

Seven Years Of Guantánamo, And A Call For Justice At Bagram

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Global Research, January 10, 2009
10 January 2009

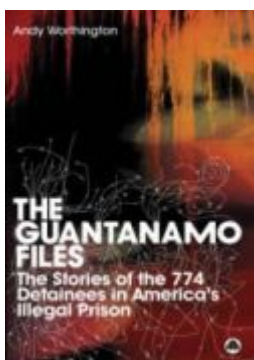
Theme: [Crimes against Humanity](#), [Law and Justice](#)



On Sunday 11 January, just nine days before the administration of George W. Bush hands over the reins of power to Barack Obama, the “War on Terror” prison at Guantánamo — perhaps the most bleakly iconic symbol of the outgoing administration’s hubris — marks its seventh anniversary.

A lawless experiment

The facts about the prison make for grim reading. A lawless experiment in arbitrary detention and coercive interrogations, Guantánamo was deliberately chosen as the location for the prison because it was presumed to be beyond the reach of the US courts. The authorities decided that they needed complete freedom to interrogate the prisoners as they saw fit, even though they did not know who they actually had in their custody. The warnings that emerged from the mouths of President Bush, Vice President Dick Cheney and defense secretary Donald Rumsfeld in the days and weeks following the opening of Guantánamo — in which they described the prisoners as “the worst of the worst,” who were “among the most dangerous, best-trained, vicious killers on the face of the earth” — were in fact hollow rhetoric.



As a study of Pentagon documents by the Seton Hall Law School demonstrated ([PDF](#)) — and

as I can confirm from my own research for [The Guantánamo Files](#) — at least 86 percent of the prisoners were captured not by US forces, but by their Afghan and Pakistani allies, at a time when bounty payments for “al-Qaeda and Taliban suspects,” averaging \$5000 a head, were widespread, and the US authorities compounded the baleful effects of this essentially indiscriminate dragnet by refusing to grant the prisoners battlefield tribunals under Article 5 of the Geneva Conventions. Held close to the time and place of capture, these had been implemented in every US war since Vietnam, and allowed witnesses to come forward to help the military separate combatants from civilians caught up in the fog of war.

Further compounding these omissions, those in overall charge of the lists of prisoners held for processing at prisons in Kandahar and Bagram (senior figures from the Pentagon, the military and the intelligence services, who were based in Kuwait) ordered that ever Arab who came into US hands was to be transferred to Guantánamo. As a result, not a single prisoner was ever adequately screened to ascertain if they actually constituted a threat to the US, or were innocent men seized by mistake, but the Bush administration insisted that they were all “enemy combatants” without rights, and deliberately stripped them of the protections of the Geneva Conventions, which prohibit “cruel or inhuman treatment,” to facilitate their interrogation.

Approving torture

The true horror of Guantánamo — and, it should be noted, of the “War on Terror” detention policies in general — became apparent when the administration responded to the meagre flow of intelligence from the Guantánamo prisoners by deciding that this was because they had been trained to resist interrogation by al-Qaeda, and not because, as innocent men and simple Taliban recruits, they had no intelligence to offer. As a highly critical Senate Armed Services Committee inquiry made clear last month ([PDF](#)), the authorities’ response was to find new ways to “break” the prisoners psychologically, which they did by reverse engineering Chinese torture techniques taught in US military schools to train American personnel to resist interrogation if captured.

These techniques, known by the acronym SERE (Survival, Evasion, Resistance, Escape), include “stripping detainees of their clothing, placing them in stress positions, putting hoods over their heads, disrupting their sleep, treating them like animals, subjecting them to loud music and flashing lights, and exposing them to extreme temperatures.” In some circumstances, they also include [waterboarding](#), a notorious torture technique, which involves controlled drowning.

The members of the Senate Committee were outraged that techniques that are illegal under the Geneva Conventions and the UN Convention Against Torture, and that are designed to enable US personnel to produce false confessions, formed the basis of the Bush administration’s approach to intelligence gathering in the “War on Terror,” but the policy’s many critics (including the FBI, the Naval Criminal Investigative Service, and the Defense Department’s own Criminal Investigative Task Force) were brushed aside.

