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INTERNATIONAL PROTECTION FOR GUANTÁNAMO'S VICTIMS

GOVERNMENTS AROUND
THE WORLD WHO HAVE
CRITICIZED GUANTÁNAMO
MUST MATCH THEIR
RHETORIC WITH ACTION
AND FIND HUMANITARIAN
SOLUTIONS FOR THE
DETAINEES HELD THERE

The detention camp at Guantánamo Bay casts a dark shadow on the USA's human rights record. The camp has become synonymous with violations of human rights and a symbol of a government abandoning its international legal obligations. More than 260 men are still unlawfully detained there, most in cruel, inhuman and degrading conditions. While the US government does not intend to charge the majority of these detainees, some face unfair trials by military commission and a few could be executed after such trials.

There has been widespread condemnation of Guantánamo by governments around the world. Even US President George W. Bush has said he wants to close the camp.

If Guantánamo is to be closed, as it must be, just and lawful solutions must be found for all the detainees. For many the solution is simple – they should be released and returned to their home countries if they are not to be charged and tried in regular civilian US courts. However, at least 50 of the detainees currently held, who the USA has said it does not intend to charge, cannot lawfully be sent back to their countries of origin because they would face a real risk of torture or other serious human rights violations if they were to be returned. A solution needs to be found that gives these men an opportunity to get on with their lives after years of enduring violations of their human rights.

The US government has the primary responsibility for resolving the situation it has created in Guantánamo. This requires releasing the detainees, ensuring their safe reintegration into society and providing reparations. The USA, after all, opened the camp and has held men there indefinitely, in harsh conditions, in some cases for nearly seven years.

One lawful option for detainees who cannot be returned home would be to offer them the chance to live in the USA. However, this may be unrealistic for many

of the men, labelled for years by the US authorities as “enemy combatants” and “terrorists”. The USA has made no attempt to offer them refuge and in July 2008 the US Attorney General called for courts to be prevented from ordering any Guantánamo detainee to be admitted into the USA.

While the vocal criticism of Guantánamo by governments around the world is to be welcomed, governments must now turn their attention to bringing this human rights scandal to an end. They must match their rhetoric with action and actively seek humanitarian solutions for the detainees held there.

Governments of states where detainees would be safe should open their doors to the men who cannot be returned to their own countries and extend international protection to them.

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Lawyer for Algerian national/UK resident
Ahmed Belbacha

BETWEEN A ROCK AND A HARD PLACE

About 500 detainees have been transferred from Guantánamo to countries around the world. Those who remain in the camp include men from Algeria, China, Iraq, Libya, Russia, Somalia, Syria, Tunisia and Uzbekistan. Returning detainees to these countries is unlawful, as it would place the individuals at risk of torture and other serious human rights violations.

These men are therefore caught between a rock and a hard place. The lawyer for Algerian national/UK resident Ahmed Belbacha explains, “*He says his cell in Guantánamo is like a grave and that although it sounds crazy he would rather stay in those conditions than go back to Algeria. The fact is that he is really, really scared about what might happen to him in Algeria.*”

The USA has already sent some of the released detainees to countries despite the risk of torture or other serious human rights violations. For example, seven detainees who were returned from Guantánamo to the Russian Federation in 2004 have since suffered human rights violations such as harassment, arbitrary detention, torture and unfair trial.

In June 2007, Abdellah al-Hajji and Lotfi Lagha were returned from Guantánamo to Tunisia. When they arrived, they were detained by the Tunisian authorities and they said they were ill-treated and forced to sign statements. According to Abdellah al-Hajji, he was deprived of sleep, slapped in the face and told that his wife and daughters would be raped unless he “confessed”.

Sending detainees to countries where they would face serious human rights violations is not a lawful solution, whether or not the USA has received “diplomatic assurances” about their treatment, assurances that are both unreliable and unenforceable. But neither is leaving the men in Guantánamo with no end in sight. The USA or other countries must extend international protection to the remaining detainees who cannot be returned home.

A RELUCTANCE TO ASSIST

Only Albania and the UK have so far agreed to admit individuals who couldn't be returned home. The UK accepted five men who had been long-term UK residents before their detention.

