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4,000 days in limbo, 8,000 miles from home

Amnesty International report highlights case of Afghan Guantánamo detainee now in his 12th year without trial

Imagine this.

You are 19 years old, asleep in your family home in a remote rural village. In the middle of the night, foreign soldiers burst in. They put a hood over your head and force you to sit against a wall. You are terrified. After a few hours, bound hand and foot and still hooded, you are taken to a military base. There you are physically assaulted, interrogated, threatened with a knife, and deprived of sleep and food. You fear you will be killed. After what you think is about 48 hours – your disorientation makes it difficult to know for sure – you are bundled, still hooded and shackled, into a helicopter and flown to another, larger military facility. There the interrogations and abuse continue. Three months pass. Then one day you are taken from your cell, your head is shaved, you are put into shackles and blacked-out goggles, and along with others you are tied down in a transport plane like cargo. This time, you are flown to a naval base on the other side of the world, specifically chosen by the detaining government with the idea of keeping detainees like you out of the reach of courts or lawyers while you are indefinitely detained, interrogated, perhaps prosecuted in front of an improvised military tribunal, or just warehoused into the future. Whatever hope you had of justice dissipates as you are kept year after year after year without ever being brought to trial and not knowing when, if ever, you will be released. You are still there today, more than a decade later.

Obaidullah does not have to imagine this. This Afghan man has lived it, held in military custody hour after hour for what will soon be 100,000 hours, day after day for more than 4,000 days, year after year for 11 years. He is one of the 166 men currently held at the US naval base in Guantánamo Bay in Cuba. He is some 8,000 miles (13,000 kilometres) from his home in Afghanistan. His daughter, born two days before he was seized, is now 11, only eight years younger than Obaidullah himself was when taken from his home.

The USA would surely condemn such treatment as contradicting basic notions of decency and human rights if any other government was responsible. Obaidullah's case, and the cases of others subjected to torture, enforced disappearance, secret transfer, incommunicado and indefinite detention, would surely have featured in the US Department of State's annual human rights assessments of other countries, their performances measured against principles laid out in the Universal Declaration of Human Rights.

But the USA has operated Guantánamo as if the Universal Declaration had never existed, or as if it has been blotted out by what the US authorities previously dubbed the "global war on terror".

A new Amnesty International report entitled "*I am fallen into darkness*" (available at <http://www.amnesty.org/en/library/info/AMR51/051/2013/en>) highlights Obaidullah's case. From his allegations of torture and other ill-treatment to indefinite detention without criminal trial to hunger strikes protesting conditions of detention, Obaidullah's experience exemplifies the multiple violations of

HISTORY WILL CAST A HARSH JUDGMENT ON THIS ASPECT OF OUR FIGHT AGAINST TERRORISM AND THOSE OF US WHO FAIL TO END IT. IMAGINE A FUTURE – 10 YEARS FROM NOW OR 20 YEARS FROM NOW – WHEN THE UNITED STATES OF AMERICA IS STILL HOLDING PEOPLE WHO HAVE BEEN CHARGED WITH NO CRIME ON A PIECE OF LAND THAT IS NOT PART OF OUR COUNTRY

President Barack Obama, 23 May 2013

human rights perpetrated in the counter-terrorism context by a country that claims to be committed to the respect and promotion of international human rights principles.

While the detainees at Guantánamo today can challenge the lawfulness of their detention in the US courts – they had that right under international law from the outset, but it was not until more than six years after the detentions began that the US Supreme Court ruled that the detainees were so entitled under the US Constitution – the USA's flawed "law of war" framework under which the government continues to justify the detentions has severely distorted the notion of habeas corpus and fair trial.



Undated photo of Obaidullah, pre-July 2002 arrest
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Between February and July 2013, Obaidullah participated in the hunger strike undertaken by scores of detainees at Guantánamo. He appears to have come off hunger strike in recent days, in the face of a detaining authority that fails to respect the right of the detainees to peaceful protest and that adopts tactics apparently aimed at undermining such protests.

Just this month, Obaidullah refused to meet with his lawyer in order to avoid what he perceived as degrading new search procedures which the detainees have been forced to endure before then can go from their cell block to a visit or telephone call with their attorney. A federal judge ruled the search procedures "excessive", but the Obama administration has obtained a stay of the order while it appeals the ruling.

Last week, Obaidullah's habeas lawyers were among those that received an email from the Pentagon, announcing that Periodic Review Board (PRB) hearings would soon commence.

The PRB process is established under an executive order signed by President Obama more than two years ago. This discretionary, executive review scheme – however it ultimately operates – can only have a further corrosive effect on the fundamental role the fairness protections of the criminal justice system play in upholding the right to liberty, as outlined in the Amnesty International report.

United Nations leaders and experts have repeatedly called on the USA to resolve the Guantánamo detentions consistent with US obligations under international human rights law. Just a few weeks ago, the UN Working Group on Arbitrary Detention specifically called on the USA to resolve Obaidullah's unlawful detention – while expressing regret that the Obama administration, which in 2009 had promised to cooperate with UN human rights mechanisms – had failed to respond to the Working Group's request for the USA's views on the case. Having reviewed Obaidullah's case, the Working Group called on the USA to release him.

Two months ago, President Barack Obama urged his country to "imagine a future – 10 years from now or 20 years from now – when the United States of America is still holding people who have been charged with no crime on a piece of land that is not part of our country". Four years earlier, he had described the Guantánamo detentions as a "misguided experiment", set up under "the misplaced notion that a prison there would be beyond the law". As the Guantánamo detentions approach their 12th anniversary, the experiment has yet to be ended, however. Detainees like Obaidullah are the human guinea pigs who find themselves trapped in this "misguided experiment", as prisoners of domestic US politics and a unilateral US law of war framework that bypasses human rights.

History, President Obama has suggested, will judge harshly those who failed to end this situation. True, but the historians have long since had enough material to condemn the USA's conduct at Guantánamo since the first detainees arrived there in January 2002. Fair and lawful resolution of these detentions is already years overdue. The USA should rapidly do now what it has failed so far to do, and from now on work to repair the damage its conduct has wrought over the past decade to the lives of detainees and their families, as well as to human rights principles.

Obaidullah should be immediately released if he is not to be charged without further delay for trial within a reasonable time under proceedings that fully comply with international fair trial standards. The same applies to the other detainees. No more delays.
