

DETENTION AND RIGHTS: EXAMINING THE HUMANITARIAN CONUNDRUMS IN GUANTANAMO BAY

By Kanika Dutt

LLM Student, National University of Ireland, Galway

DOI: 10.55662/IJLDAI.2024.10101

I. INTRODUCTION

Post the unfortunate attacks of 9/11, The United States of America established the infamous detention camp, “Guantanamo Bay”. This camp is a military-controlled prison which is located on the American-owned land in the Cuban territory. It has been long-established that the operations of this base go against the norms of International Law. This essay will aim to explore the various violations of International Humanitarian Law and Human Rights that resulted from the calamitous detention of the prisoners in Guantanamo Bay. This essay will further delve into the historical background of the ill-famed detention camp, along with the legal challenges it has faced since its inception. Finally, the essay will conclude with an in-depth study of the experiences of former prisoners, and the American government’s response to it. The primary research area of this essay is the contravention of Common Article 3 and the Geneva Convention.

II. HISTORICAL OVERVIEW

Guantanamo Bay sits at the Coast of the small country, Cuba, in the south east corner.. USA established its presence there in 1903, when US President Roosevelt and Cuban President Palma signed a contract that granted US complete control and jurisdiction of the naval base. The original lease agreement was reaffirmed by then US President, Franklin Roosevelt. Notably, the agreement is such that there is no termination date or fixed number of years. The only instance under which the Cuban government can reclaim it is if said territory is abandoned by US, or by a mutual agreement between the two states.

The prison is structured such that there are various camps, also known as ‘district’. Each district has different security levels, transparency commitments, and nature of prisoners. Until 2020, only 12 public districts have been accounted for, out of which majority are rumoured to be empty now. Some of the districts that are public knowledge are “Camp Iguana, Camp 7, and Camp X-Ray”.ⁱ

The camp elicited extreme public backlash when the Pentagon released images of Camp X-Ray, where prisoners were being subjected to various forms of humiliation and sensory deprivation. The images were a shocking illustration of prisoners wearing accessories like goggles, surgical masks, and gloves, all while hand-cuffed.ⁱⁱ This act of counter terrorism has caused an imbalance in the structure of International Law, and questioned the ethics of the so-called ‘super power’ of the world.

1. The Political Development

Every state is entitled to protect its citizens and take precautionary measures against armed conflict and terrorism. Such authority can sometimes lead to abuse of power and neglect towards a certain section of the society. The ‘War on Terror’ was declared by the former President of America, George W. Bush, after the horrifying 9/11 attacks. People arrested were suspected to be related to al-Qaeda, the terrorist organisation that carried out the 9/11 attacks, or those who were al-Qaeda sympathisers. These individuals were all Muslims, from all around the globe, The United Kingdom, Pakistan, Middle East, Afghanistan and many more places including American Muslims itself. This was a drastic measure taken in self-defence by the country, which at that time can be argued to be a haste but a self-protecting decision.

During the 2008 elections, the campaign primarily advocated for the rights of detainees and promised to shut down the military prison. An executive order was signed by Obama for reviewing of prisoners and the closure of the detention camp. The Executive Order 13492 was effective as the numbers in the prison significantly went down from 242 to 41.

The next government took a complete different approach towards Guantanamo Bay. Trump had been transparent about his views regarding the camps. During his time in office, he officially signed another executive order over turning the Obamas order of shutting down the

place. His government made it public knowledge that the prison would remain open and ready to taken in several more prisoners. The Executive order 13823 was passed and the camp remained in full force.ⁱⁱⁱ This has been a very expensive prison to maintain. Several million dollars are spent to keep the prisoners in and modify it even though more than half of them are not prosecuted and remain a suspect.

Targeting a specific community can be identified as genocide and establishment of such camps indicate a 'lawless territory' that questions the very essence of democracy.^{iv} Guantanamo Bay can be described as symbolism of grey legal practices.

2. Unveiling the Defence

Islamic radicalisation increased over the years and many states that were victims of terrorist attacks and threats took steps to avoid any conflict. These preventative measures were a result of the sudden rise of extremism that caused majority population of the victim states to generalise the Islamic religious community. Muslims who allegedly were a part of any terrorist organisation were kidnapped and arrested all around the world and were held as prisoners in Guantanamo Bay.

Protection of the national security is one of the primary reasons why the camp has remained operational. This was used to justify the kidnappings and arrest happening all around the world as these individuals could possibly pose a threat to The United States. Operating a detention facility outside the state soil creates a lot of loopholes which leaves the legal status unclear.

The debate is about the balance between security and protection of human rights. Intelligence agencies are provided with information that is discovered at the camp during questioning and interrogation. Several human right activist and lawyers have questioned 'What about the innocents?' and defended for their legal rights.^v Every government that comes into power has been clear about what their agenda is regarding this facility. Those who campaigned to shut it have been unsuccessful so far. Is the camp a necessity or a secret decimation of a community.

