

# Human Rights Council

Evaluating the situation regarding basic human rights in the Guantanamo Bay Camp



<b>Forum:</b>	Human Rights Council
<b>Issue:</b>	Evaluating the situation regarding basic human rights in the Guantanamo Bay Camp
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<b>Position:</b>	President

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## Introduction

The existing situation concerning the human rights of prisoners is still too high to fall under the Universal Declaration of Human Rights. Many prisons and detention camps still ignore the basic principles for the Treatment of Prisoners. The Standard Minimum Rules for the Treatment of Prisoners was adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, which was held at Geneva in 1955.

Recently, it has come to the attention that many nations are violating the Universal Declaration of Human Rights and are not following the regulations of the principles laid down in the Standard Minimum Rules for the Treatment of Prisoners. The attention was mainly drawn to Guantanamo Bay. Guantanamo bay is in hands of the United States and located with the Guantanamo Bay Naval Base, which is often also referred to as Guantánamo, G-bay or GTMO (pronounced as 'gitmo'). Guantánamo Bay lies within the borders of Cuba. However, all talks of giving Guantanamo bay back to the Cubans died when, in early 2002, the naval base was turned into a detention camp.

## Definition of Key Terms

### Human rights

When the United Nations was set up in 1945, their basic purpose was: "... To reaffirm faith in fundamental human rights, in the dignity and worth of the human person." However, there were no human rights set in stone. This is when the United Nations worked together in order to produce the Universal Declaration of Human Rights. The UDHR describe the rights you have simply because you are human. There are a total of 30 human rights, which are commonly referred to as 'human rights'. These rights are laid down in the universal declaration of Human Rights.



## Prisoner of War

A prisoner of War, also referred to as POW, is any person captured or interned by a belligerent power during [war](#). In the strictest sense it is applied only to members of regularly organized armed forces, but by broader definition it has also included guerrillas, civilians who take up arms against an enemy openly, or non-combatants associated with a military force.<sup>1</sup>

## Detention camp

An institution or compound where prisoners often, juvenile offenders, are held (often) temporarily.

## Detainee

A person held in custody, for a political offense or questioning.

## General Overview

Well over a decade has passed since the first prisoners were brought into Guantanamo Bay, which makes this camp the longest standing war prison in the history of the United States of America.

When the camp was established in January 2002, Secretary of Defence Donald H. Rumsfeld stated that the prison camp was established in order to detain extraordinarily dangerous person, to prosecute detainees for war crimes and to interrogate detainees in an optimal setting.

The first prisoners from the war in Afghanistan arrived in January 2003. These prisoner as well as all who followed, had been denied prisoner of war status by the United States' government. They were denied access to lawyers, to their families and to the outside world. Many nations have requested the US to either charge or release these prisoners, but this has not yet been put into motion by the US.

As shown in the infographic by ACLU to the right, almost 800 men have passed through Guantanamo's cells. With 116 men from 22 different countries remaining to be imprisoned in May 2015.

## Standard Minimum Rules for the Treatment of Prisoners

The First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, which was held at Geneva in 1955, adopted the Standard Minimum Rules for the

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<sup>1</sup> "Prisoner of War (POW)." *Encyclopedia Britannica Online*. Encyclopedia Britannica, n.d. Web. 19 Sept. 2015. <<http://www.britannica.com/topic/prisoner-of-war>>.

Treatment of Prisoners. This was then approved by the Economic and Social in the resolutions of 31 July 1957 and 13 May 1977. The Minimum Standards provide guidelines for international as well as domestic law for citizens held in prisons and other forms of custody.

The main rules described are:

- All prisoners shall be treated with the respect due to their inherent dignity and value as human beings
- There shall be no discrimination on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status

The above-described rules seem to be completely ignored by the United States regarding their prisoners in Guantanamo Bay and how they are treated.

The justice campaign released a list of torture techniques that are used in Guantanamo Bay in order to obtain the 'truth' from detainees. The list includes: sexual assault/humiliation, sleep deprivation, sensory deprivation, solitary confinement/isolation, mock executions, forced medication, use of dogs to scare detainees, temperature extremes, sensory bombardment (noise), watching other being tortured and psychological techniques.

