

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**

**AMNESTY
INTERNATIONAL**



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'IT IS NOT A SURPRISE TO ME THAT WE'VE GOT PROBLEMS IN GUANTÁNAMO'

[A]ll governments have a responsibility to protect universal human rights... So anywhere that human rights are under threat, the United States will proudly stand up
US Secretary of State John Kerry, 19 April 2013¹

What will it take to get the US government – across its three branches – to act with a real and continuing sense of urgency to close the US detention facility at Guantánamo Bay in Cuba, and to do so in ways that meet the USA's international human rights obligations?

A glimmer of hope for progress emerged with President Barack Obama breaking his recent silence on the detentions. At a White House press conference on 30 April 2013, one thousand five hundred and sixty days after he committed his administration to closing the Guantánamo detention facility within 365 days, President Obama said that he still "believe[d] that we've got to close Guantánamo". He was asked about the growing hunger strike among detainees held there, and responded that it was "not a surprise to me that we've got problems in Guantánamo". He further said that:

"the notion that we're going to continue to keep over a hundred individuals in a no man's land in perpetuity..., the idea that we would still maintain forever a group of individuals who have not been tried – that is contrary to who we are, it is contrary to our interests, and it needs to stop".²

The US authorities, President Obama included, are yet to acknowledge that the Guantánamo detention regime is contrary to international human rights law, instead framing the "problem" exclusively in terms of domestic interests and values and the USA's "war" against al-Qa'ida and associated groups. And while the administration continues to blame Congress for blocking resolution of the detentions, the administration's own "promise" involves moving some four dozen detainees into indefinite detention elsewhere and, for a number of other detainees, continuing to resort to a military commission system falling short of international fair trial standards.

But, in part, President Obama is right – it is not surprising that these detainees are protesting their situation. Whatever the initial trigger for this hunger strike, there is no escaping the backdrop to it – detainees being held year after year after year with no indication of when, if ever, they will be released or brought to trial. Distress and protest are predictable outcomes of treating detainees as if they have no human rights, ciphers to be cast into oblivion thousands of miles from their families, their fate left to the whims of domestic politics to the exclusion of international human rights law and principles.

One of the detainees on hunger strike is Obaidullah, an Afghan national who has been in US military custody without trial since 21 July 2002. He told his lawyer in late March 2013:

"I am losing all hope because I have been imprisoned for almost eleven years now at Guantánamo and still do not know my fate".³

Obaidullah was about 19 years old when he was taken into US custody. He is now about 30. According to his lawyer, his parting words at the end of their latest meeting in March 2013 were "please tell the world of this unfairness", adding "Latif died here even with a clearance". Here Obaidullah was referring to Yemeni national Adnan Farhan Abdul Latif who had been among those "approved for transfer" by the executive authorities, and who had repeatedly expressed despair at his indefinite detention. His circumstances, he said, "made death more desirable than living". In October 2011, after nearly a decade in US custody without charge or trial and a few days after a federal appeals court overturned a lower court order that he be released, Adnan Latif told his lawyer "I am a prisoner of death". Latif had been involved in protests against conditions at the camp, protests which included hunger

strikes. When his lawyers met with him in May 2012, Adnan Latif had resumed his hunger strike. He was physically very weak and he “thinks he will die and has given up all hope”, his lawyer said. Although he apparently ended his hunger strike, in September 2012, three months after the US Supreme Court refused to take his case, Adnan Latif was dead, reportedly as a result of suicide.⁴ In a statement, his lawyer said:

“However Adnan died, it was Guantánamo that killed him. His death is a reminder of the human cost of the government’s Guantánamo detention policy and underscores the urgency of releasing detainees the government does not intend to prosecute.”⁵

The US authorities have long been warned of the psychological distress caused by the indefinite detention regime at Guantánamo. In January 2004, the International Committee of the Red Cross (ICRC), describing itself as “uniquely placed to witness the impact this uncertainty has had on the internees”, revealed that it had “observed a worrying deterioration in the psychological health of a large number of them”.⁶ That was over nine years ago.

If the USA didn’t listen then, it should listen – and act – now. On 11 April, ICRC President Peter Maurer called on “the United States, including its Congress, [to] urgently find a way to resolve all pending humanitarian, legal and policy issues relating to the detention of persons held at Guantánamo Bay”. Five days later, the United Kingdom government released its annual human rights report. In it, the UK said that “the indefinite detention without trial of persons in Guantánamo Bay is unacceptable and that the detention facility at Guantánamo Bay should be closed.”⁷

On 5 April, the United Nations High Commissioner for Human Rights, Navi Pillay, had also called for urgent resolution of the Guantánamo detentions, saying:

“Some of them have been festering in this detention centre for more than a decade. This raises serious concerns under international law... [T]his systemic abuse of individuals’ human rights continues year after year. We must be clear about this: the United States is in clear breach not just of its own commitments but also of international laws and standards that it is obliged to uphold.”⁸

“Given the uncertainty and anxieties surrounding their prolonged and apparently indefinite detention in Guantánamo,” the High Commissioner for Human Rights continued, referring to the hunger strike, “it is scarcely surprising that people’s frustrations boil over and they resort to such desperate measures.”

In a matter of weeks, the number of detainees the Guantánamo authorities say meet the military’s definition of being on hunger strike has gone up seven fold, from 14 detainees on 15 March 2013 to 100 on 29 April.⁹ By 2 May, 23 of the detainees were being “tube fed”, according to the authorities, with four of these detainees in hospital. A number of those being force fed are reported to be detainees who have long been “approved for transfer” by the US authorities.¹⁰

Over the weekend of 27/28 April, about 40 more medical personnel arrived at Guantánamo, despatched there by the US Navy in response to the hunger strike.¹¹ At the same time, among those raising questions about the reported use of force-feeding was the American Medical Association. In a letter to US Secretary of Defense Charles Hagel, dated 25 April, AMA President Dr Jeremy Lazarus called for the US authorities to “address any situation in which a physician may be asked to violate the ethical standards of his or her profession”. The force feeding of a mentally competent hunger striker by medical staff contravenes medical ethics. In his letter, Dr Lazarus reminded the US authorities that “every competent patient has the right to refuse medical intervention, including life-sustaining interventions”.¹²

Amnesty International itself awaits a reply to the letter it faxed to Secretary Hagel on 22 March 2013.¹³ The organization is not in a position to know the full details about which detainees are on hunger strike or what precise form any particular detainee’s protest is

taking. Neither does the organization know the exact details of how any force feeding is being administered in any particular case. Nevertheless, a recent detainee account published in the New York Times and other allegations, as well as the past use of force-feeding at the prison camp, and the context of the detention regime in which the force-feeding is taking place, raise serious concerns. In addition, as noted further below, apparently punitive conditions being imposed on detainees since they were moved back to single cells in early April is cause for further concern.

Hunger strikes undertaken by prisoners are undoubtedly complex affairs, as is decision-making in relation to force-feeding, raising issues of medical ethics, informed consent, detainee autonomy, confidentiality, and trust between physician and prisoner. The current situation at Guantánamo heightens the need for the detainees to be guaranteed continued and regular access to independent medical assessment and care and for all medical personnel to abide by medical ethics. This is even more so given the history of human rights violations and violations of medical ethics at this and other US detention facilities, including the participation of health professionals in the abuse of detainees during interrogation processes.¹⁵

In her statement of 5 April, the UN High Commissioner for Human Rights pointed out that the USA's failure to resolve the detentions "severely undermines the United

States' stance that it is an upholder of human rights, and weakens its position when addressing human rights violations elsewhere." She noted that "When other countries breach these standards, the US – quite rightly – strongly criticizes them for it."