Why are governments so unwilling to step forward and provide solutions for Guantánamo detainees who cannot be sent home? In part at least, the conduct of the USA lies behind their reluctance.

On the one hand, there is an ongoing diplomatic effort by the USA to resettle detainees. State Department spokesman Sean McCormack said on 31 July 2008, "We have approached well over 50 countries to seek resettlement options... but have found very little assistance... We continue to call on the international community to support our efforts to find appropriate resettlement options."

On the other hand, detainees have for years been classified as "enemy combatants", effectively stigmatizing them, without trial or conviction, with involvement in "international terrorism". In addition, senior officials in the US administration have repeatedly branded those held without charge or trial at Guantánamo as "killers" and "the worst of the worst". The US authorities have also in some cases recommended that detainees are released only if receiving governments agree to impose prohibitive conditions on them, such as travel bans or house arrest. These conditions not only imply that the individuals pose a security risk, they could also constitute a further violation of human rights.

INTERNATIONAL PROTECTION – A SAFE SOLUTION

The USA, acting alone, appears to be making little or no progress towards resolving the Guantánamo situation, and there is a risk that the USA will transfer the violations elsewhere. It is therefore imperative that other governments engage with their US counterparts to find a safe, just and lawful resolution to the Guantánamo detentions.

There are many countries that could offer safe alternatives for the detainees who cannot be returned to their home countries. States could offer individuals international protection by accepting them under some form of humanitarian or other immigration status. For example, they could grant the former detainees legal residence leading to their gradual integration in line with relevant domestic immigration laws and practices. This is particularly pertinent in countries where detainees already have links, where relevant languages are spoken or where there is a well integrated pre-existing immigrant community from their country. A number of the men already have close links with suitable countries. Some have family members living there, others have previously lived there themselves. Nabil Hadjarab, for example, is an Algerian national who would face a real risk of being targeted by state authorities if returned to Algeria. He lived in France with a foster family until he was

Ravil Mingazov is a former ballet dancer who left Russia after facing religious discrimination as a Muslim. He was living in a refugee camp in Afghanistan but fled to Pakistan after the US invasion. He was arrested by Pakistani police, transferred to US custody and held in Bagram Base in Afghanistan before being flown to Guantánamo.

Ravil Mingazov currently faces an unenviable choice: continued indefinite detention in Guantánamo or a return to Russia, where he would be at real risk of serious human rights violations. His future safety depends on another option being found: either the USA fulfils its legal duty to find a safe solution for him, or another country steps in to offer a humanitarian alternative.

THERE ARE MANY COUNTRIES WHICH COULD OFFER SAFE ALTERNATIVES FOR THE DETAINEES WHO CANNOT BE RETURNED HOME

10 years old and his seven brothers and sisters still live there. Acceptance by France, where he has strong family links, would clearly offer him an opportunity to rebuild his life in safety.

There is no doubt that the detainees would face significant challenges in adjusting to life outside Guantánamo after years of harsh and indefinite detention. However, providing a safe place for them to live is the only way to end the human rights violations that they have endured, and finally close Guantánamo. Wherever they are accepted, the detainees require guarantees of both their physical and legal safety in order to begin rebuilding their lives in dignity. Governments able to offer a lawful, humane and sustainable solution to what has become an international scandal should act immediately.

RECOMMENDATIONS

The US government is responsible for ensuring a fair, safe and lawful solution to the predicament of detainees it has held in Guantánamo.

(For further details, see *Amnesty International, Framework: End Illegal US Detentions*, Index: AMR 51/167/2007.)

Amnesty International is also calling on governments of countries that can offer safe and appropriate solutions to take the necessary action. They should:

- offer international protection to Guantánamo detainees who cannot be returned to their home countries, ensuring that there is no risk of their being further deported to a country where they may face further abuse;
- engage with US authorities on this issue, with a view to identifying particular Guantánamo detainees who could be safely received and integrated into their country;
- reject any prohibitive conditions on the detainees' liberty or freedom of movement that may be attached by the USA, such as travel bans or house arrest;
- with the assistance of US authorities, ensure that Guantánamo detainees accepted into their country are provided with the necessary support to successfully integrate into the community, including adequate medical and psychological care.

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