No respect is given to the inherent dignity and value the detainees have simply for being human. The use of torture techniques is a direct violation of Article 5 in the Universal Declaration of Human Rights; No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

### **Universal Declaration of Human Rights articles applicable**

In 2002, Omar Khadr was arrested by the US military in Afghanistan and subsequently detained at Guantánamo Bay. Khadr, a Canadian citizen, allegedly killed a US soldier. He was captured after being shot in the back and was initially taken to Bagram prison, where he was beaten, suffocated, and repeatedly threatened with rape. One of the youngest prisoners incarcerated at Guantánamo Bay, he was fifteen years old when apprehended and remains confined there after nine years. In August 2010, a military commission trial under the 2006 Military Commission Act began. Video leaks revealed that much of the evidence against Khadr – including his so-called confession - was extracted under torture, a clear violation of the Geneva Conventions. Khadr initially condemned the military commission as a “sham process” and stated that “I will not willingly let the U.S. government use me to fulfil its goal.” Shortly thereafter, Khadr negotiated a plea agreement



and received an eight-year sentence for five charges.<sup>2</sup>

Omar Khadr's story describes the violation of over half of the 30 articles laid down in the UDHR. Twelve years after the first detainees were brought to Guantánamo, strapped down in planes like cargo, more than 150 men are still held there. Most of them are held without charge or trial.

A few Guantánamo detainees face trial under a military commission system that does not meet international fair trial standards. Of the almost 800 detainees who have been held there, less than one per cent have been convicted by military commission – and the majority of those were the result of pre-trial plea bargains.

The USA expects other countries to do what it refuses to – accept released detainees who cannot be repatriated. As a result, even those who obtain a judicial ruling against their detention may continue to be held.<sup>3</sup>

In 2008 there were more than 600 prisoners from 42 nations that were accused of being Taliban fighters or terrorists. These nations have demanded for the United States to either charge or release the prisoners. The United States believes that to classify these prisoners as terrorist it justifies for ignore of the Human Rights.

## Major Parties Involved and Their Views

### American Civil Liberties Union

The American Civil Liberties Union, or ACLU, is a non-profit organization whose stated mission is “to defend and preserve the individual rights and liberties guaranteed to every person in this country by the Constitution and laws of the United States”.<sup>4</sup> The organization is dedicated to ensuring that American prisons, jails and any other form of detention camps comply with the Constitution, laws of the United States and international human rights.

The ACLU fights in courts and advocates with Congress and the executive branch to ensure claims of war-based authority are properly limited to actual armed conflict, to end indefinite

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<sup>2</sup> Wallia, Harsha. "Omar Khadr: Race, Empire, and Unexceptional Detention." *The Guantanamo Bay Museum of Art and History*. N.p., n.d. Web. 19 Sept. 2015. <<http://www.guantanamobaymuseum.org/?url=waliatext>>.

<sup>3</sup> "USA: Close Guantánamo and End Human Rights Hypocrisy." *Amnesty International*. N.p., 22 Jan. 2014. Web. 19 Sept. 2015. <<https://www.amnesty.org/en/latest/news/2014/01/usa-close-guant-namo-and-end-human-rights-hypocrisy/>>.

<sup>4</sup> "FAQs." *American Civil Liberties Union*. N.p., n.d. Web. 19 Sept. 2015. <<https://www.aclu.org/faqs>>.



detention, and to close the prison at Guantánamo Bay. Imprisoning people indefinitely without charge or trial is unconstitutional, un-American, and an impediment to justice.<sup>5</sup>

## Human Rights Watch

Human Rights Watch (HRW) is an international non-governmental organization that monitors the situation of human rights on a global level. With the information they gather they make up reports on the state of human rights and what should be done in order to improve the situation. Regarding Guantanamo Bay, HRW has maintained and fought for the fact that the United States has not held the Article 5 tribunals required by the Geneva Conventions. A Combatant Status Review Tribunal (CSRT, phonetically "Seecert"), is a onetime administrative process designed to determine whether each detainee under the control of the Department of Defence at Guantanamo meets the criteria to be designated as an enemy combatant.

In an article by the Washington Post on the 8th of May 2004, several interrogation techniques approved for use in interrogating alleged terrorists at Guantanamo Bay were described. The executive director of Human Rights Watch, Kenneth Roth, characterized these as cruel and inhumane treatment illegal under the U.S. constitution.

## The United States of America

Ever since the presidential election procedures in 2009, Obama has mentioned that he will shut down the Guantanamo bay detention camp and therewith stop the human right violations in Guantanamo. In fact, ordering the closure of Guantanamo was the first official decision after President Obama came to office. However, his pledge to shut down the camp has failed multiple times because of obstruction in Congress and a lack of political will.