III. HUMAN RIGHTS TRANSGRESSIONS

The camp was fully functioning after the aftermath of 9/11 attacks. There was always some secrecy surrounding as to what exactly goes down inside. After few pictures were released of the prisoners, there was international and domestic criticism which further got fuelled after ex-prisoners came out and gave interviews. It became imperative to shed light on the practises that are carried out by the military and its implications.

1. The Districts

A famous Greek philosopher said “Man is a social Animal”. A certain social environment is required for everyone to maintain emotional and psychological needs. Imprisoning people to solitary confinement goes against the very nature of human needs. The south-eastern part of Cuba, often referred to as the “Legal Black Hole”^{vi} gives an image that resembles a dystopian world which is often in reference to where humanity has been lost.

Guantanamo Bay is a territory that comprises of multiple holding cells. Each unit is different from the other. Some are have comparatively relaxed conditions, while other districts can be very restrictive.

- i. The picture that caused a backlash was of Camp X-Ray. It was an enclosed area surrounded by barbed wire. It shut down soon after the image was released only to be reopened as a much more strict prison.
- ii. The infamous Camp 3 was established in 2003 and has been used as a punishment district. Detainees are confined to an impossibly small area with a small toilet and sink. They spend 22 hours a day in the cells which are made out of metal. The prisoners are allowed only Quran in their cell. There is a loud noise, often presumed to be some sort of generator, that prevents the detainees to talk to one another. They have no interaction with each other.^{vii}

- iii. An initiative was taken by the authorities there to open a camp that would be slightly more relaxed with the restrictions. Camp 4 was opened where the detainees had the opportunity to study English, Arabic and Pashto.
- iv. District 5 was opened with the intention of keeping a specific type of people inside who could potentially be a threat to themselves, other inmates and the officers. They were allowed a maximum of 2 hours for recreation and spent the rest of the time in their holding cells.
- v. Guantanamo Bay is possibly the most expensive prison in the world. Several million dollars were invested in Camp 6. This high security prison built 'individual cages' for recreational purposes.
- vi. There is very limited amount of information available on District Camp 7. People of high value who were in custody of the Central Intelligence Agency were shifted to Camp 7.

There are other detention units like Camp 1, Camp Echo and Camp Delta. Even though there are differences in these camps, they have one thing in common. They have the power to violate the fundamental rights of people. Solitary confinement pushes a person to the edge. No interactions are allowed with anyone except lawyers, medical staff, ICRC representatives and Interrogations. Once the physical health deteriorates over the years of imprisonment, the mental health rapidly declines too. This leaves irreversible psychological and psychiatric damage which has next to no chance of improving even if they are set free.^{viii}

2. Torture Methods

Obama administration tried to shut down this operation and public acknowledged the mistreatment of detainees held in Guantanamo Bay in 2014^{ix}, they released a document called the 'Torture Memo' that explained the role of medical professionals. Each torture technique was approved by these medical personals for practice at the CIA black site. This memo was an evidence of how official national security business was carried out. These techniques have been compared with the Nazis doctors and their methods. The Nuremburg Trial had people who were convicted for crimes against humanity. Several of them were doctors who played an

important part in the vile techniques used on people. Though the scale of Guantanamo Bay numbers is significantly less than the ones during the Holocaust, some similarities of mistreatment were pointed out between these two situations.^x

The state sponsored torture programme did not only use physical means but psychological strategies as well. The assault on one's mind can break them mentally. Arrest and kidnappings were just the beginning of the horrors that would later come out in public. Torture of all forms is prohibited by the International Law, with no exceptions to any situation. To have dignity is a right that is globally accepted. Such methods are often sheltered with terminologies like 'Enhanced Techniques'. They are not only painful but extremely degrading and humiliating. Prisoners are bound and gagged, forced to stay in painful positions for hours without access to toilet facilities. Playing metal music or loud noises is a common approach to deny sleep, waterboarding is a method used to suffocate inmates, sexual assault by excuse of rectal rehydration or feeding, rape threats, sodomy through rifles and broomsticks, threats of violence and rape against their family and threats of degrading the Quran^{xi}. These are few examples of how prisoners are treated in Guantanamo Bay with these enhanced techniques which is a glorified term for brutality.