On 19 April 2013, the US Department of State issued its latest assessment of human rights in other countries. Among the topics it reported on were hunger-strikes undertaken by detainees or prisoners protesting detention without trial or prison conditions or alleged torture and other ill-treatment. In Afghanistan, for example, it noted that in March 2012, "100 prisoners went on a hunger strike to protest their mistreatment at the Pul-e-Charkhi facility." The State Department's entry on Tunisia reported:

"The death of two Salafist detainees in mid-November after a two-month hunger strike protesting their detention alerted observers to the failure of the courts to process cases expeditiously. Some Salafist detainees claimed they were detained without charges for periods as long as six months."¹⁶

In January 2012, a prisoner died in Cuba, as a result of health problems allegedly arising from a hunger strike protesting at his unfair trial and imprisonment. Amnesty International

On 1 May 2013, the Inter-American Commission on Human Rights (IACHR), the UN Working Group on Arbitrary Detention, and three UN Special Rapporteurs (on torture, health and counter-terrorism) issued an urgent statement appealing to the US authorities to: "respect and guarantee the life, health and personal integrity of detainees at the Guantánamo Naval Base, particularly in the context of the current hunger strike." They called on the US authorities to:

(a) adopt all legislative, administrative, judicial, and any other types of measures necessary to prosecute, with full respect for the right to due process, the individuals being held at Guantánamo Naval Base or, where appropriate, to provide for their immediate release or transfer to a third country, in accordance with international law;

(b) expedite the process of release and transfer of those detainees who have been certified for release by the Government itself;

(c) conduct a serious, independent, and impartial investigation into the acts of forced feeding of inmates on hunger strike and the alleged violence being used in those procedures;

(d) allow the IACHR and the United Nations Human Rights Council mechanisms, such as the Working Group and the UN Special Rapporteurs, to conduct monitoring visits to the Guantánamo detention center under conditions in which they can freely move about the installations and meet freely and privately with the prisoners; and

(e) take concrete, decisive steps toward closing the detention center at the Guantánamo Naval Base once and for all.¹⁴

considered that responsibility for this death lay “squarely with the Cuban authorities” for imprisoning him as a prisoner of conscience.¹⁷ The US government apparently agreed, saying that it “deplored” the death of Wilman Villar Mendoza “who launched a hunger strike to protest his incarceration and he succumbed to pneumonia”. The US Department of State said that his death underscored how the “Cuban authorities must take meaningful actions to respect the basic rights of their own people” as well as “the need for greater international scrutiny of Cuba’s human rights record and international monitoring of Cuba’s prisons.”¹⁸

On the southeastern tip of Cuba, a hunger strike involving scores of detainees is taking place against a backdrop of their unlawful detention. These men are not prisoners of conscience, but prisoners of domestic US politics. The hunger strikes at Guantánamo should remind the world of the need to keep pressing the USA to end its abject failure to address the detentions as a human rights issue, and that internal laws and politics are an illegitimate excuse for the USA’s failure to meet its international human rights obligations (see further below).

The administration and Congress have it within their power to remedy the situation, not by breaking the hunger strike through force feeding, punitive action, or isolating the detainees, but by introducing real justice and respect for human rights as the route to resolving the detentions and finally doing what they should have done years ago – releasing detainees whom the USA does not intend to prosecute and bringing to fair trial in independent civilian courts without recourse to the death penalty those it does.

At the press conference on 30 April President Obama said that he would “examine every option” under executive power to deal with the detentions, but suggested that “ultimately, we’re also going to need some help from Congress”. He said that he was “going to go back at this” and that he would ask some members of Congress to “step up and help me on it.”

Five days earlier, the Chairperson of the Senate Intelligence Committee, Dianne Feinstein, had called on the Obama administration to renew its efforts to transfer out of Guantánamo those detainees who had been approved for transfer. She said:

“The fact that so many detainees have now been held at Guantánamo for over a decade and their belief that there is still no end in sight for them is a reason there is a growing problem of more and more detainees on a hunger strike. This week, monitors from the International Committee of the Red Cross who travelled to Guantánamo recently told my staff that the level of desperation among the detainees is ‘unprecedented’ in their view.

I would like to ask that the Administration review the status of the 86 detainees who were cleared for transfer in the past and let me know if there are suitable places to continue to hold or resettle these detainees either in their home countries or third countries.”¹⁹

She also urged the administration to revisit the moratorium on the repatriation of Yemeni detainees – the majority nationality at Guantánamo – imposed by the administration in early 2010, a moratorium she had herself called for. On 1 May, the White House said that the moratorium remained in place – “that is our policy”.²⁰

Amnesty International calls on both the administration and Congress to ensure that the solutions reached for each and every detainee complies with international human rights law and standards. The executive should move to release those it has already approved for transfer out of the base, with all necessary human rights protections, and Congress should act to lift restrictions it has sought to impose on the administration. But while it may be possible for the administration to resolve some of the cases more immediately than others, resolution of this situation must encompass all the detainees, not just some category of them.

HISTORY OF A HUNGER STRIKER

One of the men reported to be on hunger strike is Yemeni national Musa'ab Al Madhwani. Like other detainees held at Guantánamo, his current situation cannot be considered separately from what he has already been through over the past decade in US custody.

In 2010, a US federal judge found "credible" Musa'ab al Madhwani's detailed allegations of torture and other ill-treatment that he says he endured after his arrest in Pakistan in September 2002.²¹ Musa'ab al Madhwani has alleged that he was whipped, beaten and threatened in Pakistani custody and his allegations indicate that US personnel were aware of this at the time. After five days in Pakistani custody he was handed over to US custody and flown to Afghanistan. He says he was taken to the "Dark Prison", a secret CIA-operated facility in or near Kabul, where he was held for about a month. There "he suffered the worst period of torture and interrogation, treatment so terrible that it made him miss his time with the Pakistani forces". He was allegedly held for 30-40 days "in darkness so complete that he could not see his hand in front of his face"; "not allowed to sleep for more than a few minutes at a time"; "was fed only about every 2½ days, in very small portions"; and "twenty-four hours a day, obnoxious music blared at a deafening volume". For most of his detention at the Dark Prison, he was allegedly

"suspended from a wall by one hand, feet shackled, in a stress position that allowed him neither to sit nor stand fully. Al-Madhwani was shackled in this way night and day, without relief except during interrogation sessions. During these sessions, Al-Madhwani's hands were shackled to the floor... On one occasion, two men took Al-Madhwani, hooded and shackled, stripped him naked, and attached electrical wires to his genitals. As the men discussed whether to turn on the electricity, Al-Madhwani began screaming with fear. The men laughed and then repeatedly drenched Al-Madhwani in water so cold that Al-Madhwani could not move his fingers or his mouth...

Day after day, Al-Madhwani hung from the wall by his hand, in complete and total darkness, loud music blaring. Disoriented, he heard noises of mice and doors and thought they were ghosts. Thinking that he must be hallucinating, Al-Madhwani tried to calm himself by imagining mountains. Then he would hear a small noise, and as he turned toward it, five or more men would jump on him, remove his chains from the wall, and beat, kick, and throw him to the ground. Pointing a gun to Al-Madhwani's head, guards threatened him with the worst acts, including electrocution. For Al-Madhwani, these surprise attacks were the worst part of the Dark Prison, making him feel like his heart was tearing apart or his heart and brain were being extracted from his body."²²

Musa'ab al Madhwani was then transferred to the US air base at Bagram where he was held for another five days. There he has alleged that: "I was forced to stand the entire time until my feet swelled and I was exhausted. I was dragged by the neck to interrogation, where dogs would bark in my face." He was transferred to Guantánamo in late October 2002. There he was held in isolation and subjected to further interrogations.