## Timeline of Events

Date	Description of event
1903	The new Republic of Cuba leases 45 square miles of land in Guantánamo Bay to the U.S. for construction of a naval station. Building on the naval station begins that same year.

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<sup>5</sup> ["Detention." American Civil Liberties Union. N.p., n.d. Web. 19 Sept. 2015. <https://www.aclu.org/issues/national-security/detention>.](https://www.aclu.org/issues/national-security/detention)

1934	Cuba and the U.S. sign a perpetual lease that rents the 45 square miles of Cuba to the U.S. for \$4,085.00 a year.
January 11, 2002	The first detainees from Afghanistan and Pakistan arrive at the temporary facility of Camp X-Ray.
June 28, 2004	A divided Supreme Court rules that the Guantánamo detainees have some rights but leaves open how these rights will be exercised.
January 18, 2005	The Supreme Court refuses to consider whether the government's plan for military trials unfairly denies the detainees basic legal rights.
July 13, 2005	A report presented to the Senate Armed Services details the interrogation of the suspected "20th hijacker" in the 9/11 attacks, Mohamed al-Khatani. He was forced to wear a bra, dance with a man and do dog tricks while tied to a leash. But military investigators said that was not considered prohibited, inhumane treatment.
June 10, 2006	Three detainees are found dead in their cells by guards after apparently committing suicide.
June 29, 2006	The Supreme Court strongly limits the power of the U.S government to conduct military tribunals for suspected terrorists imprisoned at Guantánamo Bay. The 5-3 ruling effectively means officials will either have to come up with new procedures to prosecute at least 10 "enemy combatants" awaiting trial, or release them from military custody.
May 30, 2007	A Saudi detainee is found dead from an apparent suicide.
June 5, 2008	Alleged 9/11 conspirators Khalid Sheikh Mohammed, Ramzi bin al Shibh, Ali Abd al-Aziz Ali, Walid bin Attash and Mustafa Ahmed al-Hawsawi are arraigned.
June 12, 2008	The U.S. Supreme Court rules 5-4 that detainees have a constitutional right to challenge their detentions.
January 20, 2009	On his inauguration day, President Barack Obama directs Defense Secretary Robert Gates to ask prosecutors to seek stays for 120 days so terrorism cases at Guantánamo can be reviewed.
January 22, 2009	President Barack Obama signs an executive order to close Guantánamo Bay within a year.



November 13, 2009	Attorney General Eric Holder announces that five detainees, accused of complicity in the September 11th attacks, will be transferred to New York
November 18, 2009	President Obama announces that the Guantánamo Bay detention center will not be closed by January 22, 2010, due to difficulties in relocating the prisoners.
December 15, 2009	The Obama administration announces that between 70-100 detainees will be moved to an empty prison in Thomson, Illinois.
February, 2011	Detainee Awal Gul collapses and dies of an apparent heart attack after exercising.
March 7, 2011	President Obama announces that the U.S. will resume the use of military commissions to prosecute detainees at Guantánamo Bay.
April 4, 2011	Attorney General Eric Holder announces that five detainees will face a military trial at Guantánamo Bay.
May 18, 2011	A detainee identified as Inayatullah (aka Hajji Nassim) commits suicide in his cell.
September 8, 2012	A detainee is found dead in his cell - Adnan Farhan Abdul Latif, 32, of Yemen.
March 25, 2013	U.S. military spokesman Robert Durand announces that 28 of the 166 prisoners detained at Guantánamo Bay are on hunger strikes. Ten of the detainees are being force-fed, according to Durand.
April 13, 2013	Detainees wielding "improvised weapons" clash with guards. Guards respond by firing "four less-than-lethal rounds," according to Joint Task Force Guantánamo.
April 22, 2013	U.S. spokesman Lt. Col. Todd Breasseale say that 84 detainees are currently on hunger strikes, more than half of the 166 people being held.
May 16, 2013	Army Lt. Col. Samuel House announces that 102 of the 166 detainees are on hunger strikes, with 30 being fed by tubes. Three have been hospitalized.





