



The
CENTER for
VICTIMS of
TORTURE

The United States' Compliance with the International Covenant on Civil and Political Rights with Respect to the Continued Detention Without Charge or Trial of Prisoners for an Undefined Duration at the Guantánamo Bay Detention Facility

(Article 7: Prohibition of torture and cruel, inhuman or degrading treatment or punishment; and Article 10: treatment of persons deprived of their liberty)

The Center for Victims of Torture (CVT) is an international non-profit organization dedicated to healing survivors of torture and war atrocities and to work for a world without torture. We are present in sixteen countries, providing direct care for those who have been tortured at our healing sites in Minnesota, the Middle East, and Africa, and training or supporting partners in the United States and in an additional 12 countries who are working to prevent and treat torture. We advocate for human rights and an end to torture through CVT's New Tactics program and through our policy work in Washington D.C.

I. Issue Summary

The continued, prolonged detention without charge or trial of most of the 166 detainees held at the prison in Guantánamo Bay, Cuba and the ongoing forced feeding of competent detainees on hunger strike there can rise to the level of cruel, inhuman and degrading treatment (CID), in violation of the absolute prohibition against torture and CID under the International Covenant on Civil and Political Rights (ICCPR).

The United States continues to detain 166 men at the Guantánamo Bay detention facility, most for over a decade. Of the 166 detainees, 3 have been convicted, 31 have been designated for possible prosecution (of which only 7 currently face trial by or have been charged before a military commission), 46 have been approved to be held without charge until the "end of hostilities," and 86 have been cleared for transfer.¹

¹ White House Plan for Closing the Guantánamo Bay Detention Facility, available at <http://www.lawfareblog.com/wp-content/uploads/2013/08/white-house-plan-to-close-guantanamo.pdf>.

While the U.S. government does not categorize any of the detainees as approved for “indefinite detention,” the vast majority of those imprisoned at Guantánamo are being held without charge or trial and without being told when, if ever, they might be released. The severe, prolonged and harmful health and mental health problems that results from such detention can constitute cruel, inhuman and degrading treatment.²

Medical examinations have disclosed that indefinite detention have led to profound depression and vegetative symptoms, with all the attendant degradation of multiple aspects of health. The harmful psychological and physical effects of indefinite detention include:

- Severe and chronic anxiety and dread;
- Pathological levels of stress that have damaging effects on the core physiologic functions of the immune and cardiovascular systems, as well as on the central nervous system;
- Depression and suicide;
- Post-traumatic stress disorder (PTSD); and
- Enduring personality changes and permanent estrangement from family and community that compromises any hope of the detainee regaining a normal life following release.³

These severe disorders arise because the indefinitely detained prisoner realized that nothing he does matters and that there is no way to end, foreshorten or even know the duration of his incarceration. A 2008 study⁴ in which former detainees from Abu Ghraib and Guantánamo underwent detailed medical and mental health evaluations found that uncertainty was one of the most stressful factors among detainees ultimately released without ever having been charged. This uncertainty resulted in tremendous anxiety, numbing and disconnecting from feelings of hope.

These effects are exacerbated in detainees who have been traumatized or tortured prior to commencement of indefinite detention. Moreover, indefinite detention affects individuals beyond the detainee himself. When a loved one is indefinitely detained, families are separated; parents, spouses and children can and have suffered similar feelings of uncertainty, unpredictability and uncontrollability leading to the physical and psychological effects described above.

² See Letter from the Bellevue/NYU Program for Survivors of Torture, The Center for Victims of Torture, and Physicians for Human Rights to U.S. Senators (July 14, 2009), *available at* [http://cvt.hutman.net/files/pg34/LTR%20DAJ%20to%20Senators%20Revised%209-11%20\(2\).pdf](http://cvt.hutman.net/files/pg34/LTR%20DAJ%20to%20Senators%20Revised%209-11%20(2).pdf).

³ PHYSICIANS FOR HUMAN RIGHTS, “Punishment Before Justice: Indefinite Detention in the U.S.,” *available at* https://s3.amazonaws.com/PHR_Reports/indefinite-detention-june2011.pdf.

