



136 TO GO... THE UNBEARABLE SLOWNESS OF CLOSING GUANTÁNAMO

Uruguay latest country to help USA towards ending detentions at prison camp

We have offered our hospitality to human beings who suffered an atrocious kidnapping in Guantánamo
Uruguayan President José Mujica, 5 December 2014

With the transfer from the US naval base in Guantánamo Bay of six men who had been held there without charge or trial for more than 12 years, there are now 136 detainees left at the base. This is the lowest number since mid-January 2002, nearly 13 years ago, a few days after these ill-judged and unlawful detainee operations began. The USA is reducing the detainee population, but is doing so at a glacial pace and by relying on others to do what it refuses to.

It took about seven weeks to get the Guantánamo detention facility up and running – from Presidential order to the first detainees arriving on 11 January 2002. It is now around eight years since the US authorities say they have been working to shut it down, and we are approaching the fifth anniversary of the date – 22 January 2010 – by which President Barack Obama said that the prison camp would be closed and the detentions resolved.

Thus, as Amnesty International has [previously](#) pointed out, the country that was first to put a human being on the moon apparently cannot within any reasonable timeframe find its way to closing a prison its last two presidents have said does the country serious harm. Having set the detention facility up in a human rights vacuum, the USA's shameful failure to close it stems from its continuing refusal to address the detentions as a human rights issue. The detainees remain prisoners of a US "global war" theory and domestic US politics.

To be sure, there has been a recent flurry of detainee transfers out of Guantánamo, as there was at the end of 2013. Since 5 November 2014, one detainee has been repatriated to Kuwait and another to Saudi Arabia, while two have been transferred to Slovakia and three more to Georgia. The latest releases were of four Syrians, a Tunisian and a Palestinian, who were transferred on 7 December to Uruguay, the latest country to step in and help the USA out of the hole it has dug for itself.

Thus the USA continues to seek to have other countries do what it, the creator of the Guantánamo prison camp, refuses to do: namely, to accept detainees that the USA decides no longer to detain but who cannot be immediately repatriated for whatever reason. Announcing the transfers of the six men to Uruguay on 7 December 2014, the US Department of Defense said that "The United States is grateful to the government of Uruguay for its willingness to support ongoing US efforts to close the Guantánamo Bay detention facility."

One of the six men is a Syrian national who had been on long-term hunger strike to protest his indefinite detention. In October 2014, a federal judge ordered the US government to release its video recordings of this detainee's forcible cell extractions and force-feedings. In a declaration filed in the court, the detainee was quoted:

"I want Americans to see what is going on at the prison today, so they will understand why we are hunger-striking, and why the prison should be closed. If the American people stand for freedom, they should watch these tapes. If they truly believe in human rights, they need to see these tapes".

The Obama administration has fought release of the tapes, and on 3 December, filed its notice of appeal in the US Court of Appeals. Among other things, the government is arguing that the videos "could be used to increase anti-American sentiment", and a military declaration filed in the Court of Appeals points to violence following the disclosure in 2012 of a "video depicting Marines urinating on the corpses of alleged Taliban members" as reason to withhold the force-feeding/cell extraction videos, even if they "do not depict any improper treatment of the detainees", but only "lawful, humane and appropriate interaction between guards and detainees".

In an open letter to President Obama published on the Uruguayan government's website on 5 December, President José Mujica said that "we have offered our hospitality to human beings who suffered an atrocious kidnapping in Guantánamo". He emphasised that Uruguay's motive was "humanitarian", and explained that his country had historically offered people refuge from war, tyranny, persecution, racism and poverty, and that such people have built Uruguay, bringing skills, knowledge, and culture. "We are a part of the world that has suffered much",

President Mujica continued; “As such we belong to the vast majority of humanity. We must neither forget nor lose that perspective...”

This principled move by the government of Uruguay – a country 55 times smaller than the USA and with per capita GDP a third of the USA’s – is to be welcomed. The six men to whom it has offered resettlement had been held without charge or trial at Guantánamo since they were transferred there between May and August 2002. Their detentions were unlawful and cruel, and yet the USA forced these men to endure their legal limbo year after year, even long after the US authorities had approved them for transfer from the base in January 2010 or earlier. It is subjecting dozens of others to the same thing today, with each such individual having no idea when or even if his indefinite detention will end.

