

Urgent Action

In Focus

An insight into the stories behind UAs

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Guantánamo Bay – a human rights scandal

Over the past year, Urgent Action letter-writers have sent over 10,000 letters of protest to US authorities on behalf of six men held under a US Military Order at the US Naval Base in Guantánamo Bay in Cuba. The conditions in which these men and other Guantánamo detainees are held are believed to have increased their susceptibility to making coerced statements – statements which, US authorities have said, will be admissible in trials by military commission.

The majority of almost 600 detainees at the US military base are held in maximum security blocks in small cells, for up to 24 hours a day and with very little out-of-cell exercise time. They are also subjected to repeated interrogations sometimes for hours at a time and without the presence of a lawyer, raising fears that statements may be extracted under coercion.

A first-hand account of conditions at Guantánamo emerged following the release in March 2004 of Shafiq Rasul, Asif Iqbal and Ruhel Ahmed, three UK citizens known as the "Tipton Three" after their small home town. They allege they were beaten, shackled in painful positions during interrogations and subjected to sleep deprivation. They also report being photographed naked and subjected to anal searches after being shackled for hours. This led them to confess to being in a video of a Bin Laden rally in Afghanistan, despite the fact that court, workplace and university records show they were in the United Kingdom when the video was shot in 2000.

The International Committee of the Red Cross (ICRC) is the only non-governmental organization allowed access to the detainees. An ICRC delegation has stated that it has observed a "worrying deterioration" in the mental health of a large number of the detainees, and that their psychological condition has become a "major problem".

The Tipton Three's testimony has increased concern for the mental condition of the detainees, including fellow Briton Moazzam Begg, whom they describe as being "in a very bad way".



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Moazzam Begg's father Azmat Begg, who has campaigned in the UK and the USA for his son's release

Begg, his wife and three children moved to Afghanistan in June 2001 apparently intending to set up a school in a remote area and to work on projects to install water pumps. In December 2001 following the US attacks on Afghanistan, they travelled to Pakistan from where Moazzam Begg was allegedly seized by Pakistan and US agents in early 2002. Despite a pending *habeas corpus* petition to a Pakistani court, he was transferred into US custody and taken to Guantánamo Bay, where he has been held in solitary detention in a windowless room for over a year. His family in the UK received around 11 letters from him, but has heard nothing for over six months.

His fellow Briton and Guantánamo detainee, Feroz Abbasi, has reportedly been diagnosed by a US military forensic psychiatrist as suffering from depression and may have tried to commit suicide at least once. Gitanjali Gutierrez, the American lawyer who has now finally been appointed to represent them, foresees that her biggest challenge will be to get them to believe she is a lawyer there to help them, as the only Americans Begg and Abbasi have had contact with to date have been guards and interrogators.

Both men, along with four other foreign nationals at Guantánamo Bay, have been the subject of UA 199/03 since President Bush named them as being subject to a Military Order under which they could be held indefinitely without charge or trial, and against which they have no right of appeal.

Guantánamo Bay

When the conflict in Afghanistan ended in December 2001, there were several hundred detainees in US custody who had been either taken prisoner during the military action or arrested in other countries and passed on to the US military authorities. The question arose of how to deal with these prisoners, mostly adult men but including some children as young as thirteen. The US government could only hold on to them if it could ensure that neither the Geneva Convention, which defines the rights of prisoners of war, nor the jurisdiction of the US legal system applied to the detainees.

The Geneva Convention applies to "enemy combatants" taken prisoner in wartime, but the US Department of Defense invoked the distinction of "lawful and unlawful combatants", a distinction not universally accepted under international law. President Bush had determined that *al-Qa'ida* members, and by extension their associates, were unlawful combatants and so not covered by the Geneva Convention. As for the question of jurisdiction, it looked as though a solution could be found in the unique situation of Guantánamo Bay in Cuba.

The US had established a military base at Guantánamo Bay as long ago as 1898, but the arrangement wasn't formalized until 1903 when the US government obtained a perpetual lease on the base from the newly independent Cuban state for a yearly rent of \$2,000. The crucial terms in the lease state that the US would have "complete jurisdiction and control over and within said areas" but that the United States recognized "the continuance of the ultimate sovereignty of Cuba over and above the leased areas". When Fidel Castro came to power, the US forces stayed put and continued to send a cheque every year, all but one of which have remained uncashed. Although the Cuban government has claimed that the original agreement is void, there is nothing they can realistically do about it except cutting off the water supply to the base, which they did in 1964. Water is now supplied by desalination plants.