To revolt against such methods and unlawful arrests, some prisoners have held hunger strikes but they were force fed which is another form of abuse.^{xii}

Majority of the prisoners are interrogated without legal advice and those convicted are tried in secret before a panel of military officers. There is no privacy and every trial is recorded. The inmates are not informed about the evidence against them before the trial. If one would want to appeal the conviction, they would be met with another panel of military officers.^{xiii} This is not a judicial trial as people with political motive which is usually biased, decide the fate of the inmates instead of a Judiciary officer. This cannot be labelled as a 'fair and just trial' when the same politicians who aid with the conviction, on multiple occasions publicly make statements about the prisoners being a terrorists and killers. The procedures are extremely questionable but have a Modus Operandi patterns. When someone in authority and power decided the fate of prisoners, having a pre conceived notion stops from delivering justice. Unfortunately, after the trauma endured by the prisoners held in Guantanamo Bay and even if they are acquitted, there is an extremely small chance that they would be set free.

While there are people held in United States in high facility prisons for grave crimes committed by them, they are not subjected to ill-treatment like in Guantanamo Bay. How will the boundary of 'who can be treated worse' be drawn. Is it possible for a country to preach peace, justice and rule of law in one territory and practice the opposite in another jurisdiction? This is question requires accountability and admission to violation of fundamental human rights.

IV. CASE STUDIES OF EXTRAJUDICIAL DETENTION

Many people have been suspected of being a national threat to The United States since 9/11. What started off as self-defence, very rapidly turned into an abuse of power.

1. Abu Zubaydah

Abu Zubaydah was captured the during a US-Pakistan joint raid in Pakistan as he was suspected for being a al-Qaeda operative. He was arrested with 30 more men and was placed in the CIA custody for few years before was sent to Guantanamo Bay. During his capture under the CIA, he was experimented on to find torture methods that could be legally used. CIA was trying to find loopholes in the definition of torture. He was the first victim of the torture programme.^{xiv}

He told ICRC that he was held captive in a small cell that had halogen lights. If the loud music was not on then the white noise was played. When he first arrived to the CIA black site, he was strapped naked to a bed for few weeks before being moved to a chair. He was not allowed to sleep and was given only water. If he was considered cooperative, he was provided clothes, mattress and toilet paper but it could easily be stripped away.

Abu Zubaydah was subjected to waterboarding 83 times in 2002 alone. He was tortured to the point where he would lose conscious or become unresponsive. 40 drawings were discovered made by him that resembled how he was questioned and treated. Walling is a violent method of bashing the head against a metal wall, he drew pictures of that. Vortex technique is a limbo where two to three different methods are used on repeat, like splashing cold water on genitals

and loud music while he would hang naked^{xv}. In 2006 he was sent to Guantanamo Bay and was shifted to military cells where his mistreatment with the CIA got over by another cycle started in the Cuban detention camp.

Professor Helen Duffy of International Humanitarian Law and human rights from Leiden University was his lawyer. She had filed a case as his legal representative in Working Group of Arbitrary Detention.^{xvi} They ruled that there was no legal base that could justify the torture that happened to him.^{xvii} Even though the judgment is non-binding, it is an international statement that acknowledges the wrongs being committed in Guantanamo Bay.

Abu Zubaydah is still held as a suspect in Guantanamo Bay.

2. Al-Nashiri Case

Abd al-Rahim al-Nashiri is a Saudi Arabian citizen who was kidnapped from UAE by the United States because of his alleged involvement in the USS Cole bombing 2000. USS Cole, an American navy missile destroyer, was attacked in Yemen in a boat. Several people were injured and few sailors lost their lives. Al-Nashiri was transferred to the CIA custody after his capture. He was held in several detention camps of the CIA and was subjected to Enhanced Interrogation Techniques including waterboarding.

He has had several legal challenges apart from the obvious neglect of due process of law. Any evidence The United States has against him is inadmissible. Questionable techniques were used including coercion and any statement or confession during that period of time in void. Habeas Corpus petition was filled challenging the validity of his detention.

Nashiri was held at CIA detention sites in Poland, Romania, Thailand and Lithuania that became public knowledge later. A case was filed against Poland in European Court of Human rights by The Justice Initiative for having a CIA detention camp and aiding the American officials for transferring Nashiri to America.^{xviii} Undocumented interrogation was conducted on him. Mock execution trial was held to scare him and threats of sexual abuse against his mother. He deprived of his legal rights and personal liberty.^{xix} ECHR held Poland guilty of violation of International Law and was asked to pay a fine.

In the case against Romania, any documents recovered from CIA and government reports were heavily redacted. A CIA detention site named 'Bright Light' was based in Romania, in the basement of a government building where Al-Nashiri was held. The Romanian government did not acknowledge detention site or the torture^{xx}. ECHR found Romania guilty of violation of International Law and the Geneva Convention. The government was asked to pay a fine by the ECHR.^{xxi} He was coerced into confessions which would be used against him in the military trial in Guantanamo Bay, if found guilty, he would be given death penalty. Abd Al-Rahim Al-Nashiri remains under the custody of United States of America in Guantanamo Bay.

