

**USA**

**WORDS, WAR,  
AND THE RULE OF  
LAW**

**PRESIDENT OBAMA REVISITS COUNTER-  
TERRORISM POLICY, BUT HUMAN RIGHTS  
STILL MISSING FROM LEGAL FRAMEWORK**

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INTERNATIONAL**







## WORDS, WAR, AND THE RULE OF LAW

*From our use of drones to detention of terrorism suspects, the decisions that we are making now will define the type of nation – and world – that we leave to our children*  
President Barack Obama, 23 May 2013

In a landmark speech delivered on 23 May 2013, President Barack Obama revisited his administration's framework for US counter-terrorism strategy four years after a similar address he gave early in his first term.<sup>1</sup> While there were encouraging signs in the recent speech, the continuing absence of international human rights law from this framework remains a cause for concern.

In neither speech did President Obama make any express reference to human rights. This is regrettable, not least given that his administration's National Strategy for Counterterrorism has "respect for human rights" as a "core value" underlying all counterterrorism policies.<sup>2</sup> The National Security Strategy and the National Strategy for Combating Terrorism issued during the administration of George W. Bush had said much the same thing, but the human rights of detainees in US custody were systematically violated nonetheless.<sup>3</sup> Words are one thing, actions another. Despite their positive aspects, President Obama's words leave a lot to be desired, and it remains to be seen how much will change, and how quickly, after this latest national security speech.

In his 2009 address, President Obama fully endorsed the flawed theory that the USA had been engaged in a "global war" since the attacks of 11 September 2001: "Let me be clear", he said then, "we are indeed at war with al Qa'ida and its affiliates". In his latest speech, he did so again: "We were attacked on 9/11. Within a week, Congress overwhelmingly authorized the use of force. Under domestic law, and international law, the United States is at war with al Qa'ida, the Taliban, and their associated forces." As Amnesty International has long pointed out, the broad congressional authorization to which he refers – the Authorization for Use of Military Force (AUMF) – was passed after little substantive debate as well as apparent confusion among members of Congress about what they were voting for, and the resolution has been exploited over the years to justify a range of human rights violations.

In his latest speech, however, President Obama did raise the prospect of a change in approach to meet what he said was the changing nature of the terrorist threat, from a trans-national al-Qa'ida capacity to more localized affiliates operating within specific countries and regions, as well as the threat posed by "homegrown extremists" in the USA. As an additional reason for a rethink, President Obama pointed to the 2014 withdrawal from Afghanistan of US combat troops after a dozen years there. Beyond Afghanistan, he asserted, "we must define our effort not as a boundless 'global war on terror', but rather as a series of persistent, targeted efforts to dismantle specific networks of violent extremists that threaten America". Every war, he said, "has to come to an end" and in this regard the USA was "at a crossroads" requiring it to "define the nature and scope of this struggle, or else it will define us".

Amnesty International has long called for the USA to jettison its flawed "global war" framework (and for withdrawal of the AUMF as a clear congressional message of the need for a fresh start). The organization urges that this happen now, not at some still undetermined point in the future. President Obama said that he was looking forward to "engaging Congress and the American people in efforts to refine, and ultimately repeal, the AUMF's mandate. And I will not sign laws designed to expand this mandate further". However, the administration does not need to wait for Congress to act, but can immediately and publicly announce that it will from now on fully meet the USA's international human rights obligations under a legal framework consistent with international law that should have been applied from the outset of the post-9/11 response.

But the “war on terror” – whether in name or notion – has already come to define the USA’s approach to national security, and this slate cannot be wiped clean so easily. For the USA to redefine itself – to begin to live up to its own ideal of a global human rights champion – will require more than just redefining the nature and scope of the struggle against terrorism. There must also be truth, accountability and remedy in relation to the human rights violations, including crimes under international law, that have been committed by US forces in the name of this “global war”. Failure to account for the past will leave the USA not only stained by this part of its history, but more susceptible to repeating it.