Moreover, when the administration felt that even harsher techniques were required for a smaller number of prisoners regarded as particularly significant (both in Guantánamo and in secret prisons established by the CIA), lawyers close to Vice President [Dick Cheney](#) — led by David Addington, Cheney’s former legal counsel, and now his chief of staff — attempted to redefine torture as the infliction of pain “equivalent in intensity to the pain accompanying serious physical injury, such as organ failure, impairment of bodily function, or even death,”

as a replacement for its definition under the [UN Convention Against Torture](#), to which the US is a signatory, in which torture is correctly recognized as “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person.”

In terms of producing “actionable intelligence,” of course, the administration’s policy was an unmitigated disaster, as even the most cursory study of the history of torture reveals that it yields inaccurate information, and in Guantánamo this steady flow of coerced falsehoods was supplemented by further lies produced by bribery, as other prisoners took advantage of the promise of better living conditions to tell lies about their fellow inmates. It was, however, sufficient for the administration to claim to the world that the prison was full of dangerous “enemy combatants,” who could be held without charge or trial until the end of a “War on Terror” that the government itself admitted may last for generations.

Guantánamo now

For the prisoners still held at Guantánamo — 248 out of a total of 779 — conditions have improved to the extent that the SERE-derived torture techniques came to an end in the summer of 2004, when the US Supreme Court granted the prisoners habeas corpus rights (the right to challenge the basis of their detention before an impartial judge), and lawyers were finally allowed access to the prison. In other ways, however, Guantánamo remains an affront to all notions of decency.



The majority of the prisoners are now held in almost complete isolation in state-of-the-art cellblocks modelled on maximum-security prisons on the US mainland, their opportunities to socialize or indulge in any of the leisure activities that convicted criminals on the mainland take for granted remain minimal or non-existent, and even the most minor infringements of the prison’s rules are punished with brutal assaults by armoured response teams, and imprisonment -- for a month or more -- in total solitary confinement.

In addition, those who embark on [hunger strikes](#) as their only means of protesting their conditions of confinement are force-fed against their will, an experience that is both horribly painful and illegal. Disturbingly, the latest reports indicate that 30 prisoners are [currently on hunger strike](#), complaining about the fact that they remain imprisoned without charge or trial while [Salim Hamdan](#), a driver for Osama bin Laden who was [convicted](#) of providing material support for terrorism after a trial by Military Commission last summer, was [repatriated](#) in November to serve out the last month of his sentence. As David Remes, a lawyer for 17 Yemeni prisoners, explained, “They’ve actually gone ballistic at the fact that Hamdan, who was convicted of supporting terrorism, was released and they, who have been charged with nothing, continue to languish there.”

Closing Guantánamo

While the hunger strikers are undoubtedly correct in recognizing that the release of Salim Hamdan fatally undermined the rationale for Guantánamo's continued existence, their greatest hope for release lies with President-Elect Barack Obama, who has pledged to [close the prison](#) and to ban the use of torture by US forces as part of an effort to regain America's moral standing in the world. Even so, Obama needs to act swiftly and decisively if the prison is to be closed sooner rather than later, and he has so far provided few hints about how he proposes to deal with two outstanding problems.

The first of these concerns the 60 or so prisoners who have been cleared for release, but who cannot be freed because they are effectively stateless, or because of international treaties preventing the return of foreign nationals to countries where they face the risk of torture. They are from countries including [Algeria](#), Iraq, [Libya](#), Palestine, [Tunisia](#) and Uzbekistan, and they also include 17 Uighurs, Muslims from China's Xinjiang province, who had ended up in Afghanistan after fleeing government oppression and were sold to US forces after fleeing to Pakistan.

The Uighurs were cleared of being "enemy combatants" last summer, after the first court allowed to review a Guantánamo case — that of [Huzaifa Parhat](#) — ruled that the material presented by the government as evidence was comparable to a nonsense poem written by Lewis Carroll, the author of *Alice's Adventures in Wonderland*. However, when a judge [ruled in October](#) that their continued detention was unconstitutional, and that they should be released to the [care of communities](#) in the United States because no other country had been found that would accept them, the government appealed, relying on its own discredited claims that they constituted a threat to the United States.

Obama's second problem is to assess the quality of the government's allegations against the other prisoners, to determine who should face a trial on the US mainland (after he fulfils another promise and scraps the Military Commissions), and who should be freed.