A four yearlong investigation was conducted on the torture of inmates in black sites and detentions camps of CIA and the military. This investigation was a collaborative investigation on 'The War of Terror', that The Rendition Project and The Bureau of Investigative Journalism carried out. Reports of abuses and violations of international as well as domestic law was discovered. Other countries that assisted the United States were implicated as well. Evidence of mistreatment and neglect were recovered from documents which were redacted. The Rendition programme of CIA was uncovered with names of the people who were subjected to enhanced interrogation techniques.^{xxii}

Currently there are roughly 30 inmates in Guantanamo Bay who are still imprisoned even after the evidences gathered. Some of them have been there since the establishment of the detention camp. The report of this investigation was provided as an expert testimony to ECHR in cases of illegal and unlawful detentions by The United States.

V. CONSTITUTIONAL AND LEGAL CHALLENGES OF DETENTION AND TORTURE

The detention of prisoners in Guantanamo Bay is clearly a violation of International Law but it goes against the domestic laws as well. The legal applications of the US constitution that are implemented in United States soil is neglected in the American jurisdiction of Guantanamo Bay.

- i. The US constitution grants everyone the right to due process of law. All procedures have to be followed regardless of the case and fair trial is imperative. The prologue

detention of the prisoners held by military in Cuba violates the 5th amendment, right to liberty, property and due process of law.^{xxiii}

- ii. Degrading treatment and torture is prohibited according to American law. Enhanced Interrogation Techniques are harsh methods that have been inflicted upon several prisoners. These methods have evolved from just physical pain to psychological scarring. Many inmates are close to being mentally unfit and unaware because of fear and ill-treatment.

“Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.”- 8th Amendment of the US constitution.^{xxiv} The term cruel and unusual have been used separately indicating a different meaning of both. The enhanced interrogation technique can be interpreted as cruel and of unusual nature.

- iii. 14th Amendment, section 1, prohibits discrimination by the state. It can be argued that this amendment is relevant for only American citizens but the words citizen and ‘person’ are used in different sentences. It states that “no citizen should be deprived of privileges or immunities and no state shall deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of laws”^{xxv}. Legally and according to the agreement signed between the American government and Cuban government, Guantanamo Bay comes under US jurisdiction, indicating the violation of this amendment.

In 2008, a suit was filed against the government by American Civil Liberties Union, as they failed to provide un-redacted documents and reports on the then 14 prisoners of Guantanamo Bay. The claim was made to establish the correct status of the prisoners and whether they were of enemy combatant status. This claim was supported by the Freedom of Information Act. The Bush administration had officially confirmed waterboarding and use of enhanced interrogation techniques on 3 prisoners. Any transcripts that were released from them had redacted everything under charges of abuse. The ad-hoc military administration that would decide the status of the prisoners which could be biased as the presence of judge and advocate was not required. The panel consisted of three members out of which all three could be military personal.^{xxvi}

After years of attempts by activists, human rights organisations, journalists and law schools, the government was sued by The Media Freedom and Information Access Clinic, for the release of public records that had the names of “indefinite detainees”. The claimed under Freedom of Information Access which granted them right to information. The first time since the establishment of Guantanamo Bay, 46 prisoners were publicly identified by the Obama administration in 2013. These prisoners were of high value and too dangerous to be released. They would not be prosecuted as it wasn’t recommended. The accountability and transparency shown by the government was a step forward towards justice^{xxvii}. The current administration has made claims about shutting down the torture programme but no development has been done so far.

Due to the uncertain enemy combatant status of the prisoners, it was difficult understand if they could challenge their arrest under Habeas Corpus in the United States.

i. **Rasul v. Bush (2004)**

This case set a precedent for all other cases where prisoners of Guantanamo Bay applied for Habeas Corpus. Shafiq Rasul was captured along with other people after the 9/11 attacks. He filed a write petition challenging his detention. The question arose was whether he is eligible to apply for a write petition. The Supreme Court passed a landmark judgment that stated that the United States had jurisdiction and control of the Guantanamo Bay base. The court held that the right to Habeas Corpus is not limited to just the citizens but can be extended to all who come under complete jurisdiction of the state. Shafiq Rasul was soon after released from the Guantanamo Bay detention camp after the Supreme Court judgment.^{xxviii}

ii. **Boumediene v. Bush (2008)**

In 2004, 6 men were arrested for their alleged involvement in the act of bombing of US Embassy in Bosnia and Herzegovina. Since their arrest, they were placed under US custody in the Cuban base. They had filled a writ petition which was dismissed because of the Detainee Treatment Act. This act was adopted soon after the Rasul case and passed in 2005. It did not

permit the federal courts to hear the Habeas Corpus cases which effected the pending petitions. The Military Commissions Act of 2006 was adopted later which applied for the dismissal of pending petitions with the argument that the courts had no jurisdiction over the Guantanamo Bay prisoners. The Court of Appeals dismissed the application as well and the case went to the Supreme Court.