President Obama referred to “the rule of law” several times in his 2009 and 2013 speeches. In the latter, for example, he reiterated that under his predecessor, “we compromised our basic values – by using torture to interrogate our enemies, and detaining individuals in a way that ran counter to the rule of law”. He repeated that his administration, in contrast, had “unequivocally banned torture” and had “worked to align our policies with the rule of law”. What the world has learned since 2009 (as it had learned once before during the Bush administration) is that a promise by the USA to abide by the rule of law should not yet be taken as a commitment that it will meet its international human rights obligations in the counter-terrorism context. For here, it seems, the rule of law is a flexible domestic concept, the parameters of which depend on who is in the White House and how much cooperation Congress feels inclined to provide.

In May 2009, President Obama explained that he had ordered an end to the use of “brutal methods like waterboarding” for interrogating detainees because “they undermine the rule of law”. From a human rights perspective, his decision to ban the use of what the previous administration had called “enhanced interrogation techniques” – employed by the Central Intelligence Agency (CIA) against detainees subjected to enforced disappearance in a secret detention programme operated under presidential authority – was a welcome step. It would have been even better if the President had made clear that torture and enforced disappearance had been crimes under international law long before September 2001 and that anyone responsible for their use would be brought to justice. His failure to use a human rights framework was not just a rhetorical failure, but the reflection of a broader policy failure and ongoing violations of international law.

In the 2009 speech, President Obama had opposed an independent commission of inquiry into the abuses against detainees committed under the Bush administration on the grounds that “our existing democratic institutions are strong enough to deliver accountability”. The intervening years have proved him wrong, but he did not revisit this matter in his recent address. Instead he altogether ignored the question of accountability for these violations. Today, the absence of accountability for crimes under international law committed by US forces during the Bush administration, and the blocking of remedy for the victims of these and other human rights violations, has left the USA in breach of its international legal obligations. This is not the rule of law. This is injustice.

The detention facility at the US naval base in Guantánamo Bay has become a byword for injustice. In 2009, President Obama endorsed the use of military commissions to prosecute some of the detainees held at Guantánamo. These would not be the “flawed commissions of the last seven years”, he said, but revised commissions brought into line with “the rule of law”. In his recent speech President Obama again endorsed military commission trials as an option for prosecutions. This time, he appeared to make this endorsement consistent with closing the Guantánamo facility – though of course still not consistent with human rights – when he said that he had asked the Department of Defense to “designate a site in the United States where we can hold military commissions”. Military commission trials held in the USA will be as unacceptable as those held at Guantánamo, as would indefinite detentions if they were to be merely relocated rather than resolved.<sup>4</sup> The military commission system does not comply with international fair trial standards. Moreover, imposition of the death penalty at

such trials (the Obama administration is currently pursuing death sentences against six detainees facing trial by military commission) would violate international human rights law.

The UN Human Rights Committee has stated that the trial of civilians (anyone who is not a member of a state's armed forces) by special or military courts must be strictly limited to exceptional and temporary cases where the government can show that resorting to such trials is "necessary and justified by objective and serious reasons", and where "with regard to the specific class of individuals and offences at issue the regular civilian courts are unable to undertake the trials".<sup>5</sup> The US government cannot point to any such rationale. It can only point to domestic politics, the same domestic politics that the administration blames for the Guantánamo gridlock. The military commissions are not by any measure tribunals of demonstrably legitimate necessity, but creations of political choice.

In 2009, President Obama said that the standards governing the continued detention of those Guantánamo detainees whom he suggested could neither be prosecuted nor released would be brought into line with "the rule of law". Then in 2010, the administration revealed that it had decided that there were some four dozen detainees who fell into this category, as "law of war" detainees held under the AUMF.<sup>6</sup> In his 2013 address, President Obama revisited this issue a little more cautiously than he had four years earlier, and this could herald a welcome change in approach. The President referred to those detainees who "cannot be prosecuted", including "because the evidence against them has been compromised or is inadmissible in a court of law". He said that "once we commit to a process of closing Guantánamo I am confident that this legacy problem can be resolved, consistent with our commitment to the rule of law". Without a commitment from Congress and the administration to abide by and implement human rights principles and law, his own legacy will remain one of detentions and military commission trials – either still at Guantánamo or relocated to the US mainland – that flout the USA's international human rights obligations.