- May 23, 2013 In a speech at the National Defense University, President Obama calls on Congress to close the detention center at Guantánamo Bay by saying, "Given my administration's relentless pursuit of al Qaeda's leadership, there is no justification beyond politics for Congress to prevent us from closing a facility that should never have been opened."
- June 6, 2013 U.S. spokesman Capt. Robert Durand says that 103 detainees remain on hunger strikes, with 41 being force fed.
- September, 2013 The Office of the Director of National Intelligence releases a report, saying that some former detainees are returning to terrorist activity after being released. The study says that of the 603 detainees who've been released, 100 of them have resumed fighting against the U.S.
- February, 2014 Detainee Fawzi Odah files a lawsuit relating to the upcoming completion of U.S. combat operations in Afghanistan. His lawyers argue that to hold detainees after the end of active hostilities is a violation of the Geneva Conventions.
- May 22, 2014 U.S. District Judge Gladys Kessler lifts a temporary restraining order that had stopped the force feeding of detainee Abu Wa'el Dhiab. Kessler rules that he must be forcibly fed because of the "very real probability that Mr. Dhiab will die."
- May 31, 2014 The United States transfers five Guantanamo Bay detainees to Qatar in exchange for the release of U.S. Army Sgt. Bowe Bergdahl.
- August 21, 2014 The U.S. Government Accountability Offices declares that the Defense Department broke federal law by exchanging five Taliban detainees for Army Sgt. Bowe Bergdahl without giving Congress the appropriate notice.
- October 3, 2014 U.S. District Judge Gladys Kessler orders the release of videotapes showing detainee Abu Wa'el Dhiab being force fed.
- December 7, 2014 Six detainees are transferred to Uruguay, including Abu Wa'el Dhiab, who has been on a hunger strike. Dhiab took his fight against forcible feeding to federal court in the District of Columbia.



February 18, 2015      A U.S. military appeals court vacates the conviction of David Hicks, an Australian who pleaded guilty to providing material support to terrorism. Hicks was the first detainee at Guantanamo to be convicted in a military commission

## UN involvement, relevant resolutions, treaties and events

When the UN was formed the world was still fearful of all that had happened during the nuclear war as well as the widespread of discrimination and genocide during the Second World War. In response to this the United Nations General Assembly had adopted the Universal Declaration of Human Rights (UDHR).

Since early in the 1980s the United Nations has been focused on torture and has drafted and implemented many treaties, conventions and has established an international committee that is dedicated to preventing, investigation as well as making restitution for torture, the Committee Against Torture (UNCAT).

In 2006 the United Nations High Commissioner on Human Rights (UNHCHR) released a 54 page special report based on the investigation done on the torture in the Guantanamo Bay detention camp. The report included evidence of violations against the International Covenant on Civil and Political Rights (ICCPR), the Convention against Torture (CAT), the International Convention on the Elimination of all Forms of Racial Discrimination (ICERD), and the International Covenant on Economic, Social and Cultural Rights (ISCESCR). The United States has been a party of all the above mentioned agreements.

- Convention against torture and other cruel, inhuman or degrading treatment or punishment, 10th of December 1984, UN Resolution 39/42
- Anti-torture initiative, 14th of December 1984, UN Resolution 1985/33
- Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

## Evaluation of Previous Attempts to Resolve the Issue

As mentioned in the section 'Un involvement, relevant resolutions, treaties and events' the United Nations and its organs have worked on establishing the end of the (human rights violations at the) Guantanamo bay camp.

The United Nations High Commissioner on Human Rights (UNHCR), released a report on

their investigations into the violations at the camp. The report was concluded with the recommendation to the United States of America to close the detention facility immediately and therewith make an end to the human rights violations that are present at the detention camp. However, even though during his election campaign in 2008, Obama pledged to close the facilities at Guantanamo, the camp currently still houses an estimated 140 prisoners.

## Possible Solutions

Ever since Obama mentioned his wish to close down the Guantanamo Bay camp there has been a division in opinions in congress. The Republicans have been able to delay the closure of the camp and have made it a priority to keep it open. The solution given by many different sources is that Obama should veto any legislation that comes out of Congress that would thwart the goals of closing down Guantanamo Bay.

The following questions can be used to form good arguments in debate and create a policy on the issue.

- Would the establishment of a new declaration of right, specifically concerning prisoners, better the conditions in Guantanamo Bay?
- Does equal treatment mean equal treatment under the national law (the law of every individual country) or equal treatment under international law (Universal Declaration of Human Rights and other conventions, treaties etc.)
- Do organizations that represent prisoner need more authority, power or instruments to prisoners? If so, to what extend and how would this be established?
- Should the UN have the ability to inspect a detainment facility unannounced and be able to give out sanctions?

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