirmation of the conclusion that the CIA or others have been involved in methods of interrogation that are incompatible with international law.” The CIA, Scheinin stated, “has been involved and continues to be involved in the use of interrogation techniques that violate the absolute prohibition against torture.”

The destruction of the CIA interrogation tapes showing the torture of at least two prisoners underscores the basic fact that egregious human rights violations by the US are not isolated events. On the contrary, torture and illegal detentions have been the standard operating procedure for the CIA, with the cooperation of military brass and the support of the entire political establishment.

Scheinin said that in a meeting with representatives of the CIA during his visit to the United States, “the CIA refused to engage in any meaningful interaction aimed at clarifying the means of compliance with international standards of methods of interrogation and accountability in respect of possible abuses.” He also said the CIA refused to meet with him a second time. This stonewalling is yet further evidence of the lawlessness of the US government.

Significantly, Scheinin noted that behavior by CIA officials “supports the suspicion that the CIA has been involved and continues to be involved in the extraordinary rendition of terrorism suspects and possibly other persons.”

Moreover, the report concluded, “It is unlikely that the CIA would be able to run a global programme of rendition and detention of terrorist suspects without at least logistical support by the United States military authorities.”

Although the Bush administration declared that it held no other “high value” detainees in secret detention

after transferring 14 to Guantánamo Bay from around the world in 2006, it reserved the possibility of resuming the practice whenever it wished, and has rendered at least one other detainee since then. Other suspected detainees remain missing.

It should not be forgotten that, in addition to those detainees being held at Guantánamo, the US continues to hold some 700 detainees in Afghanistan and approximately 18,000 detainees in Iraq. Many of these are classified by the US as “unlawful enemy combatants” in order to deny them fundamental legal rights.

While at the Guantánamo Bay prison, Scheinin observed the pre-trial military proceedings against Salim Ahmed Hamdan, the alleged former driver of Osama bin Laden. Hamdan, captured in Afghanistan in 2001, has been held at Guantánamo since 2002.

The drumhead character Hamdan’s CSRT was evident. “The hearings provided graphic illustrations of the practical difficulties in providing fair trials at a distant military base, and confirmed the difficulties or even impossibility of the defense to provide evidence,” Scheinin told the press. “Neither witnesses from abroad or high-value detainees from the Guantánamo detention facility next door could be heard, at least on this particular occasion.”

The written report is more specific: “These are administrative processes rather than judicial ones. Detainees are not provided with a lawyer during the course of hearings.” Even if all charges are dropped, “the most that a reviewing court may do is to order reconsideration of a decision, not release.” This violates international prohibitions on arbitrary detention, *habeas corpus* rights, the right to a timely trial, and other fundamental legal protections.

As could be expected, US media coverage of the report and the Hamdan CSRT has been nonexistent. Neither the *New York Times*, *Washington Post*, nor *Los Angeles Times* published an article on the topic, with the main coverage in the US coming from brief wire reports from the AP and Reuters.

Also typical, the response of the US government to the report has consisted largely of the attempt to dismiss and discredit it. Melanie Khanna, a US legal adviser, was quoted in both the AP and Reuters articles at some length. Khanna said that sections of Scheinin’s report dealing with legal violations by the US “simply

catalogue well-known criticisms and fail even to acknowledge that there are multiple ways of approaching the difficult issues discussed...”

“We hope that in future the work of the Special Rapporteur proceeds differently,” Khanna said, claiming Scheinin’s description of the combatant status reviews was “in part misleading about the facts of the process, and revisits well-worn, ill-informed criticisms of military commissions hearings. The unfortunate fact is that a large part of the report again repeats unfair and oversimplified criticisms of the United States.”

However, the “well-worn” arguments against the military tribunals have also been made by the US Supreme Court—specifically in regard to the case of Hamdan—before this decision was scuttled by Congress in the 2006 Military Commissions Act. In that case, *Hamdan v. Rumsfeld*, the court ruled that President Bush did not have the authority to establish military commissions, and found them to be illegal under military law and the Geneva Conventions.

When Hamdan was subject to another military commission in June 2007, charges of conspiracy and supporting terrorism were thrown out by the military judge, who ruled that the commission lacked jurisdiction because Hamdan had not been officially classified as an “unlawful enemy combatant.”

The government appealed this decision, asking a military court to declare Hamdan an “unlawful enemy combatant” so he can be tried once again. A ruling has not been issued as of this writing. During the hearing, the defense was denied the request to call three “high value” detainees held at Guantánamo for testimony on the spurious grounds that the request was not timely because of the clearance required to access such prisoners. The detainees, Khalid Sheik Mohammed, Ramzi Bin al-Shib and Abu Faraj al-Libi, have all been subjected to CIA interrogations and torture.



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