Because of the doubts about the quality of the gathering of evidence against the prisoners — as analyzed by the Senate Armed Services Committee and also, under different circumstances, by [Lt. Col. Stephen Abraham](#), a veteran of US intelligence who worked on the prisoner reviews at Guantánamo and single-handedly demolished the government's integrity in a [series of statements](#) in 2007 — this should not be an insurmountable task, but Obama needs to appoint an impartial body to review the cases that is capable of separating fact from fiction. The bitter truth is that Guantánamo is built on lies, and cannot be closed until the government's lamentable substitute for evidence is examined with rigour and a profound skepticism.

In spite of all these problems, however, the prisoners at Guantánamo can at least be reassured that a great number of people care about their plight and are actively seeking their release. As we pause to think of the prisoners on this shameful anniversary, I ask you also to think of other prisoners — also held for years without charge or trial — who have been almost forgotten by the world, and who do not have even the limited rights for which the Guantánamo prisoners and their lawyers have fought for many long years.

A plea for justice at Bagram



Last week, in a US District Court, Judge John D. Bates listened as lawyers for prisoners held in Bagram prison in Afghanistan argued that they too deserved the habeas corpus rights that the Guantánamo prisoners were granted in June 2004. The lawyers made their appeals on behalf of four prisoners they have never even met. Unlike at Guantánamo, lawyers have never been allowed access to Bagram, where approximately [670 prisoners](#) are held. The majority of these are Afghans, who, according to a Defense Department document cited by the [New York Times](#) last January, are held for an average of fourteen and a half months before being either released or transferred to a wing of [Pol-i-Charki](#), the main Afghan prison in Kabul, which was refurbished by US forces in 2007 and is now apparently a place of uneasy cooperation between the Afghan government and the US military.

For the Afghans in Bagram, life is hard enough, as they are held not as prisoners of war protected by the Geneva Conventions, but as a variation on the “enemy combatants” at Guantánamo, subjected to secretive military reviews about which almost nothing is known. However, they at least have more chance of being released than Bagram’s other inmates: the 30 or so prisoners who are from other countries, according to US officials who spoke to the [New York Times](#) last January.

In the District Court last week, the four cases examined by Judge Bates involved one Afghan, [Haji Wazir](#), a businessman who was seized in Karachi, Pakistan in 2002, and three of these foreign prisoners: Redha al-Najar ([PDF](#)), a Tunisian who was seized from his house in Karachi, where he lived with his wife and child, in May 2002, Amin al-Bakri ([PDF](#)), a Yemeni gemstone dealer who was seized in Bangkok, Thailand in December 2002, and Fadi al-Maqalah, a Yemeni who was apparently seized in Afghanistan sometime in 2004.

Disturbingly, the three foreign prisoners seem to have spent time in secret CIA prisons before ending up at Bagram, but what is also disturbing about their cases is that there seems to be no distinction between these prisoners and others who were transferred to Guantánamo, except, of course, that the Bagram prisoners continue to have no rights whatsoever, and the government intends to make sure that they never do.

According to [SCOTUSblog](#), which reports on significant court cases in the United States, Judge Bates appeared to recognize this discrepancy, as he “voic[ed] some concern over the government creating a ‘black hole’ for detainees in a ‘law-free zone’” at Bagram, and “hinted” that he may allow some of the prisoners to file court cases to challenge the basis of their imprisonment.

Everyone concerned with the exercise of justice must hope that Judge Bates will indeed grant habeas rights to prisoners like Haji Wazir, Redha al-Najar, Amin al-Bakri, Fadi al-

Maqalah, and, in due course, to others — also held for years — whose identities are either completely unknown or only suspected. Anything less, and Bagram will indeed remain a law-free black hole, even as plans move ahead to close Guantánamo.

Andy Worthington is the author of [The Guantánamo Files: The Stories of the 774 Detainees in America's Illegal Prison](#) (published by Pluto Press, distributed by Macmillan in the US, and available from Amazon — click on the following for the [US](#) and the [UK](#)). To receive new articles in your inbox, please subscribe to the [RSS feed](#)). Andy wrote this article exclusively for [Cageprisoners](#).

For more about the Bagram legislation, visit the website of the [International Justice Network](#), whose lawyers, Tina Monshipour Foster and Barbara Olshansky, represent the Bagram prisoners described above.

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