The Supreme court reversed the decision of the Court of Appeals by providing the detainees right to Habeas Corpus. It was found that depriving them of challenging their detention is unconstitutional. The court further took reference of *Rasul v. Bush* stating that the jurisdiction extends to Guantanamo Bay which gives Federal courts the right to hear the petitions.^{xxix}

iii. **Gul v. Biden (2021)**

Asadullah Haroon Gul was arrested by the Afghanistan government in 2007 for allegedly being connected to a member of al-Qaeda. He was a senior commander for Hezb-e-Islami Gulbuddin (HIG), which was a terrorist organisation with affiliations to al-Qaeda. The US government detained him in Guantanamo Bay where he spent 15 years. He had filed a Habeas Corpus petition which got rejected. In 2021 when he reapplied, the application got approved as US had peace with HIG. Judge Mehta held that evidence was hearsay and a result of torture which made it inadmissible.^{xxx} Before the ruling, US Security agencies had concluded that Mr. Gul was not a threat to United States and should be released. The court held that he was not a member of al-Qaeda and that his detention was illegal. He was finally released from the naval base but several other inmates are still captured and held in Guantanamo Bay.^{xxxi} These federal courts judgement marks an important milestone for providing justice to prisoners held in Guantanamo Bay.

VI. APPLICABILITY OF INTERNATIONAL HUMANITARIAN LAW

International Humanitarian Law came into being for the protection of people and their rights during armed conflict whether it is an international conflict or national. International Law is a developing area, it might not always be binding or enforceable but it holds importance.

1. Geneva Convention

Geneva Conventions are international treaties that are the backbone of International law. It contains rules and limitations for the protection of fundamental rights. The third Geneva Convention is applicable to Prisoners of War which is in direct correlation to the situation at Guantanamo Bay. This convention broadens the scope of who could be identified as a prisoner of war. This was a major breakthrough as it declared derogation and torture unlawful. Common Article 3 is a very specific provision that is applicable to conflict that is not of an international character. The main element is the protection of individuals, their personal liberty and dignity. The article grants everyone the right to humane treatment in any conflict without exceptions by making torture universally unlawful.

The practices of CIA and the military at Guantanamo Bay is in clear contravention of the Common Article three. The conflict with the detainees is not of an international character which makes the arbitrary detention of the prisoners unlawful according to the Common Article 3. The article abides by the due process of law^{xxxii} which has not been provided to the prisoners in the naval base. Torture and not providing judicial assistance and fair trial is a clear violation of the law.

Article 13^{xxxiii} and 16^{xxxiv} lay down the grounds of the treatment of prisoners. According to the convention, all prisoners shall be treated humanely and should not be objected to discrimination.

2. Convention against Torture

“The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)”, is an international treaty that was adopted by The United Nations general Assembly to prohibit torture and other methods of ill-treatment. Any evidence that has been acquired through means of torture makes it void and inadmissible. Member states are obliged to implement any necessary measures to implement this treaty. Article 1 of the CAT defines torture as “.....any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person..”^{xxxv} United States has acknowledged the applicability of CAT in Guantanamo Bay.^{xxxvi} The next essential step would be to actively abide by the treaty. Countries like Poland and Romania had allowed the United States to take the prisoners under their custody which can result in the potential violation of principle of non-refoulment, article 3 of CAT. Extradition of a person should not be processed if there are possibilities of mistreatment.^{xxxvii} The Optional Protocol of CAT adopted by the United Nations in 2002 allows international organisations to visit detention centres to ensure that the treaty is being executed.^{xxxviii}

3. International Covenant on Civil and Political Rights

International Covenant on Civil and Political Rights is an important human rights treaty. It addresses the political and civil freedom of every individual. United States is a member state of this treaty which raises questions as to the practices in Guantanamo Bay and other detention sites. The treaty grants right to fair trial and liberty. Article 7 explicitly prohibits torture and other treatment that degrades and violates any person.^{xxxix}

4. Status of Prisoners at Guantanamo Bay

Since the establishment of the camp, the status of detainees at Guantanamo Bay has been a contentious issue and the validity of the detention has not been resolved. One of the obstacle is the uncertain status. The detainees were first classified as ‘enemy combatants’ and then as ‘unlawful combatants’, which is a term that does not exist. It can be assumed that the change in terminology is to avoid the contradiction of international law. Prisoners of war and unlawful

combatant are not synonyms. POW is recognised internationally while the other term does not exist.^{xi}

The American government has argued that the detainees are not eligible under the Geneva Convention and US laws as they are non-state actors. Several landmark judgments were passed by the US Supreme court that allowed the prisoners to challenge their detention regardless of their status. This legal complexity has been a loophole for the torture programme and has made it difficult to interpret international according to the new terms. Article 2 of CAT states that “No exceptional circumstance whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.”^{xli} Article 4 and 5 makes the violation of Article 2 a criminal offence. US has ratified this convention making the very existence of Guantanamo Bay a criminal offence.