⁴ PHYSICIANS FOR HUMAN RIGHTS, “Broken Laws, Broken Lives: Medical Evidence of Torture by the U.S. Personnel and Its Impact,” *available at* https://s3.amazonaws.com/PHR_Reports/BrokenLaws_14.pdf.

The recent hunger strike among the detainees at Guantánamo underscores the despair among detainees facing indefinite detention.⁵ Hunger strikes are a form of expression by individuals who have no other way of making their demands known.

Prison hunger strikes have occurred in democratic and totalitarian regimes around the world for hundreds of years. Prisoners in indefinite detention, at risk of torture, or who are held in other extreme conditions have resorted to hunger strikes or fasts to death as a way to publicize and create conditions for negotiations of grievances. Prison hunger strikes are often organized or understood as a form of political protest. Notable strikes have occurred during the course of civil and human rights struggles.

Forced feeding of mentally competent hunger strikers is a breach of various bans on torture and other cruel, inhuman or degrading treatment or punishment.

The World Medical Association, an international congress of 102 national medical associations, has adopted two documents that address the treatment of prisoners who are on hunger strikes. Specifically, the World Medical Association's 1975 Declaration of Tokyo - Guidelines for Physicians Concerning Torture and other Cruel, Inhuman or Degrading Treatment or Punishment in Relation to Detention and Imprisonment states in part:

Where a prisoner refuses nourishment and is considered by the physician as capable of forming an unimpaired and rational judgment concerning the consequences of such a voluntary refusal of nourishment, he or she shall not be fed artificially. The decision as to the capacity of the prisoner to form such a judgment should be confirmed by at least one other independent physician. The consequences of the refusal of nourishment shall be explained by the physician to the prisoner.

Additionally, the World Medical Association's 1991 Declaration of Malta on Hunger Strikers provides in part:

Forcible feeding is never ethically acceptable. Even if intended to benefit, feeding accompanied by threats, coercion, force or use of physical restraints is a form of inhuman and degrading treatment.

Guantánamo prisoners who are force-fed are strapped into a metal chair and immobilized with arm, leg, body, and sometimes head restraints. A plastic tube is then forcibly inserted up the detainee's nostril, down his esophagus and into his stomach, whereby liquid nutritional supplement is forced down the tube. The prisoner is restrained in the chair for upwards of two hours to prevent him from

⁵ See Joint Letter from 25 Human Rights Organizations to President Obama on the hunger strike at Guantánamo Bay (April 11, 2013), available at http://ccrjustice.org/files/2013.4.11_GTMO%20Coalition%20Letter%20to%20President%20Obama_0.pdf.

vomiting. A U.S. District Judge found that Guantánamo “force-feedings are a painful, humiliating and degrading process.”⁶

The American Medical Association,⁷ the Inter-American Commission on Human Rights, the UN Working Group on Arbitrary Detention, the UN Rapporteur on Human Rights and Counter-Terrorism, the UN Rapporteur on Torture, and the UN Rapporteur on Health⁸ condemn the force-feeding of detainees at Guantánamo Bay.

For these reasons, the United States (i) must put an end to the indefinite detention scheme at Guantánamo by either charging detainees with a recognizable criminal offense and trying them in a court which meets international standards for due process, or providing for the immediate release or transfer to a third country, in accordance with international law; and (ii) put an end to the force-feeding of competent hunger strikers at Guantánamo Bay.

II. Relevant Question in List of Issues

The serious physical and psychological harms resulting from indefinite detention and forced feeding as a violation of the ICCPR’s absolute ban on torture and cruel, inhuman and degrading treatment was not fully raised in the Committee’s List of Issues. Therefore, we urge the Committee to ask the below “Recommended Questions” during the U.S. review.

III. U.S. Government Response

In its response to questions from the Human Rights Committee, the United States did not respond to the physical and psychological impact of the indeterminacy of detention without charge or trial of detainees at Guantánamo because those issues were not specifically raised by the Committee. However, the U.S. did respond to related questions about the indefinite detention scheme at the Guantánamo Bay prison.