If President Obama's references to the rule of law in 2009 had incorporated international human rights law, the US administration would have long ago abandoned its endorsement of indefinite detention of Guantánamo detainees and military commissions as the forum in which to prosecute any of them (and an approach consistent with human rights would also have led the USA to drop its pursuit of the death penalty). Moreover, if the USA had applied human rights law from the outset, the reason Guantánamo was chosen as the location for this detention facility – to seek to keep the detainees from the US courts – would never have been countenanced. President Obama was right when he said in his latest speech that the Guantánamo detention facility "should never have been opened". He should now recognize that in closing it, the USA should apply the long missing ingredient – international human rights law.

In his May 2013 speech, the President restated his commitment to closing the Guantánamo detention facility which he said "has become a symbol around the world for an America that flouts the rule of law". To this end, he called on Congress to "lift the restrictions on detainee transfers" from Guantánamo, promised that "to the greatest extent possible, we will transfer detainees who have been cleared to go to other countries", announced that he was appointing "a new senior envoy at the State Department and Defense Department whose sole responsibility will be to achieve the transfer of detainees to third countries",<sup>7</sup> and that he was "lifting the moratorium on detainee transfers to Yemen so we can review them on a case-by-case basis". While these moves should be cautiously welcomed, the coming days and weeks will begin to show whether or not this is another false dawn.

After all, for more than five years the US administration has been saying that it intends to close the 11-year-old detention facility.<sup>8</sup> It is no surprise that many of the detainees feel a sense of hopelessness and despair at their situation of indefinite detention.<sup>9</sup> As the UN Special Rapporteur on torture said on 1 May 2013:

“At Guantánamo, the indefinite detention of individuals, most of whom have not been charged, goes far beyond a minimally reasonable period of time and causes a state of suffering, stress, fear and anxiety, which in itself constitutes a form of cruel, inhuman, and degrading treatment.”

Each day that passes without resolution of this situation compounds the cruelty to detainees and their families.

An issue that was not addressed by President Obama in his May 2009 speech was another that will likely be long associated with his period in office, namely the use of lethal force by US forces in the counter-terrorism context. Since that initial national security address, the USA's use of “targeted killing”, particularly by remote-controlled “drones”, has become an issue of considerable international concern. The President devoted a substantial portion of his May 2013 address to this matter, acknowledging that there were “profound questions” raised by the use of drones to carry out “targeted killings”, including about “who is targeted, and why; about civilian casualties, and the risk of creating new enemies; about the legality of such strikes under US and international law; about accountability and morality”.

The US administration's “strong preference”, President Obama asserted, is for the “detention and prosecution of terrorists”, and the administration's policy is that “lethal force will not be proposed or pursued as punishment or as a substitute for prosecuting a terrorist suspect in a civilian court or a military commission”.<sup>10</sup> This policy preference appears to be based on the position that “capturing a terrorist offers the best opportunity to gather meaningful intelligence and to mitigate and disrupt terrorist plots” rather than expressly being grounded in law.<sup>11</sup> In any event, the President continued, “sometimes this approach is foreclosed” by the remoteness of location or the unwillingness or inability of the state in question to “take action”, and the kind of operation in which US Special Forces went into Pakistani territory in 2011 and killed Osama bin Laden “cannot be the norm” because of the risks involved.<sup>12</sup> It was in this context, he said, that the USA “has taken lethal, targeted action against al Qa'ida and its associated forces, including with remotely piloted aircraft commonly referred to as drones”.