VII. POTENTIAL SOLUTIONS

1. Rehabilitation of Uncharged men is of the utmost importance. Their case should be evaluated by the US federal court and those who aren't convicted should be sent back to their country after all the necessary medical treatment and a substantive amount of compensation.
2. Detainees who have been convicted should be moved to a high security prison in the United States. They should be treated like all the other prisoners there without any discrimination. Medical treatment should be provided if required.
3. If the transfer cannot be made to the US soil, they should be rehabilitated to a UN member state that follows International Law or a state that has remained neutral in the Guantanamo Bay issue.
4. International Organisations like ICRC and Amnesty should be allowed to actively help the detainees in the Camp.
5. Lawyers should be provided by the state and enquiry should be conducted against Enhanced Interrogation Techniques.
6. All records and files that were redacted should be declassified only If the detainees consent to it.

7. The detainees should be allowed to meet their families and have monitored visits from them.
8. Solitary Confined should be considered as cruel and unusual treatment.
9. All evidence gathered through torture and coercion should be disposed of.
10. A quasi-judicial body should be set up in Guantanamo Bay that consist of Judges and Medical Expert excluding all military personal.
11. The political involvement should be reduced. The abuse of power occurs where politics is involved.

These are all potential solutions with manageable risks. Islamic extremism is an ongoing problem that is effecting several nations all around the world but generalising a community based on the actions of few is ethically wrong. This is a problem that can be solved if efforts are put in collectively by the US government and International Organisations.

VIII. CONCLUSION

In conclusion, the interrogation techniques and unlawful detention is a prevailing issue. The complex challenges and violation of Humanitarian Law has opened up possibilities of grave conflicts that can occur in future. The experiences of the prisoners has caused a lot of backlash internationally and nationally. Even after important legal precedents were delivered, no effort to close the camp has been made. Principle of justice has been neglected because of discrimination. It is important to keep checks and balances of power and the involvement of 'law and order' is imperative.

The legal status does not dictate whether an individual deserves under basic human rights. Every living person is entitled to dignity and liberty. Torture methods were practised before evolvement of law. History reflects how far a conflict can escalate. To conclude, International Humanitarian Law should be abided by for the protection of fundamental rights in such contemporary disputes and conflicts.

