



Guantánamo – Eleven Steps to Accountability

(1) Close detention in Guantanamo Bay

Keep the promise of closing down the detention in Guantánamo Bay and the system of arbitrary detention it represents.

(2) Transfer or resettle those cleared for release

Prisoners recommended for transfer by the Guantánamo Review Task Force should be transferred to their home country, or where this is not possible to a host country or the United States as fast as possible.

(3) Ensure human rights compliant resettlement

In doing so, the United States has to ensure that transfers and resettlements are consistent with obligations under international human rights law and humanitarian law and taking into account the informed consent of the individual detainee.

(4) Prosecute in US Federal Court or release

All prisoners who cannot be transferred to a host country because they are accused of having committed a crime should be transferred to the United States for prosecution in federal court. No prisoner should be kept in detention indefinitely without trial in violation of human rights law.

(5) Abolish Military Commission system

Military commission trial can only be compatible with international law if it concerns recognized offences against the law of war. Almost all of the past, current, and pending prosecutions before the military commission do not deal with alleged internationally recognized war crimes or crimes conducted in armed conflicts. The system of sub-standard military commissions has proven both, ineffective and a travesty of justice. It needs to be closed.

(6) Recognize the torture policies as unlawful

The US should publicly recognize that the policies contained in the torture memos constitute unlawful practice and amount to a violation of torture, cruel and inhuman, or degrading treatment. Without a legal confirmation there is no certainty about a no return to these policies. The US should also publish the report of the Senate Investigative Committee on the torture policies to allow proper accountability.

(7) End impunity

The United States has a positive obligation under international law to investigate all allegations of torture and crimes under international law. Investigations should be directed

against everyone who authorized, participated in, or was complicit in such practices. This includes lawyers and high-level officials from the Bush administration who drafted or authorized the torture memos, and authorized 'enhanced interrogation' technics. This is not a political choice – it is a legal obligation.

(8) Provide remedies and reparations

Everybody who has been subject to torture, cruel and inhuman, or degrading treatment has the right to a remedy and reparation irrespective of his affiliation. In addition to monetary compensations, reparations should also include symbolic actions such as public acknowledgment, public apology or commitment to non-repetition of torture, and unlawful detentions.

(9) Recognize the role of human rights law

The United States should revise its legal positions and recognize in line with general international doctrine that human rights obligations of a state apply extra-territorially to situations in which the state in question exercises effective control or authority over a territory or a person. In the context of Guantánamo and other detention outside US sovereign territory this means that the United States have to comply with their obligations under international human rights law because they exercise *de facto* control over all detainees.

(10) Cooperate with ongoing investigations

Cases have been lodged in third countries under the principle of universal jurisdiction and before international institutions against US officials, contractors, or third countries that become complicit in torture, secret detention, or enforced disappearances. The US should cooperate with these proceedings rather than exercising pressure on third states, and provide relevant information via mutual legal assistance and extradition.

(11) Ensure intelligence accountability

The system of enforced disappearances and torture within the secret detention and renditions program has highlighted the lack of effective legal accountability of the intelligence services, especially within their international cooperation. Effective safeguards against complicity in torture through the receipt, demand, and sharing of intelligence information – possible obtained through torture – needs to be put in place. No actor in counter-terrorism, not even the intelligence community, can stay outside the law.