Amnesty International has long expressed concern about the USA's “targeted killing” policy, particularly in relation to secrecy and accountability and, as with detentions, the legal consequences of conducting such attacks under a “global war” framework.<sup>13</sup> The lack of official disclosures and investigations about individual attacks has made it difficult to reach firm conclusions about the legality under international law of individual attacks. In this regard, any further transparency is a step in the right direction. However, publicly available information still indicates that the USA's policy appears to permit extrajudicial executions, in violation of international human rights law, virtually anywhere in the world.

On the eve of his speech, President Obama had authorized Attorney General Eric Holder to disclose previously classified information relating to the “targeted killing” in September 2011 in Yemen of Anwar al-Aulaki, a US citizen, as well as the fact that three other US citizens, Samir Khan, ‘Abd al-Rahman Anwar al-Aulaki, and Jude Kenan Mohamed had been killed “in US counterterrorism operations” since 2009, although these three “were not specifically targeted by the United States”.<sup>14</sup> Both Attorney General Holder's letter to the Senate Judiciary Committee and President Obama's speech spelt out some of the details behind the decision to kill Anwar al-Aulaki, and the President added that “I would have detained and prosecuted Aulaki if we captured him before he carried out a plot, but we couldn't. And as President, I would have been derelict in my duty had I not authorized the strike that took him out.”

As already noted, for the time being at least, the USA's global war framework persists, with all its consequences for detentions under the AUMF and for the USA's use of “targeted killings”. This war paradigm remains an unacceptably unilateral departure from the very



concept of the international rule of law in general, and the limited scope of application of international humanitarian law (IHL, the law of armed conflict) in particular.

Amnesty International has been particularly concerned by the USA's radical reinterpretation of the concept of "imminence" when invoking the right to use lethal force in self-defence.<sup>15</sup> Under international human rights law, the intentional use of lethal force is lawful only if it is "strictly unavoidable" in order to meet an "imminent threat of death" in self-defence or defence of others. The only exception to the ordinary "law enforcement" rules in relation to the use of lethal force and the right to life is in the exceptional situation of zones of armed conflict. In the context of an international armed conflict, a person who is a member of the armed forces of a state, or a civilian who is at the relevant time directly participating in hostilities, may be lawfully targeted for attack (and killed), if the attack complies with the rules of international humanitarian law. Applying this rule to non-international armed conflict may, at least in some circumstances, require attempting to capture, rather than kill, members of armed groups wherever practically possible.

In his recent speech, President Obama stated that "America does not take strikes to punish individuals; we act against terrorists who pose a continuing and imminent threat to the American people, and when there are no other governments capable of effectively addressing the threat." The policy document issued to coincide with the speech similarly asserts that: "the United States will use lethal force only against a person that poses a continuing, imminent threat to US persons". While it is possible that this general standard could meet international law requirements in individual cases, the devil will remain in the detail. Furthermore it remains the case that it is the executive that gives itself the life-or-death decision-making power and while it promises to keep "appropriate Members of the Congress" informed on cases of individuals "against whom lethal force has been approved", it will still be the executive that enforces the standards and procedures, decides what information to disclose, and whether or not to initiate any investigation following any particular strike.<sup>16</sup>

Thus, while the "targeted killing" policy is a cause for concern including as a result of the "global war" framework, the question of the legality of individual drone strikes and the extent to which the concept of imminence is or is not being stretched beyond international legal limits in individual cases has to be examined on the specific facts of each case. Again, we return to the need for the disclosure and examination of more information.

The US authorities should now move to disclose more information on all cases of "targeted killings", almost all of which have been of non-US nationals. Amnesty International welcomes the recognition by President Obama in his 23 May speech of the "inherent dignity of every human life", regardless of nationality. However, on this nationality issue, it is notable that the administration's policy states that if the intended target of lethal force in the counter-terrorism context is "a US person", the Department of Justice "will conduct an additional legal analysis to ensure that such action may be conducted against the individual consistent with the Constitution and laws of the United States".<sup>17</sup> President Obama should follow through on the words in his speech by ensuring that the domestic focus on US nationals is not allowed to distract from this fundamental concept of universal human rights, namely that the right to life, to liberty, and to fair trial of every human being is to be respected without discrimination on the basis of their nationality.