In a habeas corpus hearing in US District Court more than seven years after Musa'ab Al Madhwani was taken to Guantánamo, Judge Thomas Hogan noted that there was "no evidence in the record" that Al Madhwani's allegations were inaccurate. To the contrary, the allegations were corroborated by "uncontested government medical records describing his debilitating physical and medical condition during those approximately 40 days in Pakistan and Afghanistan, confirming his claims of these coercive conditions." Judge Hogan emphasised that as described in Musa'ab Al Madhwani's "classified testimony about his conditions of confinement, which I find to be credible, the United States was involved in the

prisons where he was held, and believed to have orchestrated the interrogation techniques, the harsh ones to which he was subject”.

On 26 March 2013, lawyers for Musa'ab Al Madhwani filed an emergency motion for “humanitarian and life-saving relief” in US District Court. The motion relayed that Musa'ab al Madhwani had the previous day told his lawyers in a telephone call, through an interpreter, that he had been on hunger strike for some time to protest what he said were deteriorating conditions of detention, including lack of potable water and cold temperatures in his cell. Along with the motion, the lawyers filed a statement from the detainee himself:

“I have been in prison in Guantánamo Bay, Cuba, for ten and a half years... Before I was sent to the prison at Guantánamo Bay, I was detained at the Dark Prison at Bagram Air Base where I was tortured and deprived of food and water.

Both of my parents have died during the time that I have been in prison in Guantánamo Bay. They were waiting for me to come home and now they are gone. I am afraid that my entire family will be dead before I am released from this prison.

I, and other men here at the prison, feel utterly hopeless. We are being detained indefinitely, without any criminal charges against us... I have no reason to believe that I will ever leave this prison alive. It feels like death would be a better fate than living in these conditions. I am dying of grief and pain on a daily basis because of this indefinite detention...”

A doctor retained by Musa'ab Al Madhwani's lawyers as an expert witness signed a statement on 13 April 2013 in support of the motion. He had interviewed the detainee for about 90 minutes by telephone from Maryland to Guantánamo, and had also been able to review a number of “medical records and other documentation” released by administration lawyers. In his signed statement, he said:

“My clinical judgment...is that Mr al Madhwani has suffered serious deterioration in his medical condition such that his life may be in imminent danger... His condition had deteriorated to the point that he collapsed on April 10, 2013, requiring emergency medical treatment including intravenous fluids....

He has suffered depression for at least a year following the unexpected death of his mother. He reported that his father had also died during his indefinite detention, and a fear that his family members would die off one by one while he remained in prison... His faith precludes conscious or active thinking about suicide, but he has wished and hoped to die over the past several months.”²³

The doctor also expressed concern that a deterioration of conditions of confinement “could trigger in Mr Al Madhwani the symptoms of post-traumatic stress disorder linked to the effects of his torture”. The re-traumatization or the re-experiencing of trauma by torture victims is well documented. The UN's Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol) describes how “distress at exposure to cues that symbolize or resemble the trauma is frequently manifested by a lack of trust and fear of persons in authority, including physicians and psychologists.”²⁴ This is mainly in the context of consensual interviews or examinations by physicians, and would apply to a much greater degree to the non-consensual force-feeding of a detainee on a hunger strike protest. Any of those detained at Guantánamo and previously subjected to torture may in any event already be experiencing re-traumatization as a result of the detention regime they are subjected to. The authorities should not need reminding that, rather than potentially re-traumatizing alleged torture victims, they are under an obligation to provide rehabilitation to any victims who have suffered torture or other ill-treatment by US officials.²⁵

During oral argument in District Court on 15 April 2013 on Musa'ab al Madhwani's

emergency motion, after which Judge Thomas Hogan dismissed the motion for lack of jurisdiction (see further below), the administration lawyers had said that the detainee had been moved from Guantánamo's Camp 6 to Camp 5 "at his own request". Three days later, the administration told Judge Hogan that it had been mistaken and that the transfer had been for medical reasons – "following his medical examination and treatment on April 10, 2013, he was transferred to Camp 5 at the request of medical authorities." The administration apologized to the court for the error.

No apologies have been forthcoming from the US authorities in relation to the human rights violations committed against this and other detainees.

THE BACKDROP TO THE HUNGER STRIKE

Hunger strikes undertaken by detainees or prisoners protesting some aspect of their detention or treatment are a complex issue implicating a range of rights, including the right to freedom of expression, the right to health, and the right to be free from torture and other cruel, inhuman or degrading treatment or punishment. Intersecting with the state's obligations on these rights are questions of medical ethics and the clinical judgment of health professionals involved in the prison setting.

This is not the first time detainees have gone on hunger strike at Guantánamo, and the previous history of such protests there raised serious concerns, as the report of five UN experts found in 2006.²⁶

This latest hunger strike reportedly began on 6 February 2013. According to a declaration signed by a lawyer representing Afghan national Obaidullah:

"That week [in early February], camp authorities asked all of the detainees in Camp 6 to step outside of the cells while a 'shakedown' of the entire camp was conducted by US soldiers. While the prisoners were all outside of the cell blocks, soldiers went into the cells, and searched the belongings of the prisoners in Mr Obaidullah's cell block. Such an invasive search had not been conducted since the early years at Guantánamo under President Bush. The intrusive searches were unexpected, sudden, and disrespectful. To the knowledge of Mr Obaidullah, there was no incident which provoked the searches.

During the invasive searches, the soldiers confiscated detainees' personal items, including blankets, sheets, towels, mats, razors, toothbrushes, books, family photos, religious CDs, and letters, including legal mail.

Mr Obaidullah personally had the following items taken from him: blanket, sheet, towel, family photos, a medically necessary device he used for his knee, some of his legal documents, mail from his attorneys, and documents from his family. This was especially distressing for him because he has done nothing to provoke the taking of belongings and comfort items that gave him a small sense of humanity".

This is outlined in a declaration signed by Obaidullah on 27 March 2013, which has just become available after classification review. In it Obaidullah also states:

"I had not participated in hunger strikes, or organized protests in the past. I have been patiently challenging my imprisonment in US civil courts. But the latest actions in the camps have dehumanized me, so I have moved to take action. Eleven years of my life have been taken from me, and now by the latest actions of the authorities, they have also taken my dignity and disrespected my religion...

The strike has led authorities to treat all of us more harshly even as our health is deteriorating."²⁷

Whatever the reasons for the current hunger strike – the authorities have claimed that

detainee allegations of abusive cell searches, mishandling of detainees' Qur'ans, and other allegations of deteriorating conditions are unfounded – there is no getting away from the backdrop to this protest. The fact is that the vast majority of the 166 detainees held at the base, including dozens of individuals who have long been “approved for transfer” by the US authorities, are held in indefinite detention without charge or criminal trial. Even the military authorities have acknowledged the impact of this situation on the detainees. At a Pentagon briefing on 20 March, General John F. Kelly, Commander of US Southern Command, said that the detainees had had “great hope” that the Guantánamo detention facility would have been closed by now. It is now, after all, more than three years past President Obama's deadline for closing the facility and more than 11 years since the first detainees arrived at the base; some of the detainees have been held there since.

At the 20 March briefing and at a House Armed Services Committee hearing on the same day, General Kelly suggested that a contributory factor to the current protests were recent developments perceived by detainees as indicating that the administration has given up on fulfilling President Obama's 22 January 2009 executive order on closing Guantánamo. General Kelly said that these developments included the announcement in early February 2013 that the Office for the Special Envoy for the Closure of Guantánamo Bay would itself be closed down, and the fact that President Obama had made no mention of the Guantánamo detentions either in his inaugural address of 21 January or in his 12 February State of the Union speech. General Kelly further told the House Armed Services Committee on 20 March that the detainees had been “devastated” by what they perceived as the President having “backed off” closure of the Guantánamo detention facility. It is into this silence that President Obama spoke at the White House press conference on 30 April.