ENDNOTES

- ⁱ Team BI, 'Factsheet: The History and Evolution of Guantánamo Bay Detention Camp' (*Bridge Initiative*, 8 March 2021) <https://bridge.georgetown.edu/research/factsheet-the-history-and-evolution-of-guantanamo-bay-detention-camp/>, (accessed: 8th December, 2023)
- ⁱⁱ 'This Day in History: 2002 Camp X-Ray Pictures Spark Outrage' (*MACAU DAILY TIMES*, 20 January 2016) <https://macaudailytimes.com.mo/44362.html#:~:text=The%20Pentagon%20has%20released%20the,surgical%20masks%20and%20heavy%20gloves.,> (accessed: 8th December, 2023)
- ⁱⁱⁱ Team BI, 'Factsheet: The History and Evolution of Guantánamo Bay Detention Camp' (*Bridge Initiative*, 8 March 2021) <https://bridge.georgetown.edu/research/factsheet-the-history-and-evolution-of-guantanamo-bay-detention-camp/>, (accessed: 8th December, 2023)
- ^{iv} D. Gregory, 'The black flag: Guantanamo bay and the space of exception', (2006), (*Taylor & Francis Online*), *Geografiska Annaler: Series B, Human Geography*, 88:4, 405-427, DOI: [10.1111/j.0435-3684.2006.00230.x](https://doi.org/10.1111/j.0435-3684.2006.00230.x)
- ^v '(Guantanamo Bay: "Ugly chapter of unrelenting human rights violations ...)', (2022), <https://www.ohchr.org/en/pressreleases/2022/01/guantanamo-bay-ugly-chapter-unrelenting-human-rights-violations-un-experts>, (accessed: 9th December, 2023)
- ^{vi} Johan Steyn, 'Guantanamo Bay: The Legal Black Hole' [2008] 53(1) *International & Comparative Law Quarterly*
- ^{vii} (*Human locked up alone rights - human rights watch*) <https://www.hrw.org/reports/2008/us0608/us0608webwcover.pdf>, (accessed: 9th December, 2023)
- ^{viii} 'II. the Range of Prison Facilities at Guantanamo' (*Locked Up Alone: Detention Conditions and Mental Health at Guantanamo: II. The Range of Prison Facilities at Guantanamo*) https://www.hrw.org/reports/2008/us0608/2.htm#_ftn6, (accessed: 9th December, 2023)
- ^{ix} Mustafa N, 'The Legacy of Torture in Guantanamo Prison Lives on for Detainees | CBC Radio' (*CBCnews*, 27 July 2022) <https://www.cbc.ca/radio/ideas/the-legacy-of-torture-in-guantanamo-prison-lives-on-for-detainees-1.6272718>, (accessed: 9th December, 2023)
- ^x Crosby SS and Benavidez G, 'From Nuremberg to Guantanamo Bay: Uses of Physicians in the War on Terror' (*American journal of public health*, January 2018) <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5719692/#bib22>, (accessed: 9th December, 2023)
- ^{xi} Tayler L and Elisa E, 'Legacy of the "Dark Side": The Costs of Unlawful U.S. Detentions And ...' (*Watson Institute, Brown University*) <https://watson.brown.edu/costsofwar/files/cow/imce/papers/2022/Costs%20of%20War%20-%20Legacy%20of%20the%2027Dark%20Side%27%20-%20Tayler%20and%20Epstein%20-%20FINAL%20Jan%209%202022.pdf>, (accessed: 9th December, 2023)
- ^{xii} George J.A, Sondra S.C, Leonard H.G, Guantanamo Bay: a medical ethics-free zone?, *N Engl J Med*. 2013 Jul 11;369(2):101-3. doi: [10.1056/NEJMp1306065](https://doi.org/10.1056/NEJMp1306065). Epub 2013 Jun 12. PMID: 23758205, (accessed: 9th December, 2023)
- ^{xiii} 'Unjust, Unwise, unAmerican' (*The Economist*) <https://www.economist.com/leaders/2003/07/10/unjust-unwise-unamerican>, (accessed: 9th December, 2023)
- ^{xiv} 'ABU ZUBAYDAH' (*Abu Zubaydah - The Rendition Project*) <https://www.therenditionproject.org.uk/prisoners/zubaydah.html>, (accessed: 9th December, 2023)
- ^{xv} '“The Forever Prisoner”: Abu Zubaydah’s Drawings Expose the US’s Depraved Torture Policy' (*The Guardian*, 11 May 2023) <https://www.theguardian.com/law/2023/may/11/abu-zubaydah-drawings-guantanamo-bay-us-torture-policy>, (accessed: 9th December, 2023)
- ^{xvi} Helen Duffy about Abu Zubaydah who remains unlawfully detained in Guantanamo Bay, (*Leiden University*, 2023) <https://www.universiteitleiden.nl/en/in-the-media/2023/05/helen-duffy-in-trouw>, (accessed: 9th December 2023)

xvii 'Crimes against humanity': UN body calls for release of Guantanamo Bay inmate, (*The Guardian*), <https://www.theguardian.com/us-news/2023/apr/28/un-guantanamo-bay-abu-zubaydah-detention>, (accessed: 9th December, 2023)

xviii Time Line: Al-Nashiri v. Poland at the European Court of Human Rights, (*Open Society Justice Initiative*), <https://www.justiceinitiative.org/publications/time-line-al-nashiri-v-poland-european-court-human-rights>, (accessed: 10th December, 2023)

xix Situation in Islamic Republic of Afghanistan, (*International Criminal Court*) ICC-02/17-131 03-12-2019 1/9 NM PT OA OA2 OA3 OA4, https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2019_07304.PDF, (accessed: 10th December, 2023)

xx Al-Nashiri v. Romania, (*Open Society Justice Initiative*), <https://www.justiceinitiative.org/litigation/al-nashiri-v-romania#:~:text=Sometime%20between%20June%20%2C%202003,rendered%20out%20of%20the%20country>, (accessed: 10th December, 2023)

xxi 'HUDOC - European Court of Human Rights' (*HUDOC - European Court of Human Rights*), <https://hudoc.echr.coe.int/eng/#%7B%22itemid%22%3A%5B%22001-183685%22%5D%7D>, (accessed: 10th December, 2023)

xxii 'The Report - The Rendition Project' (*The Rendition Project - The Rendition Project*), www.therenditionproject.org.uk/unredacted/the-report.html, (accessed: 10th December, 2023)

xxiii Constitution Annotated, (*Constitution of the United States*), <https://constitution.congress.gov/constitution/amendment-5/>, (accessed: 10th December, 2023)

xxiv Constitution Annotated, (*Constitution of the United States*), <https://constitution.congress.gov/constitution/amendment-8/>, (accessed: 10th December, 2023)

xxv Constitution Annotated, (*Constitution of the United States*), <https://constitution.congress.gov/constitution/amendment-14/>, (accessed: 10th December, 2023)

xxvi ACLU Sues To Uncover Records Detailing Torture And Abuse Of Guantanamo Prisoners, (*American Civil Liberties Union*), <https://www.aclu.org/press-releases/aclu-sues-uncover-records-detailing-torture-and-abuse-guantanamo-prisoners>, (accessed: 10th December, 2023)

xxvii Names of Guantanamo Bay Detainees Released After FOIA Request filed by Yale Law Schools MFIA Clinic, (*Yale Law School*),