The administration should also now declassify and publish the Presidential Policy Guidance which President Obama said he had signed on 22 May 2013 and which codifies "guidelines, oversight and accountability" in relation to the use of force in the counterterrorism context. The administration should similarly declassify and release legal memorandums setting out the US administration's full legal analysis of the use of lethal force in the counter-terrorism context.

On the day of President Obama's latest speech, the White House did issue a document entitled "US Policy Standards and Procedures for the Use of Force in Counterterrorism Operations Outside the United States and Areas of Active Hostilities".<sup>18</sup> This provides the preconditions that must be met before such use of force. The first of these preconditions is that "there must be a legal basis for using lethal force". Here again we return to the familiar "rule of law" problem described above – what law precisely is the USA applying? Again, more detail is required, not least given that whatever the administration's current standards and procedures are,<sup>19</sup> it takes the position that they "do not limit the President's authority to take action in extraordinary circumstances when doing so is both lawful and necessary to protect the United States or its allies".<sup>20</sup> It is not easily forgotten how, under the previous president, the administration had taken the position that law and necessity allowed the use of conduct that amounted to torture and enforced disappearance, activities unequivocally prohibited under international law.

Transparency had been a theme in President Obama's May 2009 speech – he recalled among other things that "I ran for President promising transparency, and I meant what I said". After four years in which the government's use of secrecy has continued to block accountability and remedy for human rights violations, the question of transparency was given a lower profile in the President's latest speech.

In 2009, President Obama had also noted that his administration was reviewing its use of the "state secrets privilege". In his latest address, he again made reference to this issue, but only to say in general terms that there must be "careful constraints on the tools the government uses to protect sensitive information, such as the state secrets doctrine". His administration had invoked this doctrine shortly after taking office in January 2009, to seek to block a lawsuit brought by detainees who alleged human rights violations during their detention and transfers in the context of the USA's "rendition" programme.<sup>21</sup> The administration defended this approach to the end of this litigation in the domestic courts in 2011, and has shown little sign of changing course.<sup>22</sup> As the European Court of Human Rights stated in a landmark judgment on a US rendition case in December 2012, "the concept of 'State secrets' has often been invoked to obstruct the search for truth".<sup>23</sup> Courts in the USA have consistently refused to hear the merits of lawsuits seeking redress for human rights violations committed in this context, citing national security, secrecy and various forms of immunity under US law.

There had been some hope prior to the May 2013 speech that President Obama would announce in it that a 6,000 page report on the CIA secret detention and interrogation programme, finalized in 2012 by the Senate Select Committee on Intelligence, would be published as fully as possible. The administration has now had a copy of the report for nearly six months for its review. According to the Committee's Chairperson, Senator Dianne Feinstein, the report includes "details of each detainee in CIA custody, the conditions under which they were detained, [and] how they were interrogated". She said that it reveals some "startling" details about the CIA programme. Those details remain secret, however, and how much, if any, will be declassified and made public remains to be seen. President Obama made no mention of the report in his address.

Amnesty International urges President Obama to revisit his words on the interdependence of transparency and accountability contained in a memorandum to executive branch chiefs at the beginning of his first term in office.<sup>24</sup> The entire Select Committee report should be made public. No redactions of the truth about torture or other gross human rights violations can ever be justified on grounds of 'national security'. Moreover, the CIA should not once again be given the power to shield its abusive practices from public scrutiny.