On 2 May, the spokesperson for the US Department of State said that “here in this building we remain actively focused on pursuing transfer options for detainees approved for transfer by consensus decisions of the departments and agencies involved.”²⁸ He also stated that the White House was “actively” looking at appointing “a new senior-level person here at this building” in relation to this issue.

Amnesty International awaits a response to the letter it sent to Secretary of Defense Charles Hagel on 22 March, calling for real urgency to be injected into the administration's claims that it remains committed to resolving the detentions. The organization also called on the authorities to implement a serious and thorough review of the current situation at the facility, including a review of cell search policies and practices.

Amnesty International would oppose any action taken against hunger strikers aimed at punishing them for their protest or any attempts to coerce them into ending their strike. The organization notes the order in the early morning of 13 April issued by the commander of Joint Task Force Guantánamo (JTF-GTMO) to shift detainees from communal to single-cell living at Camp VI “to ensure the health and security of those detainees”, an order that was

GUANTÁNAMO: 11 YEARS, 9 DEATHS

January 2002 – First detainees transferred to US Naval Base at Guantánamo Bay in Cuba

June 2006 – Three detainees, two Saudi Arabian nationals, Mane'i bin Shaman al-'Otaybi and Yasser Talal al-Zahrani, and one Yemeni, Salah Ahmed al-Salami, die at Guantánamo, reportedly by suicide

May 2007 – Saudi Arabian detainee Abdul Rahman Ma'ath Thafir al-Amri dies, reportedly by suicide

December 2007 – Afghan detainee Abdul Razzak Hekmati dies, reportedly of cancer

June 2009 – Yemeni detainee Mohammed Ahmed Abdullah Saleh al-Hanashi dies, reportedly by suicide

February 2011 – Afghan detainee Awal Gul dies, reportedly of natural causes

May 2011 – Afghan detainee Inayatollah dies, reportedly by suicide

September 2012 – Yemeni detainee Adnan Farhan Abdul Latif dies, reportedly by suicide

April 2013 – 100 detainees on hunger-strike

carried out on that day. JTF-GTMO issued a news release reporting that:

“This action was taken in response to efforts by detainees to limit the guard force's ability to observe the detainees by covering surveillance cameras, windows, and glass partitions. Round-the-clock monitoring is necessary to ensure security, order, and safety.

In order to re-establish proper observation, the guards entered the Camp VI communal living spaces to transition detainees into single cells, remove obstructions to cameras, windows and partitions, and medical personnel conducted individual assessments of each detainee. The ongoing hunger strike necessitated these medical assessments. Some detainees resisted with improvised weapons, and in response, four less-than-lethal rounds were fired. There were no serious injuries to guards or detainees.”²⁹

The organization emphasises that such moves must not be driven by or carried out with any punitive intent. In particular, detainees should not be punished for exercising their right to peaceful protest. Any use of force must be strictly necessary for the maintenance of security and order within the institution, or when personal safety is threatened.³⁰ Furthermore, conditions of detention should conform to the UN Standard Minimum Rules for the Treatment of Prisoners, the UN Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment and other international human rights standards.³¹ If solitary confinement is used, it should not be as a punitive measure and only for the shortest time possible, it should be applied only in accordance with stringent due process requirements and regular, daily, access to adequate medical attention by a doctor must be granted.³² Solitary confinement may amount to a violation of the prohibition on torture and other ill-treatment.³³

According to lawyers for Obaidullah, in a recent communication with Amnesty International, “The latest report from our client is that after the April 13 raid in which prison guards put everyone hunger striking into solitary cells, he has had no toothbrush or toothpaste for two weeks, no nail clipper, no soap. His showers and recreation are often offered in the middle of the night, forcing him to choose between that and sleep. The guards are making lots of noise to prevent the detainees from sleeping soundly.”

If these allegations are true, it is difficult to interpret the behaviour described above as anything other than punitive and, given that the target of this search and seizure of personal possessions was a man on hunger strike, it appears to be punishment for his protest. Deprivation of personal and dental hygiene materials, of personal effects and measures to deprive prisoners of sleep would breach international prison standards³⁴ and could constitute ill-treatment. There appear to be no reasonable grounds known to Amnesty International that might justify the actions taken against this detainee described above.

MEDICAL ETHICS

In an article in the latest issue of the World Medical Journal, three experts on the issue of hunger strikes in prison write the following:

“It has to be stated here clearly that a competent prisoner, that is to say, capable of discernment, and not submitted to any pressure or coercion, direct or indirect, has the right to autonomy. This includes accepting or refusing any treatment, once informed of the pros and cons. This also includes fasting as a way of protest as this can be considered as a last resort the prisoner has to make a message known or to make a demand. As has been mentioned [and see below] the maximum authority on medical ethics has decided that patient autonomy trumps beneficence in such a case, and that a physician should [not] force a hunger striker to eat...

As prolonged fasting can arguably become a medical problem, the ‘custodial’ authorities often medicalize the issue by order[ing] force-feeding. Their argument is that the reason

physicians should intervene is to 'save lives'. They thus 'throw the hot potato', so to say, into the medical camp, and order... the physician to solve their problem and thus quell the protest. The counter argument to this is relatively simple, as the weight of the ethics is in favour of the physicians. The physician's role is not to 'resolve the problem' with an unethical invasive procedure against the patient's informed refusal. The power to 'resolve the problem' lies with the authorities".³⁵

As this hunger strike at Guantánamo has continued, and grown since it first began in February 2013 there have been reports of its impact on the health of a number of the detainees involved, and some detainees have been reported as suffering rapid weight loss. For example, Yemeni detainee Sanad al-Kazimi told his lawyer that he was on hunger-strike and that by late March that he had lost 42 pounds (19 kilograms).³⁶

Obaidullah, an Afghan detainee who has been in US military custody for nearly 11 years, told his lawyer in late March 2013:

"I have lost a lot of weight. I am down from 167 pounds to 125 pounds. I am weak, and have pain in my waist dizziness I can not sleep well. I fell [sic] hopeless. I can't exercise my muscle become weaker in last 50 days I have thrown up 5 times"

His lawyer has said that the above description given to her by Obaidullah "describes exactly the condition that I personally saw him in" when she met with him on 26, 27 and 28 March 2013, by which time Obaidullah said he had been on hunger strike for about 48 days.

According to another detainee's account given to his lawyer, the director of the UK-based legal action charity Reprieve, in a telephone call from Guantánamo on 11 April 2013, "Code Yellows (when a prisoner collapses or passes out) in Camp V are now running at 10 to 15 times a day". After the call, the lawyer expressed concern about the health and well-being of the detainee, Saudi Arabian national and UK resident Shaker Aamer,

"Shaker coughed really badly twice during our phone call – he reports that he now has a chest infection that is making his other medical complaints worse... At the end of our conversation, he appeared to be crying, or very close to crying, which is very unusual for Shaker, for he is a proud man who does not like to show weakness. However, it was clear that he genuinely fears dying in Guantánamo now, and he made me promise to deliver a message to his wife if the worst comes to the worst, and he does not see her again."³⁷



"I made this lantern with my brothers. It's made with bits of paper and cardboard. We used a water bottle sanded on the floor as glass. We painted it with bits of paint and fruit juice. It's held together by pressure only. We made this lantern for those in the world who remember and pray for us during this time of suffering. Let its light fill you. Use it to bring peace to your heart. Thank you."