Specifically, in its response to Issue 17, the U.S. stated that there were no Guantánamo detainees “scheduled for indefinite detention.” While the United States has not slated any group of detainees for “indefinite detention,” the prolonged detention without charge or trial for an undefined duration over which an individual has no knowledge of when or whether he will be released effectively becomes “indefinite” regardless of how the U.S. government labels it.

⁶ Dhiab v. Obama, Civil Action No. 05-1457 (D.C. District Court, July 2013), *available at* <http://legaltimes.typepad.com/files/gitmo-order.pdf>.

⁷ Letter to Secretary of Defense Chuck Hagel (April 25, 2013), *available at* <http://media.miamiherald.com/smedia/2013/04/30/07/58/FRs25.So.56.pdf>.

⁸ IACHR, UN Working Group on Arbitrary Detention, UN Rapporteur on Torture, UN Rapporteur on Human Rights and Counter-Terrorism, and UN Rapporteur on Health reiterate need to end the indefinite detention of individuals at Guantánamo Naval Base in light of current human rights crises (May 1, 2013), *available at* <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13278>.

The U.S. also responded that the law of armed conflict allows the U.S. to hold detainees until the end of hostilities. While there may be a legal basis under international humanitarian law to detain some individuals for the duration of hostilities, law of war detention must come to an end. The U.S. government failed to address what would mark the end of hostilities, whether the end of combat operations in Afghanistan or some other suitable indicator. Moreover, custody arrangements that result in detention of an indefinite term, including “continued law of war detention,” may still have serious physical and psychological effects that constitute cruel, inhuman and degrading treatment in violation of U.S. treaty obligations.

The U.S. also responded that it will transfer detainees who have been designated for transfer. But it failed to discuss specific measures it intends to take to transfer most if not all of the 86 detainees designated for transfer using existing waiver authority, and what specific efforts are being made to remove restrictions in current law on transferring the remaining detainees from Guantánamo.

While the U.S. has already announced the impending transfer of 2 Algerian detainees back to Algeria,⁹ the United States must take concrete steps to transfer all cleared detainees out of Guantánamo as expeditiously as possible using the maximum transfer authority under current U.S. law. Now that the President has lifted the moratorium on transfers to Yemen, the U.S. should begin transferring on a case-by-case basis the 56 Yemenis cleared for transfer, especially the 26 Yemeni detainees who have been cleared for transfer without conditions. It should also work to transfer the 17 cleared non-Yemeni detainees whose countries have requested their return, as well as, resettle the remaining detainees cleared for transfer to the United States or third countries, in accordance with international law.¹⁰

Finally, the U.S. government also responded that it is committed to implementing a Periodic Review Board (PRB) process to determine whether detention of those detainees not charged or designated for transfer is still necessary. But in order for the PRBs to be meaningful they should be open, transparent, and provide all necessary due process protections to detainees. Also, detainees who are recommended for transfer by the PRB process should be transferred as soon as practicable.¹¹

The continued indefinite detention of individuals at Guantánamo – some of whom have been held over 11 years without being charged or tried – is inconsistent with U.S. obligations under the ICCPR, including the absolute prohibition against torture and CID.

IV. Recommended Questions

⁹ Charlie Savage, *U.S. to Send 2 at Guantánamo Back to Algeria, Saying Security Concerns Are Met*, N.Y. TIMES, July 26, 2013, available at http://www.nytimes.com/2013/07/27/us/top-pentagon-official-on-detainees-to-step-down.html?_r=0.

¹⁰ Media reports indicate the countries of Afghanistan, Algeria, Libya, Saudi Arabia, and Tunisia have requested the return of Guantánamo detainees. For additional information see HUMAN RIGHTS FIRST, “Guantanamo: A Comprehensive Exit Strategy” (July 2013), available at <http://www.humanrightsfirst.org/uploads/pdfs/close-GTMO-july-2013.pdf>.