Four days after President Obama's national security speech, the UN High Commissioner for Human Rights, Navi Pillay, gave her opening statement at the 23<sup>rd</sup> session of the UN Human Rights Council in Geneva. Among the issues she highlighted were the continuing indefinite

detentions at Guantánamo Bay, the lack of accountability in relation to the USA's rendition programme as operated under the Bush administration and the "human rights implications of the use of armed drones in the context of counter-terrorism and military operations". She acknowledged President Obama's announcement on proposed steps towards closing the Guantánamo facility, and urged the USA to "ensure that all such measures are carried out in compliance with its obligations under international human rights law" as well as ensuring that pending closure of the facility there is "full respect for the human rights of detainees" held in it, including those on hunger strike. She also expressed hope that following President Obama's speech there would be "a shift towards greater transparency by the United States, as well as stricter controls on the use of drones". Wherever violations occur, she added, "States should conduct independent, impartial, prompt and effective investigations, and provide victims with an effective remedy".<sup>25</sup>

As the statement of the UN High Commissioner for Human Rights makes clear, all these issues are *human rights* concerns. The USA must address them as such within a legal framework that fully respects and adheres to international human rights law and standards. For all the words, this is an action that is still awaited.

## RECOMMENDATIONS

Amnesty International urges the US government to:

- **Immediately drop the "global war" framework.** The message sent by the USA's global war framework is that a government can ignore or jettison its human rights obligations and replace them with rules of its own whenever it decides that the circumstances warrant it. Under its global war framework, the USA has at times resorted to enforced disappearance, torture, secret detainee transfers, indefinite detention, and unfair trials, as well as a lethal force policy that plays fast and loose with the concept of "imminence" and appears to permit extrajudicial executions. At the same time, truth, accountability and remedy have been sacrificed. Congress and the administration should commit to a framework for US counter-terrorism strategy – from detentions to the use of force – that fully complies with international human rights law and standards.
- **Ensure necessary investigations.** Ensure prompt, thorough, independent, effective and impartial investigations into all credible allegations of human rights violations, with the methodology and findings of such investigations made public.
- **Ensure full accountability.** Ensure that anyone responsible for crimes under international law, including torture and enforced disappearance, committed in the post-9/11 counter-terrorism context is brought to justice, regardless of their level of office or former level of office.
- **Guarantee access to remedy.** Ensure that all victims of US human rights violations are recognised, and have genuine access to meaningful remedy, as required under international law.
- **End any use of secrecy that obscures truth about human rights violations or blocks accountability or remedy for violations.** Any information that describes or details human rights violations for which the USA is responsible must be made public. Among other things, such information relating to the identity, detention, interrogation and transfers of those held in the now terminated CIA programmes of rendition and secret detention should be declassified and disclosed, including in the context of trial proceedings being conducted against detainees currently held at Guantánamo, and in relation to the report on the CIA detention

programme finalized by the Senate Select Committee on Intelligence in December 2012. The USA must end any use of the state secrets doctrine that blocks remedy or accountability.

- **Address the Guantánamo detentions as a human rights issue.** The detentions must be resolved and the detention facility closed in a way that fully complies with international human rights law. Specifically:
  - Pending resolution of the detentions, and without delaying that goal in any way, there should be an immediate detailed review of conditions of detention and of policies implemented in response to the hunger strike, including assessing cell-search, force-feeding and comfort item policies, facilitating continuing access for legal representatives to detainees, allowing full access to independent medical professionals, UN experts, and human rights organizations, and ensuring all policies comply with international human rights law and standards and medical ethics.
  - Expedite safe detainee transfers: Dozens of the Guantánamo detainees have long been “approved for transfer” by the US authorities. Particularly now that President Obama has lifted the moratorium on repatriation of Yemeni nationals, as the Chairperson of the Senate Intelligence Committee had recently urged, the administration and Congress should bring about lawful and safe detainee transfers as a matter of priority. The USA should not place any conditions on transfers of detainees that would, if imposed by the receiving government, violate international human rights law and standards.
  - Charge and try in civilian courts: Detainees who are to be prosecuted should be charged and tried without further delay in ordinary federal civilian court, without recourse to the death penalty. Any detainees who are not to be charged and tried should be immediately released.
- **Ensure full compliance with international law in the use of lethal force.**
  - Consistent with the first recommendation above, the USA must end claims that it is authorized by international law to use lethal force anywhere in the world under the theory that it is involved in a “global war” against al-Qa’ida and other armed groups and individuals.
  - Recognize the application of international human rights law to all US counterterrorism operations, including those outside US territory, and bring US policies and practices in line with the USA’s international human rights obligations.
  - Ensure that any use of lethal force outside of specific recognized zones of armed conflict complies fully with the USA’s obligations under international human rights law, including by limiting the use of force in accordance with UN standards for the use of force in law enforcement.
  - Ensure that any use of lethal force within a specific recognized zone of armed conflict complies fully with the USA’s obligations under international human rights and humanitarian law, including by recognizing and respecting the rule that if there is doubt as to whether a person is a civilian, the person is to be considered a civilian.
  - Declassify and publish the Presidential Policy Guidance signed by President Obama on 22 May 2013, and other policy and legal memorandums on the use of lethal force.

