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Guantánamo detention centre: Eight years of injustice Questions and Answers

Soon after taking office in January 2009, US President Barack Obama committed his administration to shutting down the detention centre at Guantánamo Bay by 22 January 2010. Nearly a year later, nearly 200 men continue to be held there, and a few weeks ago President Obama acknowledged that his deadline would not be met.

Around 50 of the detainees cannot be returned to their own countries where they are at risk of further human rights violations. Amnesty International continues to highlight the need for international protection for such detainees.

How many people are held in Guantánamo today?

198 men are currently detained in Guantánamo. Almost half of those held are Yemeni nationals. Others still detained include those from Algeria, Libya, Tunisia and Syria.

What is the situation of the men currently held in Guantánamo?

The majority of the detainees still held in Guantánamo have never been charged with any crime by the US authorities. Amnesty International has long called for all those held in Guantánamo to be charged with recognizable criminal offences and brought to trial before independent and impartial courts or released.

Since President Obama took office, the US administration has continued to assert broad authority to continue to detain without charge or trial those the previous administration labelled as “enemy combatants”. The Obama administration has retained the option of trying selected Guantánamo detainees before military commissions, tribunals which Amnesty International considers fail to meet international fair trial standards. The administration is also turning to the civilian federal courts to conduct some trials.

One Guantánamo detainee has been charged for trial and transferred for trial before US District Court in New York, while the administration has announced that five others suspected of involvement in the 9/11 conspiracy will likewise be transferred for civilian trial in New York. The five have not yet been transferred. The US Attorney General has made clear his expectation that the administration will be seeking the death penalty at their trials, a punishment that Amnesty International opposes unconditionally, in all cases.

Around 50 of the almost 200 Guantánamo detainees cannot be returned to their home countries. This is because they would be at risk of further human rights abuses such as torture or persecution if returned. The list of people in this situation includes citizens from Algeria, China, Libya, Russia, Syria and Tunisia.

For this reason, the US authorities, the detainees’ lawyers and several international organizations including Amnesty International have been urging governments in Europe and elsewhere to provide these men with a safe place to live.

The USA has already sent some detainees to countries despite the risk they faced. For example, seven detainees who were returned from Guantánamo to the Russian Federation in 2004 suffered human rights violations upon their return including arbitrary detention, torture and other ill-treatment and unfair trial.

Why doesn't the USA offer them a home on the US mainland?

The fate of the Guantánamo detainees has become bound up with domestic US party politics, with some politicians resorting to fear-mongering in their efforts to block resolution of the Guantánamo detentions. Members of Congress have repeatedly sought to block release of any of the detainees into the USA and the administration itself has litigated to block court orders for any such releases.

Nevertheless, it remains the case that the USA has the ultimate responsibility for finding lawful and appropriate solutions for those detainees it does not intend to bring to fair trial. If no third country solution has presently been found for any detainee slated for release, he should be released into the USA.

Lawyers for a number of the Guantánamo detainees have filed asylum applications in the USA, but the applications have been rejected by the US Citizenship and Immigration Services (USCIS) on the grounds that the applicant was outside the territory of the United States (detained in Guantánamo) and therefore ineligible to apply for asylum.

Has any government already provided international protection for former Guantánamo detainees?

Yes. Several former Guantánamo detainees who could not go back to their own countries are currently living in a number of European countries including France, Belgium, Hungary, Ireland and Portugal. Others are now in Palau and Bermuda.

In addition, the UK has taken in non-UK nationals, but only individuals who had at some time been resident in the UK. After many years of campaigning by Amnesty International and others, Germany also accepted the return of Murat Kurnaz, a German resident who had lived there all his life but who did not have German nationality as he was born to Turkish parents.

How are these men integrating into their new societies?

In general terms, the former detainees are happy to have been released from Guantánamo and some have now been reunited with their families.

However, as might be expected after years of indefinite and harsh detention, they are facing challenges in adapting to life in unfamiliar countries. It is important to remember that people released from Guantánamo may have significant mental health concerns resulting from their prolonged period of detention and their treatment in custody.

Do countries in Europe have a legal obligation to provide asylum to these men?

Countries do not have a legal obligation per se but human rights groups insist they have a moral duty to take action.

Amnesty International has said that European and other countries should turn into action their very vocal opposition to Guantánamo by helping close down the facility – which can only be done if solutions are found for those still held there.

What legal status would these men have once in Europe?

The legal status given to the men varies from country to country.

Amnesty International calls on host countries to give them a legal status that provides for their physical security in the host country and all the attendant benefits and support necessary to rebuild their lives, including housing, medical and psychological care, education, options for employment and the possibility to reunite with their families.

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