Just last month, the UN Committee against Torture reiterated to the USA what it had told it *eight years earlier* in 2006 in relation to the Guantánamo detentions, namely that “indefinite detention constitutes *per se* a violation” of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT), a treaty ratified by the USA in 1994. The Committee expressed its concern about the “cumulative effect that the conditions of detention and treatment in Guantánamo have had on the psychological health of detainees” and repeated its call on the USA to “cease the use of indefinite detention without charge or trial”. It also called for an end to the force-feeding of hunger striking detainees able to take informed decisions, and reiterated that such force-feeding “constitutes ill-treatment in violation of the Convention”.

At a session in Geneva earlier in November 2014, the Obama administration had told the Committee that it was now adopting the position that UNCAT applies extraterritorially, including at Guantánamo. It should follow this belated recognition by immediately ending these indefinite detentions as a violation of the treaty, and immediately and safely releasing, into the USA if necessary, any detainee it does not intend to promptly charge for fair trial.

Seven months earlier, having reviewed the USA’s record under the International Covenant on Civil and Political Rights (ICCPR), ratified by the USA in 1992, the UN Human Rights Committee similarly called on the USA to “end the use of administrative detention without charge or trial” at Guantánamo. Both of these treaty monitoring bodies called on the USA to ensure that any prosecutions of detainees held at Guantánamo be conducted in the ordinary criminal justice system, not under the USA’s military commission system that does not meet international fair trial standards.

In August 2014, in between the Human Rights Committee and the Committee Against Torture issuing their conclusions, a third treaty monitoring body, the Committee on the Elimination of Racial Discrimination, published its findings on the USA. Among other things, it too called on the US authorities to “end the system of administration detention without charge or trial and ensure the closure of the Guantánamo Bay detention facility without further delay”. It also called on the USA to “guarantee the right of detainees to a fair trial in compliance with international human rights standards, and to ensure that any detainee who is not charged and tried is released immediately”.

Despite the USA’s assertion that the Guantánamo detentions are justifiable under its distorted unilateral theory of a “global war” (what the Bush administration used to call the “war on terror”), what these human rights treaty bodies have again made clear is that the USA is in violation of its international *human rights* obligations through its continuing operation of this indefinite detention regime and its resort to military commission trial proceedings.

The USA also remains on the wrong side of its international obligations through its failure to ensure full accountability for the violations committed at the base and elsewhere. The Guantánamo detention facility has been the location for multiple human rights violations over the years, including torture and other ill-treatment, arbitrary detention, prolonged incommunicado detention, force-feedings and enforced disappearance. The latter crime under international law is believed to have occurred there in 2003 and 2004 when the base was apparently used as one of the “black sites” by the Central Intelligence Agency for its [secret detention programme](#).

Abu Zubaydah, for example, has been in US detention ever since he was first taken into custody in Pakistan in late March 2002. He was eventually transferred out of CIA custody and into US military detention in Guantánamo, on 4 September 2006. He remains at the naval base today. In his first four and a half years of detention, the US authorities transferred him to a series of secret locations in CIA custody, reportedly including Thailand, Poland, Guantánamo Bay, Morocco, Lithuania and Afghanistan. During this time, he was subjected to enforced disappearance, secret transfers, torture and other ill-treatment, human rights violations for which no one has been brought to justice. Abu Zubaydah has himself never been charged in the 12 and a half years he has been in US custody.

As well as ending the Guantánamo detentions, and closing the detention facility, the USA must ensure thorough and impartial investigations into all allegations of human rights violations, bring those responsible to justice and ensure genuine access to remedy to those who suffered the violations.

Shortly before a meeting with President Mujica in the White House on 12 May 2014, President Obama had praised his Uruguayan counterpart’s “extraordinary credibility” on human rights. The USA’s own credibility on human rights, and indeed that of President Obama himself, is further corroded every day that the Guantánamo detentions and military commission proceedings continue.