The US administration claimed that, as Guantánamo Bay was not a sovereign territory of the United States, the courts had no jurisdiction and so could not be used to challenge the legality of any detentions there. From January 2002, therefore, the bulk of detainees were transported by air from Afghanistan and other military bases to be housed in a temporary purpose-built prison facility at Camp X-Ray, where they were kept in small wire-mesh cages. In April 2002 they were transferred to the newly constructed Camp Delta where the majority are held in maximum security blocks in cells even smaller than before.

Several cases were quickly brought in the Washington DC District Court challenging the US administration's position. These were dismissed in July 2002 by the District Court and in August 2002 on appeal by the Circuit Court. The case of *Rasul v Bush* finally made it to appeal in the Supreme Court where, in June 2004, it was found that the US courts do have jurisdiction over the Guantánamo Bay detainees. Ironically, Shafiq Rasul is one of the Tipton Three and had actually already been released before the decision was handed down. The result, however, had great significance for the remaining detainees. In an effort to restrict the scope of judicial review, the US government instituted a review of every detainee's case by a panel of three military officers to determine whether they are indeed enemy combatants or not.

The *Rasul v Bush* ruling does not, however, address the conditions under which the detainees are held. Nor does it immediately affect Moazzam Begg and the other five men who, on 3 July 2003, were the first to be named under the Military Order titled "Detention, Treatment and Trial of Certain Non-Citizens in the War Against Terrorism", issued by President Bush nine weeks after the attack on the World Trade Centre and five weeks after the subsequent invasion of Iraq. This explicitly found that it would not be "practicable to apply... the principles of law and the rules of evidence generally recognized in the trial of criminal cases in the United States district courts" when dealing with suspected terrorists.

A week after the Supreme Court ruling in *Rasul v Bush*, another nine detainees were made subject to the Military Order, bringing the total to 15. The nine have not been identified and it is not even known if any or all are held in Guantánamo.

The original six have continued to be held at the Guantánamo base, probably in Camp Echo where pre-commission detainees are held. Each man is held for 23-24 hours a day in reportedly windowless cells with no possibility of communication with other detainees which, according to psychiatrist Dr Daryl Matthews who visited the camp in 2003, place them at "significant risk for future psychiatric deterioration, possibly including the development of irreversible psychiatric symptoms". Supporters of the detainees are concerned that any guilty pleas brought before the commissions could be the result of the coercive nature of the conditions in which they have been held.

Where we are now

Amnesty International continues to oppose trial by military commissions because they will not comply with international standards, not least because they will lack independence from the executive, are discriminatory and deny the right of appeal to an independent and impartial court established by law.



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AI members stage a protest outside the residence of UK Prime Minister Tony Blair during a visit by US President George W. Bush in November 2003

Preliminary hearings under the Military Order have now taken place for four of the original six, but Moazzam Begg and Feroc Abbasi remain in limbo. A US lawyer, arranged by the US Center for Constitutional Rights, has finally been allowed to visit the two men, but on the strict condition that she does not communicate anything that passes between them to the outside world. She cannot even tell Moazzam Begg's father what condition his son is in, or relay a personal message. Whether the men will be brought before a Military Commission or whether their lawyer will be able to secure a writ of *habeas corpus* to obtain their release remains to be seen.

The Combatant Status Review Panels to determine the "enemy combatant status" of the other 585 prisoners at Guantánamo Bay are also in process. The Pentagon plans to have three hearings running simultaneously in the hope of holding 72 hearings a week until the cases have been heard for all detainees. At the time of writing only 30 had reached conclusion and in all but one case the detainee was deemed to be an "enemy combatant" who should remain in detention. As such, the US government claims the right to detain them until the "war on terror" is won, which on 3 July 2003 a senior defense official said is "open-ended".

For further information on Guantánamo Bay, please visit <http://web.amnesty.org/pages/usa-070104-action-eng>