- Declassify and disclose key information relating to all other such use of lethal force in the counter-terrorism context, including the names and locations of individuals killed.
- Ensure independent and impartial investigations in all cases of alleged extrajudicial executions or other unlawful killings, respect for the rights of family members of those killed, and effective redress and remedy where killings are found to have been unlawful.

## ENDNOTES

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<sup>1</sup> President Obama's speech of 23 May 2013 is available at <http://www.whitehouse.gov/the-press-office/2013/05/23/remarks-president-national-defense-university>, while his speech of 21 May 2009 is at <http://www.whitehouse.gov/the-press-office/remarks-president-national-security-5-21-09>. See also USA: President Obama defends Guantánamo closure, but endorses 'war' paradigm and indefinite preventive detention, 22 May 2009, <http://www.amnesty.org/en/library/info/AMR51/072/2009/en>

<sup>2</sup> National Strategy for Counterterrorism, June 2011, [http://www.whitehouse.gov/sites/default/files/counterterrorism\\_strategy.pdf](http://www.whitehouse.gov/sites/default/files/counterterrorism_strategy.pdf)

<sup>3</sup> See, for example, USA: Undermining security: violations of human dignity, the rule of law and the National Security Strategy in 'war on terror' detentions, April 2004, <http://www.amnesty.org/en/library/info/AMR51/061/2004/en>, and USA: Law and executive disorder: President gives green light to secret detention program, August 2007, <http://www.amnesty.org/en/library/info/AMR51/135/2007/en>

<sup>4</sup> See Memorandum to the Secretary of Defense and Attorney General from President Barack Obama, re: Directing Certain Actions with Respect to Acquisition and Use of Thomson Correctional Center to Facilitate Closure of Detention Facilities at Guantanamo Bay Naval Base, 15 December 2009, <http://www.whitehouse.gov/the-press-office/presidential-memorandum-closure-detention-facilities-guantanamo-bay-naval-base>

<sup>5</sup> UN Human Rights Committee, General Comment No 32, Article 14: Right to equality before the courts and tribunals and to a fair trial, UN Doc CCPR/C/GG/32, 23 August 2007, para. 22.

<sup>6</sup> See Final Report of the Guantánamo Review Task Force, 22 January 2010, <http://www.justice.gov/ag/guantanamo-review-final-report.pdf>

<sup>7</sup> According to the Fact Sheet issued by the White House in conjunction with the speech this means more than one envoy. See Fact Sheet: The President's May 23 Speech on Counterterrorism, 23 May 2013, <http://www.whitehouse.gov/the-press-office/2013/05/23/fact-sheet-president-s-may-23-speech-counterterrorism>

<sup>8</sup> According to former President Bush, by early in his second term beginning in January 2005 he had recognized that the Guantánamo detentions had become "a propaganda tool for our enemies and a distraction for our allies". He subsequently worked, he said, to "find a way to close the prison". George W. Bush. *Decision Points*, Virgin Books (2010), page 180.