¹¹ For more information see Letter from 10 Human Rights and Civil Liberties Organizations to Secretary of Defense Chuck Hagel and Secretary of State John Kerry about Periodic Review Boards (July 23, 2013), available at <http://www.cvt.org/sites/cvt.org/files/PRB%20Coalition%20Letter.pdf>.

1. In light of the serious physical and psychological ramifications of prolonged detention without charge and trial that constitutes cruel, inhuman and degrading treatment, and may rise to the level of torture, what specific, additional efforts beyond the U.S. government's most recent steps (i.e. appointing State Department envoy to negotiate detainee transfers, lifting moratorium on Yemeni detainees, announcing certification to transfer 2 Algerian detainees back to Algeria, and announcing that Periodic Review Boards will commence) is the U.S. government taking to end the indefinite detention scheme at Guantánamo, specifically:
 - a. What appropriate marker will constitute the end of hostilities? The end of combat operations in Afghanistan?
 - b. Will the President use his existing authority to certify transfers and issue national security waivers to the fullest extent possible beyond the 2 Algerian detainees for most if not all of the 86 detainees who have been cleared for transfer? If so, what is the proposed timeline?
 - c. Now that the Yemen moratorium on transfers has been lifted, what specific steps is the U.S. government taking to begin individual transfers of the 56 Yemeni detainees, especially for the 26 that are cleared for transfer without conditions? What is the proposed timeline?
 - d. What efforts is the U.S. government making to repatriate the 17 cleared detainees from Afghanistan (4), Algeria (5), Libya (1), Saudi Arabia (2), and Tunisia (5) whose countries have requested their return?
 - e. Will the U.S. government seek to resettle the remaining detainees cleared for transfer, including the 3 Uighurs, to the United States or third countries?
 - f. Will the Periodic Review Board (PRB) process be open and transparent and afford the necessary due process protections to detainees? Will detainees who are found to no longer present a continued security threat to the United States by the PRBs be transferred as soon as practicable?
 - g. What measures is the U.S. government taking to eliminate the transfer restrictions imposed by Congress? Is the U.S. government supportive of the detainee provisions of the Senate Armed Services Committee's mark-up of the National Defense Authorization Act for Fiscal Year 2014?

2. Given the World Medical Association's Guidelines – endorsed by the International Committee of the Red Cross, the American Medical Association, the Inter-American Commission on Human Rights, the UN Working Group on Arbitrary Detention, the UN Rapporteur on Human Rights and Counter-Terrorism, the UN Rapporteur on Torture, and the UN Rapporteur on Health- that force-feeding mentally competent hunger strikers is a form of cruel, inhuman and degrading treatment, what measures is the U.S. government taking to end this practice?

V. Suggested Recommendations

1. The U.S. government should end the indefinite detention scheme at Guantánamo Bay, Cuba as soon as possible, specifically:
 - a. The President should use his existing security waiver authority to certify transfers and issue national security waivers to the fullest extent possible for most, if not all, of the 86 detainees who have been cleared for transfer.
 - b. Congress should pass, and the President should sign, the Senate Armed Services Committee's version of the National Defense Authorization Act for Fiscal Year 2014, which includes provisions ending or lowering barriers on transferring all detainees from Guantánamo.
 - c. Should the U.S. government proceed with the Periodic Review Board (PRB) process, the PRBs should be open, transparent, and provide all necessary due process protections to detainees. Detainees who are recommended for transfer by the PRB process should be transferred as soon as practicable and in accordance with international law.

2. The U.S. government should follow the World Medical Association's Guidelines for Physicians Concerning Torture and other Cruel, Inhuman or Degrading Treatment or Punishment in Relation to Detention and Imprisonment (Declaration of Tokyo) and the World Medical Association's Declaration of Malta on Hunger Strikers and its accompanying Guidelines for the Management of Hunger Strikers. To this end, the Secretary of Defense should order the immediate end of all force-feeding of Guantánamo prisoners who are competent and capable of forming a rational judgment as to the consequences of refusing food. He should also allow independent medical professionals to review and monitor the status of hunger-striking prisoners in a manner consistent with international ethical standards.