

Why Won't the US Close Guantanamo?

Rather than funding the abuses at the detention centre, US lawmakers should heed calls by the UN special rapporteur on human rights to provide reparations to its victims

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Last month, the US Senate [passed](#) the National Defence Authorisation Act (NDAA) for 2024, an appropriations bill defining military priorities, and one that has consistently placed restrictions on remedies to the abuses at [Guantanamo Bay](#).

This year's [bill](#), like many years prior, includes a prohibition on funds to close the infamous prison camp; a prohibition on funds to transfer the incarcerated men out of the prison; a prohibition on the transfer of detainees to Afghanistan, [Libya](#), Somalia, [Syria](#), [Yemen](#) and the [US](#); and a prohibition on modifying the prison.

By supporting these measures, federal lawmakers have once again voted to perpetuate the problem of Guantanamo, the violence it is notorious for, and the collective responsibility of the Muslim men detained who have been rendered guilty until proven innocent.

Despite stated [opposition](#) from the White House, a veto of the bill seems unlikely.

President Joe Biden, who has made past [promises](#) of closing the prison, has taken no action to initiate this process. Rather, he [reportedly](#) invested millions of dollars last year in renovating parts of the facility and upgrading its courtroom in a move that The New York Times [described](#) as a "retreat from transparency in the already secretive national security cases at the base".

For the 22nd year, the abuses and lack of accountability at Guantanamo have been codified with no end in sight.

But while the annual passage of the NDAA and its signing by successive presidents have maintained the status quo on Guantanamo, budgetary considerations are far from being the only reason that the forever prison is still in operation and why impunity has reigned.

Ongoing Cruelty

This month marks 21 years since the infamous torture memos were drafted and signed by the US Office of Legal Counsel, effectively sanctioning the use of torture and allowing the US to unabashedly and openly conduct [war crimes](#).

According to one [memo](#), in order for the physical infliction of pain to be considered torture, it would have to be “equivalent in intensity to the pain accompanying serious physical injury, such as organ failure, impairment of bodily function or even death”.

After the memos were released, former President Barack Obama made sure to announce that no one would be [prosecuted](#) for these crimes and would go on to casually remark some years later that “[we tortured some folks](#)”.

Yet the effects of that torture, including [confessions](#) made under duress and extreme violence, continue to render the remaining prisoners at Guantanamo guilty and perpetuate their [ongoing](#) suffering. Obama’s inaction undoubtedly set a precedent of impunity – one that would be justified over and over again.

Mere weeks before US senators voted the NDAA into law, the UN published a [report](#) on the abuses at Guantanamo Bay by the special rapporteur on human rights and counter-terrorism, **Fionnuala Ni Aolain**. Ni Aolain was the [first](#) independent UN investigator to visit the facility in its nearly 22 years of operation.

The 23-page report, which [renewed](#) the global spotlight on Guantanamo, is a scathing critique of the government’s treatment of current and former detainees and a thorough indictment of the US government’s systematic crimes of extraordinary rendition, arbitrary detention, and deliberate and extensive mechanisms to deny individuals their rights.

“Several US government procedures establish a structural deprivation and non-fulfilment of rights necessary for a humane and dignified existence and constitute at a minimum, cruel, inhuman and degrading treatment across all detention practices at Guantanamo Bay,” the special rapporteur writes.

With just 30 remaining out of the nearly 800 prisoners the detention centre once held, Ni Aolain is also careful to address post-Guantanamo life for former prisoners, and how their conditions maintain the prison’s cruelty.

“For many former detainees, their current experience in their home or third country merely becomes an extension of arbitrary detention in Guantanamo, with some even expressing that they wish to return,” the report states.

But renewed attention on the crimes at Guantanamo has also meant renewed denials by the US government. Despite the formal critiques, American officials blithely [dismissed](#) the special rapporteur’s detailed review in a generic response that could have just as easily been written before her visit.

Thoroughly consistent with all its efforts to deny the violence at Guantanamo, the US’s reply was not just a categorical rejection of the report, but a powerful symbolic refusal – at the highest levels – to pursue any remedies, let alone any semblance of accountability, for its

victims.

To this end, the US insisted that it disagreed “in significant respects with many factual and legal assertions”, and that it was “committed to providing safe and humane treatment for detainees at Guantanamo, in full accordance with international and US domestic law”.

Despite testimony by countless former [prisoners](#) and even former [guards](#) at Guantanamo and CIA [black sites](#), the US government continues to double down on its assertions, demonstrating that no individual, human rights organisation or institutional body – much less one without actual authority over the US – could move the US to respond any differently.

Nevertheless, the US stated that it would be “carefully reviewing” the recommendations and “will take any appropriate actions, as warranted”.

What would actually warrant a change though? The US has been continuously condemned for its operations and treatment of those incarcerated to no avail.

In fact, over the last 13 years, the US has been subjected to three evaluations of its human rights records under the [Universal Periodic Review](#) process. Every one of the reports repeatedly called attention to the abusive conditions at Guantanamo and urged its immediate closure. And for every official criticism, the US government issued a response [denying](#) allegations of inhumane treatment while justifying its policies at Guantanamo and lack of action.

Not only did the brutality continue under Obama, but since 2010, the [restrictions in the NDAA](#), especially in blocking funds to release and transfer Guantanamo detainees, have increased. Obama, like every other president, elected not to [veto](#) the bill.

Facade of Accountability

Although the US finally allowed a UN torture investigator’s visit to Guantanamo without [restrictions](#), it was not to invite accountability. It was instead to promote the facade of accountability after 22 years by allowing the visit in the first place – only to categorically reject any wrongdoing. In other words, the US is not committed to accountability but to the creation of contested narratives that have long outlived the truth. Government impunity, after all, was built into the War on Terror’s legal infrastructure.

It is telling that, in the wake of a UN report on Guantanamo, US lawmakers would pass the NDAA once more with bipartisan support and seemingly no debate either on Capitol Hill or in the media about the provisions related to the detention centre. For years, US lawmakers proudly [boasted](#) about prolonging the torture at Guantanamo, but now there doesn’t even seem to be a need to address what has become an inevitability.

If the last 20 years have taught us anything, it is that there has never been, nor is there likely ever to be, any accountability for this disastrous and deeply [Islamophobic](#) project that has no conceivable end.

As much as the US has claimed to be fighting a war on terror, Guantanamo has always been a site where violence has been inflicted on Muslim men – labelled as irredeemable terrorists, even as most were never charged, let alone convicted – who have been pushed to the edge of life under the nebulous justification of protecting national security.

The US has so effectively rendered the men's lives meaningless to the point where, as historian [Achille Mbembe](#) puts it, "nobody even bears the slightest feelings of responsibility or justice towards this sort of life or, rather, death".

For a place whose motto is "safe, humane, legal, transparent", the prison in Guantanamo Bay remains anything but. Created under the guise of the "state of exception", it is a place built on the transgression of law yet continues to be sanctioned, paradoxically, by the law. A former detainee, Nizar Sassi, described the infamous prison as a place where "you don't even have the right to have rights".

Rather than earmark funds to perpetuate the abuses at Guantanamo, US officials should heed the special rapporteur's calls to provide [reparations](#) to its victims. The US must close the prison and own up to the violence it has unleashed there. Until it does, no amount of denials can hide the truth of Guantanamo Bay, which will rightly and deservedly remain a thorn in its side.

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