<sup>9</sup> See, for example, USA: Re Guantánamo: A human rights appeal to the US administration and Congress, 17 May 2013, <http://www.amnesty.org/en/library/info/AMR51/030/2013/en>; and USA: 'I have no reason to believe that i will ever leave this prison alive': Indefinite detention at Guantánamo continues; 100 detainees on hunger strike, 3 May 2013, <http://www.amnesty.org/en/library/info/AMR51/022/2013/en>

<sup>10</sup> US Policy Standards and Procedures for the Use of Force in Counterterrorism Operations Outside the United States and Areas of Active Hostilities,

[http://www.whitehouse.gov/sites/default/files/uploads/2013.05.23\\_fact\\_sheet\\_on\\_ppg.pdf](http://www.whitehouse.gov/sites/default/files/uploads/2013.05.23_fact_sheet_on_ppg.pdf)

<sup>11</sup> *Ibid.*

<sup>12</sup> Here President Obama said that the capture of Osama bin Laden had been the administration's preference. He also noted that the US forces had not become "embroiled in an extended fire fight" in the attack on the compound in Abbottabad. Amnesty International remains concerned at the absence of an independent investigation into the killing of Osama bin Laden, which the organization considers may have amounted to an unlawful killing conducted under the USA's global war paradigm. See, for example, USA: A reflection on justice, 16 May 2011, <http://www.amnesty.org/en/library/info/AMR51/038/2011/en>

<sup>13</sup> For further information, see USA: 'Targeted killing' policies violate the right to life, June 2012, <http://www.amnesty.org/en/library/info/AMR51/047/2012/en>; USA: The devil in the (still undisclosed) detail: Department of Justice 'white paper' on use of lethal force against US citizens made public, February 2013, <http://www.amnesty.org/en/library/info/AMR51/006/2013/en>; USA: Joint letter to President Obama re: Shared concerns regarding US drone strikes and 'targeted killings', April 2013, <http://www.amnesty.org/en/library/info/AMR51/017/2013/en>

<sup>14</sup> Letter from Attorney General Eric Holder to Senator Patrick Leahy, Chairman of the Senate Judiciary Committee, available at <http://www.justice.gov/slideshow/AG-letter-5-22-13.pdf>

<sup>15</sup> See discussion of discussion of imminence, international law and the *Caroline* case in USA: 'Targeted killing' policies violate the right to life, and USA: The devil in the (still undisclosed) detail, *op. cit.*

<sup>16</sup> See US Policy Standards and Procedures for the Use of Force in Counterterrorism Operations Outside the United States and Areas of Active Hostilities, *op. cit.*, page 3.

<sup>17</sup> *Ibid.*

<sup>18</sup> *Ibid.*

<sup>19</sup> Even within the limited information disclosed on 23 May 2013, the counterterrorism policy standards and procedures "are either already in place or will be transitioned into place over time", *op. cit.*, page 1.

<sup>20</sup> US Policy Standards and Procedures for the Use of Force in Counterterrorism Operations Outside the United States and Areas of Active Hostilities, *op. cit.*, page 3.

<sup>21</sup> See USA: Federal court rejects government's invocation of 'state secrets privilege' in CIA 'rendition' cases, 29 April 2009, <http://www.amnesty.org/en/library/info/AMR51/058/2009/en>.

<sup>22</sup> See USA: Remedy blocked again: Injustice continues as Supreme Court dismisses rendition case, 25 May 2011, <http://www.amnesty.org/en/library/info/AMR51/044/2011/en>

<sup>23</sup> European Court of Human Rights, *El-Masri v. the former Yugoslav Republic of Macedonia* [GC], App. No. 39630/09, Judgment, 13 December 2012, para. 191.

<sup>24</sup> Transparency and Open Government. Memorandum for the Heads of Executive Departments and Agencies. President Barack Obama, 20 January 2009, <http://www.whitehouse.gov/the-press-office/transparency-and-open-government>

<sup>25</sup> Opening Statement by UN High Commissioner for Human Rights Navi Pillay at the 23rd session of the Human Rights Council, Geneva, 27 May 2013, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13358&LangID=E>