Letter from Guantánamo detainee Fayiz al-Kandari to lawyer, 21 March 2013. As of early May 2013, this Kuwaiti national was reported to be on hunger strike and being "tube-fed"

Shaker Aamer reported to his lawyer that he was not yet being force fed (though there have been reports that is now is). As of 2 May 2013, the military authorities were reporting that 23 of the detainees were being tube fed. The precise details of these tube feedings – who the detainees are, the degree of coercion, at which point in a detainee's hunger strike force feeding was administered, and so on – were unknown to Amnesty International at the time of writing. Lawyers are being informed by the Department of Justice if their client is being force fed, and some have made this public. Fayiz al-Kandari (see picture), for example, had been “tube-fed” for a week by 29 April, according to his lawyer. This Kuwaiti national has been held at Guantánamo without trial since May 2002, after being transferred there from Afghanistan.

A recent account from a Yemeni detainee given through an interpreter to his lawyer at Reprive, together with other reports, raise serious concerns regarding the force-feeding, and non-compliance with medical ethics by doctors carrying out the force-feeding. The account of Samir Naji al Hasan Moqbel, who says he has been on hunger strike since 10 February 2013, includes the following:

“I will never forget the first time they passed the feeding tube up my nose. I can't describe how painful it is to be force-fed this way. As it was thrust in, it made me feel like throwing up. I wanted to vomit, but I couldn't. There was agony in my chest, throat and stomach. I had never experienced such pain before. I would not wish this cruel punishment upon anyone.

I am still being force-fed. Two times a day they tie me to a chair in my cell. My arms, legs and head are strapped down. I never know when they will come. Sometimes they come during the night, as late as 11pm, when I'm sleeping...

During one force-feeding the nurse pushed the tube about 18 inches into my stomach, hurting me more than usual, because she was doing things so hastily...It was so painful that I begged them to stop feeding me. The nurse refused to stop feeding me. As they were finishing, some of the 'food' spilled on my clothes. I asked them to change my clothes, but the guard refused to allow me to hold on to this last shred of my dignity.”³⁸

The AMA has already raised the issue of medical ethics in relation to the feeding of detainees at Guantánamo. In his letter to US Secretary of Defense Charles Hagel, cited above, the AMA President emphasised that:

“The AMA has long endorsed the World Medical Declaration of Tokyo, which is unequivocal on this point: ‘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’.”³⁹

In its Declaration of Malta, adopted some years after the Declaration of Tokyo, the World Medical Association has underlined that the force feeding of a mentally competent hunger striker by medical staff contravenes medical ethics.⁴⁰ Decision-making in this area is very complex, which heightens the need for the detainees to be guaranteed continued and regular access to independent medical assessment and care. The need for independent medical care is also heightened by the fact that this is a prison to which lawyers only have sporadic access given the facility's location in a remote military base, and by the fact that a number of the detainees are alleged to have previously suffered torture or other cruel, inhuman or degrading treatment at the hands of US military or other government personnel, particularly in the earlier stages of their detention (see case of Musa'ab al Madhwani above).

The authorities must not instruct or require medical staff caring for detainees on hunger strike to act in any way that contravenes their professional judgment and internationally

agreed medical ethics. Such ethics include the principle of informed consent to any treatment, which in turn includes the intake of food and nutrients.

Force feeding of a mentally competent hunger striker is not only contrary to medical ethics but in addition breaches their right to freedom of expression. Accordingly, force feeding must never be used as a tool of repression or means to break the strike and impede a detainee's right to peaceful protest.

Additionally, force feeding would amount to cruel, inhuman or degrading treatment, or even in some circumstances torture, in violation of international law if it is intentionally and knowingly conducted in a manner that causes unnecessary pain or suffering.⁴¹

EXCUSES, EXCUSES

On 15 April 2013, the White House spokesperson was asked about the detentions, in view of the ongoing hunger strikes and the clashes between detainees and guards on 13 April as the detainees at Camp VI were moved from communal to single-cell living. He said that the White House was monitoring the situation closely. He reiterated that

"it is our view, the President's view that that facility ought to be closed... But the obstacle to closing Guantánamo Bay – obstacles have been raised by Congress, and that remains a reality. But our position is clear: It's in our national security interest to pursue that, and the President remains committed to it."

Asked if there was anything the administration was doing with Congress to try to make this happen", the spokesperson responded:

"we are always discussing with Congress our belief that we should take the action that the President has long supported, that military commanders and the President's predecessor supported, because it's in our national security interest. Congress has, as you know, raised obstacles to this, legislatively, and that has made it obviously more difficult to pursue this. But that does not change the fact that it is the President's objective, and we are constantly looking for ways to move forward on that objective... We do have constraints placed on us by Congress, but that doesn't lessen in the President's view the need to pursue this agenda."⁴²

As the ICRC President said on 11 April 2013 after meeting President Obama at the White House, "The issue of Guantánamo is politically blocked in this country".⁴³ Moreover, it should be pointed out that while the administration is quick to blame Congress for blocking resolution of the Guantánamo detentions, it is been just as quick to exploit legislation passed by Congress in 2006 to block judicial review of claims brought by Guantánamo detainees, including most recently the motion for emergency relief brought on behalf of Musa'ab al Madhwani.

In the Obama administration's response to Musa'ab al Madhwani's motion for emergency relief, the Department of Justice urged the District Court on 11 April 2013 to summarily dismiss the motion for lack of jurisdiction:

"By statute, Congress has exercised its constitutional prerogative to withdraw from the federal courts jurisdiction ... Here, through Section 7 of the Military Commissions Act of 2006 ("MCA"), Congress has exercised its jurisdictional prerogative, not to grant, but to withdraw from federal courts jurisdiction to adjudicate conditions-of-confinement claims by detainees at Guantánamo Bay:

'no court, justice, or judge shall have jurisdiction to hear or consider any other action against the United States or its agents relating to any aspect of the detention, transfer, treatment, trial, or conditions of confinement of an alien who is or was

detained by the United States and has been determined by the United States to have been properly detained as an enemy combatant or is awaiting such determination.'

As reflected in a number of floor statements, by withdrawing court jurisdiction over detainees' conditions-of-confinement claims, Congress intended to prevent the detainees from consuming resources and disrupting operations at the Guantánamo Bay Naval Base through litigation not related to the legality of their detention."⁴⁴

The version of the MCA signed into law by President Obama on 28 October 2009 revised the military commission system but left untouched the above wording contained in Section 7.2 of the MCA passed in 2006.

On 15 April 2013, the day the White House spokesperson reiterated that Congress was to blame for blocking resolution of the Guantánamo detentions, the administration was arguing in federal District Court in Washington, DC, that Musa'ab Al Madhwani's emergency motion should be dismissed. At the end of the hearing, Judge Hogan did so, dismissing the motion on grounds of lack of jurisdiction under Section 7.2 of the MCA.

Also on 15 April 2013, lawyers for a former Guantánamo detainee filed a brief in federal appellate court, responding to the Obama administration's bid to have that court continue to block judicial remedy for a former Guantánamo detainee, who is seeking damages for the physical and psychological injuries he allegedly suffered as a result of abuse in US custody in Afghanistan and the naval base in Cuba.⁴⁵ "All of plaintiff's claims are jurisdictionally barred" by Section 7.2 of the MCA, the administration has asserted.⁴⁶

The Obama administration had been successful in the lower court. In December 2011, a judge on the DC District Court granted the administration's motion to dismiss the lawsuit brought by Abdul Rahim Abdul Razak al Janko, a Syrian national, who has alleged among other things that when in US custody in Afghanistan he was subjected to "abusive interrogation techniques", including "striking his forehead; threatening to remove his fingernails; sleep deprivation; exposure to very cold temperatures; humiliation; and rough treatment" and that in Guantánamo he was tied, shackled, force-fed, had his Koran desecrated, was subjected to "extreme sleep deprivation" in solitary confinement, and to "severe beatings and threats against himself and his family". He alleged that as a result of the abuse, he attempted suicide 17 times. The District Court granted the government's motion to dismiss, citing section 7.2 of the MCA, which he said stripped jurisdiction of the court to consider such claims.⁴⁷

In February 2012, the US Court of Appeals for the DC Circuit ruled that the federal courts had no jurisdiction to consider a lawsuit for damages brought by relatives of two detainees who died in Guantánamo in June 2006. The Court found that jurisdiction had been removed under Section 7.2 of the MCA.⁴⁸

The Obama administration's willingness to rely upon the MCA – legislation signed into law by President Bush in 2006 that further facilitated impunity and absence of remedy for past violations, and resuscitated unfair trials by military commissions – should be set against the administration's repeated use of the excuse "Congress is blocking closure of Guantánamo" as a reason for the impasse on the detentions.