<https://law.yale.edu/yls-today/news/names-guantanamo-detainees-released-after-foia-request-filed-yale-law-schools-mfia-clinic>, (accessed: 10th December, 2023)

xxviii RASUL V. BUSH & AL-ODAH V. U.S, (*The Center For Justice & Accountability*), <https://cja.org/what-we-do/litigation/amicus-briefs/rasul-v-bush-al-odah-v-u-s/>, (accessed: 11th December, 2023)

xxix Boumediene, et al. v. Bush et al., (*International Crimes Database Project, 2008*), <https://www.internationalcrimesdatabase.org/Case/893/Boumediene-v-Bush/>, (accessed: 11th December, 2023)

xxx Anastasia Bradatan, 'ACLU Statement on Biden's Long-Delayed Transfer of Man Detained at Guantánamo For Over 15 Years' (June 24, 2022) <https://www.aclu.org/press-releases/aclu-statement-bidens-long-delayed-transfer-man-detained-guantanamo-over-15-years>, (accessed: 11th December, 2023)

xxxi 'ACLU Statement on Biden's Long-Delayed Transfer of Man Detained at Guantánamo For Over 15 Years | American Civil Liberties Union' (*American Civil Liberties Union*, 24 June 2022), www.aclu.org/press-releases/aclu-statement-bidens-long-delayed-transfer-man-detained-guantanamo-over-15-years, (accessed 11 December 2023)

xxxii International Committee of the Red Cross, "Commentary on the Third Geneva Convention: Article 3," International Humanitarian Law Treaties Database (2020), <https://ihl-databases.icrc.org/en/ihl-treaties/gciii-1949/article-3/commentary/2020?activeTab=undefined>, (accessed: 11th December, 2023)

xxxiii International Committee of the Red Cross, "Article 13 - Prisoners of War - Text and Commentary," International Humanitarian Law Treaties Database, <https://ihl-databases.icrc.org/en/ihl-treaties/gciii-1949/article-13?activeTab=undefined>, (accessed: 11th December, 2023)

^{xxxiv} International Committee of the Red Cross, "Article 16 - Notification of the Protecting Powers - Text and Commentary," International Humanitarian Law Treaties Database, <https://ihl-databases.icrc.org/en/ihl-treaties/gciii-1949/article-16?activeTab=undefined>, (accessed: 11th December, 2023)

^{xxxv} International Covenant on Civil and Political Rights (1984), Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, [Online], available at <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading>, (accessed: 11th December, 2023)

^{xxxvi} Amnesty International, "USA Recognizes Convention Against Torture and Applies to Guantanamo," Amnesty International, November 2014, available at: <https://www.amnesty.org/en/latest/news/2014/11/usa-recognizes-convention-against-torture-applies-guant-namo/>, (accessed: 11th December, 2023)

^{xxxvii} European Court of Human Rights, "Guide on Article 3 of the Convention - Prohibition of Torture," European Court of Human Rights, available at: https://www.echr.coe.int/documents/d/echr/Guide_Art_3_ENG, (accessed: 11th December)

^{xxxviii} United Nations Audiovisual Library of International Law, "The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment," available at: <https://legal.un.org/avl/ha/catcidtp/catcidtp.html#:~:text=The%20Convention%20against%20Torture%20and,be,en%20ratified%20by%2020%20States.>, (accessed: 11th December, 2023)

^{xxxix} Office of the High Commissioner for Human Rights, "International Covenant on Civil and Political Rights," <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights#:~:text=the%20present%20Covenant.-,Article%207,to%20medical%20or%20scientific%20experimentation.>, (accessed: 11th December, 2023)

^{xl} Alka Pradhan, 'The United States Faces a test on Guantanamo Bay in Geneva', (*Lawfare*), October, 2023, available at: <https://www.lawfaremedia.org/article/the-united-states-faces-a-test-on-guant%C3%A1namo-bay-in-geneva>, (accessed: 11th December, 2023)

^{xli} "United States: Status and Treatment of Detainees Held at Guantanamo Naval Base," Casebook, [28/01/2022], (*International Committee of the Red Cross*), available at: <https://casebook.icrc.org/case-study/united-states-status-and-treatment-detainees-held-guantanamo-naval-base>, (accessed: 11th December, 2023)