Under international law, the fact that one branch of government has passed legislation purporting to block another branch from ending an unlawful indefinite detention regime is no justification for the failure of the state as a whole from meeting its treaty obligations.⁴⁹

An ironic feature of this blame game is the degree to which the US administration previously claimed an executive authority to set up Guantánamo, to initiate military commission trials, to authorize secret detention, enforced disappearance, torture and other cruel, inhuman or degrading treatment. Successive US administrations have also claimed the authority to use

military force without congressional authorization. For example, a Department of Justice memorandum from late September 2001, which has never been withdrawn, takes an expansive view of presidential power in the counter-terrorism context:

"We think it beyond question that the President has the plenary constitutional power to take such military actions as he deems necessary and appropriate to respond to the terrorist attacks upon the United States on September 11, 2001. Force can be used both to retaliate for those attacks, and to prevent and deter future assaults on the Nation. Military actions need not be limited to those individuals, groups, or states that participated in the attacks on the World Trade Center and the Pentagon: the Constitution vests the President with the power to strike terrorist groups or organizations that cannot be demonstrably linked to the September 11 incidents, but that, nonetheless, pose a similar threat to the security of the United States and the lives of its people, whether at home or overseas. In both the War Powers Resolution and the Joint Resolution, Congress has recognized the President's authority to use force in circumstances such as those created by the September 11 incidents. Neither statute, however, can place any limits on the President's determinations as to any terrorist threat, the amount of military force to be used in response, or the method, timing, and nature of the response. These decisions, under our Constitution, are for the President alone to make."⁵⁰

Today, the US administration says its hands are tied by Congress in finding a solution to the cases of 166 men whose human rights the USA denies year after year.

Blaming Congress for passing legislation to block resolution of the detentions is simply not good enough – and moreover the administration should argue in court that the MCA *does not* block remedy for former detainees or judicial review of detention conditions of current ones.

The USA's failure to meet its obligation to resolve these detentions in a manner that fully meets its obligations under the International Covenant on Civil and Political Rights and other international human rights treaties is an urgent matter that needs resolving now. All branches of the US government should work for that goal.

PROMISES, PROMISES

At a media briefing on 26 April 2013, with the US military revealing that it considered 100 of the detainees at Guantánamo to be on hunger-strike, the White House Press Secretary was again asked about the situation at the detention camp. He responded in familiar fashion:

"we continue to monitor the hunger strikers at Guantanamo closely. And this is something obviously that the Defense Department has the most specific information on. Here at the White House, the President remains committed to closing the detention facility at Guantanamo Bay. Some progress has been made under this administration and under the previous administration. However, Congress has enacted and renewed legislation in order to foreclose our ability to close the detention facility... But a fundamental obstacle here to closing this detention facility – which is so clearly, the President believes and his predecessor and numerous others, including military leaders, believe is in our national security interest to do – the obstacle remains at Congress. But we're going to continue to press forward in trying to deal with this problem."⁵¹

Not only is the excuse that the administration continues to offer for the USA's failure to resolve the Guantánamo detentions inadequate, so too was the promise that President Obama in January 2009 to close the detention facility. For if that promise is met within the terms of President Obama's executive order of 22 January 2009, the human rights problem will not be over.

As Amnesty International pointed out a few days after President Obama signed the Executive Order, and has repeated since in trying to persuade the USA to change its approach, this

commitment to “the prompt and appropriate disposition of the individuals detained at Guantánamo” and the “closure of the detention facilities at Guantánamo” was framed not as a human rights issue but primarily one “further[ing] the national security and foreign policy interests of the United States.”⁵²

Lacking a human rights framework – which demands fair trial or release of the detainees, all of them – the administration set up a Task Force under the order to review the detentions to decide what to do with each detainee. Over the months that the Task Force did its work, members of Congress took to turning the detentions not into a human rights issue, but a domestic political one. As President Obama said in May 2009 in reference to Guantánamo, “over the last several weeks, we've seen a return of the politicization of these issues that have characterized the last several years...And we will be ill-served by some of the fear-mongering that emerges whenever we discuss this issue.”⁵³

But at the same time it was clear that while President Obama remained committed to closing the Guantánamo facility, he was an advocate of indefinite detention under a global “war” framework. He emphasised not only that “We are indeed at war with al Qaeda and its affiliates”, but also that there was a category of detainee who could be detained indefinitely if the administration determined that they could neither be brought to trial nor released.⁵⁴ He also supported keeping military commissions as an option to try some detainees, although his preference was trials by federal court where “feasible”.

Eight months later, the Task Force set up under President Obama’s executive order published its final report. It had concluded, among other things, that 48 detainees then held at Guantánamo, whom it did not identify, were “too dangerous to transfer but not feasible for prosecution”. They would, it said, “remain in detention pursuant to the government’s authority under the Authorization for use of Military Force [AUMF], passed by Congress in response to the attacks of September 11, 2001.” Amnesty International has long called for the AUMF – the broadly worded and long abused domestic law underpinning for the USA’s global “war” framework – to be revoked.

Without a fundamental change in approach by the USA, closure of the Guantánamo detention facility will simply mean relocation of at least some of its current detainees to indefinite detention elsewhere – as well as unfair trials for military commissions for some of them.

At the White House press conference on 30 April 2013, President Obama broke his recent relative silence on the Guantánamo issue. Asked about the hunger strikes, he restated his commitment to closing the detention facility and said that he would not only get his administration to review its options on the Guantánamo detentions but also that he would “reengage with Congress to try to make the case that this is not something that’s in the best interest of the American people. And it’s not sustainable”. He is right and he should now expressly underline that international human rights law and principles oblige the USA to close Guantánamo.

The day after President Obama’s intervention, however, the White House was once again emphasising congressional obstacles to closing the detention facility and framing that goal in terms of domestic interests. At a media briefing, the President’s Press Secretary said:

“Unfortunately, Congress has thrown up obstacles to the achievement of that goal, as you know. And that has made it, to date, impossible to close that facility. We have made progress in moving detainees to third countries. And we are continuing to evaluate detainees and look at ways to continue that process going forward. So there are things that the President can do administratively, but this will also require congressional agreement. And we will work with Congress to try to persuade them of the overriding national security interests as well as economic interests in closing Guantánamo Bay.”⁵⁵

It is long past time for the US government – all three branches of it – to address resolution of

these detentions as a human rights issue. Indefinite detention must end. Those detainees whom the government has no intention of charging with recognizably criminal offences without further delay and with a view to bringing them to fair trial, should be immediately released.

FIVE STEPS TOWARDS ENDING THE GUANTÁNAMO INJUSTICE

Following President Obama's renewal of his commitment to shut down the US detention centre at Guantánamo Bay, Amnesty International urges his administration and Congress to work towards this goal as a matter of urgency and a matter of human rights.

Among the steps the US government must take towards ending the injustice of Guantánamo are the following five:

- **Review conditions at Guantánamo:** Pending resolution of the detentions, and without delaying that goal in any way, immediately conduct a detailed review of conditions of detention and of policies implemented in response to the hunger strike, including: evaluating cell-search, force-feeding and comfort item policies, and allowing full access to independent medical professionals, UN experts, and human rights organizations, and ensure all policies comply with international human rights law and medical ethics.
- **Dedicate resources, ensure leadership:** A high-level White House position should be appointed to drive forward this issue, to coordinate review of all executive options, and to liaise with and ensure pressure on Congress. There should be no more delays, and no more excuses for the USA's failure to meet its international human rights obligations.
- **Expedite safe detainee transfers:** Dozens of the Guantánamo detainees have long been "approved for transfer" by the US authorities. Many are Yemeni nationals, who remain in limbo because of the moratorium on repatriation of Yemeni detainees imposed by the administration over three years ago. The administration should accept Senator Dianne Feinstein's offer to help resolve the cases of the 86 detainees she has said were approved for transfer in the past and her call on the administration to review the repatriation moratorium.
- **Apply human rights framework:** Even if the US administration meets its commitment to close the Guantánamo detention facility, it apparently intends to hold at least 46 of the detainees indefinitely without charge or trial somewhere else on the basis of its flawed "global war" framework. This is unacceptable, as is the continuing resort to military commission trials that do not meet international standards. Congress and the administration should commit to addressing the detentions under a framework that complies with international human rights law and standards, something that has been missing from the outset.
- **Charge and try in civilian courts:** Detainees who are to be prosecuted should be charged and tried in ordinary federal civilian court, without recourse to the death penalty. Any detainees who are not to be charged and tried should be released.

Any resolution of the injustice of Guantánamo will be incomplete without full accountability for the human rights violations that have been committed against detainees, including the crimes under international law of torture and enforced disappearance. Genuine access to meaningful remedy must be guaranteed to those who have been subjected to violations, and the use of secrecy and immunity to block accountability and remedy must be ended.

ENDNOTES

- ¹ Remarks on the Release of the Human Rights Report, John Kerry, Secretary of State, Press Briefing Room, Washington, DC, 19 April 2013, <http://www.state.gov/secretary/remarks/2013/04/207791.htm>
- ² Remarks by the President, The Vice President, The First Lady, Dr. Jill Biden, and Petty Officer David Padilla at Joining Forces Employment Event, White House, 30 April 2013, <http://www.whitehouse.gov/the-press-office/2013/04/30/remarks-president-vice-president-first-lady-dr-jill-biden-and-petty-offi>
- ³ *Obaydullah v. Obama*. Declaration of Obaidullah, 27 March 2013. US District for the District of Columbia, 5 April 2013.
- ⁴ See USA: Another detainee dies at Guantánamo, 11 September 2012, <http://www.amnesty.org/en/library/info/AMR51/077/2012/en>
- ⁵ The authorities have reported that Adnan Latif died from an overdose of psychiatric medication.
- ⁶ Guantanamo Bay: Overview of the ICRC's work for internees, 30 January 2004, Operational Update, <http://www.icrc.org/eng/resources/documents/misc/5qrc5v.htm>
- ⁷ Human Rights and Democracy 2012. UK Foreign and Commonwealth Office, April 2013, available at <http://www.hrdreport.fco.gov.uk/> (page 78).
- ⁸ Pillay says Guantánamo detention regime is in 'clear breach of international law' and should be closed, Office of UN High Commissioner for Human Rights, News release, 5 April 2013, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13212&LangID=E>
- ⁹ For past and latest figures, see <http://www.miamiherald.com/2013/03/29/3313577/hunger-strike.html>. Lawyers for the detainees have reported higher numbers of detainees on hunger strike than official recognized by the prison authorities.
- ¹⁰ See Some force-fed captives are cleared for release. Miami Herald, 1 May 2013, <http://www.miamiherald.com/2013/04/26/3366805/some-force-fed-captives-are-cleared.html>
- ¹¹ See More Navy medics arrive at Guantánamo to help out on forced feedings. Miami Herald, 29 April 2013.
- ¹² Letter available at <http://media.miamiherald.com/smedia/2013/04/30/07/58/FRs25.So.56.pdf>
- ¹³ The letter is available at <http://www.amnesty.org/en/library/info/AMR51/014/2013/en>
- ¹⁴ 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 crisis. 1 May 2013, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13278&LangID=E>
- ¹⁵ See, for example, Chapter 6 of The Report of The Constitution Project's Task Force on Detainee Treatment, available at <http://detainee-taskforce.org/>. The Department of Justice memorandums that gave legal approval to the use of "enhanced interrogation techniques" against detainees in secret CIA custody repeatedly stated that approval was based on the CIA's assertion that health professionals would be available to monitor those being subjected to these techniques, which violated the international prohibition of torture and other ill-treatment
- ¹⁶ 2012 Human Rights Reports: Tunisia, 19 April 2003, <http://www.state.gov/j/drl/rls/hrrpt/2012/nea/204385.htm>
- ¹⁷ Cuban authorities 'responsible' for activist's death on hunger strike, 20 January 2012,

<http://www.amnesty.org/en/news/cuban-authorities-responsible-activists-death-hunger-strike-2012-01-20>

¹⁸ Daily Press Briefing, US Department of State, 20 January 2012, <http://www.state.gov/r/pa/prs/dpb/2012/01/182271.htm>

¹⁹ Feinstein urges Obama Admin to transfer cleared Guantánamo detainees. News release and letter from Senator Dianne Feinstein to National Security Director Tom Donilon, 25 April 2013, <http://www.feinstein.senate.gov/public/index.cfm/press-releases?ID=2966b770-f7bb-42da-8dcb-4e8d584cde53>

²⁰ White House press briefing by Press Secretary Jay Carney, 1 May 2013, <http://www.whitehouse.gov/the-press-office/2013/05/01/press-briefing-press-secretary-jay-carney-512013> (“Well, we have a moratorium on the transfer of Yemeni detainees to Yemen -- 50 percent, roughly, I think, of those detainees still at Guantánamo are Yemeni, so that is a significant bloc and it is one reason why there are the number of detainees at Guantánamo who remain there. But that moratorium is in place because, as you know, there was a transfer of detainees that resulted in their release, and it was the judgment that we made that it was no longer the right thing to do to transfer detainees when we had agreements from the host government to keep them incarcerated. So we're obviously evaluating this and other aspects of the situation in Guantánamo, but that is our policy. The moratorium remains in place.”)

²¹ For further information and references on the Musa'ab Al-Madhwani case, see USA: See no evil: Government turns the other way as judges make findings about torture and other abuse, February 2011, <http://www.amnesty.org/en/library/info/AMR51/005/2011/en> and USA: Still failing human rights in the name of global 'war', 20 January 2010, <http://www.amnesty.org/en/library/info/AMR51/006/2010/en>

²² *Al-Madhwani v. Obama*, Brief for petitioner-appellant Musa'ab Al-Madhwani, In the US Court of Appeals for the DC Circuit, 15 November 2010.

²³ Supplemental declaration of Stephen N. Xenakis, M.D., 13 April 2013.

²⁴ United Nations Office of the High Commissioner for Human Rights, Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 2004, UN Doc.: HR/P/PT/8/Rev.1, para. 241. The UN Committee against Torture (CAT) has also observed that “victims may be at risk of re-traumatization and have a valid fear of acts which remind them of the torture or ill-treatment they have endured.” UN CAT, General Comment No. 3: Implementation of article 14 by States parties, 13 December 2012, UN Doc. CAT/C/GC/3, (GC 3) para. 13.

²⁵ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1465 UNTS 85, Article 14 (ratified by the USA on 21 October 1994); see also CAT, GC 3, paras 11-15.

²⁶ For example, see UN Doc.: E/CN.4/2006/120, 27 February 2006. Situation of detainees at Guantánamo Bay. Report of the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, Leila Zerrougui; the Special Rapporteur on the independence of judges and lawyers, Leandro Despouy; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak; the Special Rapporteur on freedom of religion or belief, Asma Jahangir; and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Paul Hunt, paragraphs 54, and 79-82.

²⁷ *Obaydullah v. Obama*. Declaration of Obaidullah, 27 March 2013. US District for the District of Columbia, 5 April 2013.

²⁸ US Department of State daily press briefing, Patrick Ventrell, Acting Deputy Spokesperson, 2 May 2013, <http://www.state.gov/r/pa/prs/dpb/2013/05/208885.htm>

²⁹ Media Release: Commander orders single-cell detention at Guantánamo Bay for continued detainee

health and security, Joint Task Force Guantánamo Public Affairs, 13 April 2013, <http://www.southcom.mil/newsroom/Pages/MEDIA-RELEASE-Commander-Orders-Single-Cell-Detention-at-Guantanamo-Bay-for-Continued-Detainee-Health-and-Security.aspx>

³⁰ UN Basic Principles on the Use of Force and Firearms, adopted by the Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, Principle 15. Principle 16 also provides that "Law enforcement officials, in their relations with persons in custody or detention, shall not use firearms, except in self-defence or in the defence of others against the immediate threat of death or serious injury, or when strictly necessary to prevent the escape of a person in custody or detention presenting" a grave threat to life.

³¹ Standard Minimum Rules for the Treatment of Prisoners, adopted by the First UN Congress on the Prevention of Crime and the Treatment of Offenders, approved by the UN Economic and Social Council in resolutions 663C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977 (SMR); UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by UN General Assembly resolution 43/173 of 9 December 1988 (the Body of Principles).

³² SMR, paras. 22 and 24; UN Body of Principles, Principle 24.

³³ UN Human Rights Committee, General Comment No. 20: Replaces general comment 7 concerning prohibition of torture and cruel treatment or punishment (Article 7), 10 March 1992, UN Doc.: HRI/GEN/1/Rev.1 at 30 (1994); Interim Report of the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, 5 August 2011, UN Doc.: A/66/268.

³⁴ SMR, para 15.

³⁵ Physicians and hunger strikes in prison: Confrontation, manipulation, medicalization and medical ethics (part 1). Hernán Reyes, Scott A. Allen and George J. Annas. World Medical Journal, February 2013, <http://www.wma.net/en/30publications/20journal/pdf/wmj201301.pdf>

³⁶ *Anam et al v. Obama et al*, Declaration of Martha Rayner, In the US District Court for DC, 11 April 2013.

³⁷ *Anam et al v. Obama et al*. Declaration of Clive A. Stafford Smith, Filed as supplemental exhibit supporting memorandum of law in support of emergency motion of petitioner Musa'ab Omar al Madhwani for humanitarian and life-saving relief. In the US District Court for DC, 13 April 2013.

³⁸ Gitmo is killing me. By Samir Naji al Hasan Moqbel. New York Times, 14 April 2013, http://www.nytimes.com/2013/04/15/opinion/hunger-striking-at-guantanamo-bay.html?partner=rssnyt&emc=rss&_r=0

³⁹ Letter available at <http://media.miamiherald.com/smedia/2013/04/30/07/58/FRs25.So.56.pdf>

⁴⁰ World Medical Association. Declaration of Malta on Hunger Strikers. Adopted by the 43rd World Medical Assembly, St. Julians, Malta, November 1991 and editorially revised by the 44th World Medical Assembly, Marbella, Spain, September 1992 and revised by the 57th WMA General Assembly, Pilanesberg, South Africa, October 2006. "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." Para. 13. <http://www.wma.net/en/30publications/10policies/h31/>

⁴¹ Force-feeding breaches law, UN says amid Guantánamo strike, Channel News Asia, 1 May 2013, <http://www.channelnewsasia.com/news/world/force-feeding-breaches-law-un-says-amid-660400.html> ("If it's perceived as torture or inhuman treatment – and it's the case, it's painful – then it is prohibited by international law,' Rupert Coville, a spokesman for the UN High Commissioner for human rights, told AFP")

- ⁴² Press Briefing by Press Secretary Jay Carney, White House, 15 April 2013, <http://www.whitehouse.gov/the-press-office/2013/04/15/press-briefing-press-secretary-jay-carney-4152013>
- ⁴³ Red Cross chief: End political blockage on Guantánamo, Miami Herald, 11 April 2013, <http://www.miamiherald.com/2013/04/11/3339070/icrc-head-calls-on-us-to-end-political.html>
- ⁴⁴ *Anam et al v. Obama et al*, Respondents' rebuttal memorandum on the issue of jurisdiction over petitioner Musa'ab Oma al Madhwani's emergency motion for humanitarian and life-saving relief. In the US District Court for DC, 11 April 2013.
- ⁴⁵ *Al Janko v. Gates et al*, Appellant's reply brief, US Court of Appeals for the DC Circuit, 15 April 2013.
- ⁴⁶ *Al Janko v. Gates et al*. Brief for Defendants-Appellees, US Court of Appeals for the DC Circuit, 1 March 2013.
- ⁴⁷ *Al Janko v. Gates et al*, Memorandum Opinion, US District Court for the District of Columbia, 11 December 2011
- ⁴⁸ *Al-Zahrani v. Rodriguez*, US Court of Appeals for the DC Circuit, 21 February 2012. The Court of Appeals decided that the US Supreme Court's *Boumediene v. Bush* ruling had only found the first part of MCA § 7 – purporting to strip habeas corpus jurisdiction – unconstitutional, saying “We...presume that the Supreme Court used a scalpel and not a bludgeon in dissecting §7 of the MCA, and we uphold the continuing applicability of the bar to our jurisdiction over ‘treatment’ case”.
- ⁴⁹ Article 27, Vienna Convention on the Law of Treaties (“A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty”).
- ⁵⁰ The President's constitutional authority to conduct military operations against terrorists and nations supporting them. Memorandum opinion for Timothy Flanigan, the Deputy Counsel to the President, from John C. Yoo, Deputy Assistant Attorney General, Office of Legal Counsel, US Department of Justice, 25 September 2001, <http://www.justice.gov/olc/warpowers925.htm>
- ⁵¹ Press Secretary Jay Carney, White House briefing, 26 April 2013, <http://www.whitehouse.gov/the-press-office/2013/04/26/press-briefing-press-secretary-jay-carney-4262013>
- ⁵² See USA: The promise of real change. President Obama's executive orders on detentions and interrogations, 30 January 2009, <http://www.amnesty.org/en/library/info/AMR51/015/2009/en> (“President Obama's executive order states that “in view of the significant concerns raised by these detentions, both within the United States and internationally, prompt and appropriate disposition of the individuals currently detained at Guantánamo and closure of the facilities in which they are detained would further the national security and foreign policy interests of the United States and the interests of justice”. Amnesty International's aim is to ensure that the measures taken to end the Guantánamo detentions comply with the USA's international obligations as well... Specifics as well as speedy action are now of the essence. The executive order contains little in terms of specific commitments or criteria for deciding the fate of individual detainees. Amnesty International looks forward to the administration making public further details of its plans as soon as possible, and the organization makes some observations on the executive order and provides some recommendations below.”)
- ⁵³ Remarks by the President on national security, 21 May 2009, <http://www.whitehouse.gov/the-press-office/remarks-president-national-security-5-21-09>
- ⁵⁴ *Ibid.*
- ⁵⁵ White House press briefing by Press Secretary Jay Carney, 1 May 2013, <http://www.whitehouse.gov/the-press-office/2013/05/01/press-briefing-press-secretary-jay-carney-512013>