



***Update to the 11 September 2013 Report by the Center for Constitutional Rights
Regarding Arbitrary Detention at Guantánamo***

***Submitted for the Fourth Periodic Review of the United States of America
110th Session of the Human Rights Committee, Geneva
10 March – 28 March 2014***

This report supplements and updates the 11 September 2013 submission by the Center for Constitutional Rights (CCR) to the UN Human Rights Committee (“the Committee”) regarding arbitrary detention at Guantánamo.

In its September submission, CCR reported to the Committee that the United States continues to hold 164 men indefinitely and without charge at Guantánamo, including more than half who were unanimously approved for transfer over three years ago. In December of 2013, the United States transferred nine prisoners, eight of whom had been approved for release.¹ Four of these men were transferred pursuant to court orders, one pursuant to a military commission plea agreement, and four pursuant to the 2013 National Defense Authorization Act (NDAA). While these long overdue releases are welcome developments and demonstrate that the Executive Branch has all of the legal authority that it needs to close Guantánamo, 77 cleared men still remain at Guantánamo.

The government has not transferred any prisoners in 2014 even though a new version of the NDAA, which was signed into law on 26 December 2013, lifted the restrictions previously cited by the Administration as preventing transfers. Additionally, CCR notes that, despite the Administration’s declaration in May 2013 that it has lifted the moratorium on transfers to Yemen, none of the men who were transferred in December were Yemeni nationals. As of this submission, 88 of the 155 prisoners who remain at Guantánamo are Yemeni, 56 of whom have been cleared for release, most in 2009-10. There is no indication from the Administration, however, that concrete progress has been made towards negotiating for their release to any country.² CCR respectfully draws the Committee’s attention to the unsettling fact that Guantánamo is devolving into a detention facility that exclusively holds men of Yemeni descent.

CCR further notes that the recent transfers by the government included the forcible repatriation of two prisoners, Belkacem Bensayah and CCR client Djamel

¹ The Executive Branch transferred two Sudanese nationals on 18 December, two Saudi nationals on 16 December, two Algerian nationals on 5 December, and the remaining three Uighur prisoners on 31 December. All prisoners were transferred back to their country of nationality with the exception of the Uighur detainees, who were transferred to Slovakia. See Charlie Savage, *U.S. Frees Last of the Chinese Uighur Detainees from Guantánamo Bay*, N.Y. TIMES, 31 Dec. 2013.

² According to one administration official, the Administration is still considering the feasibility of several options in addition to a “potential rehabilitation program,” including “trying to persuade the Saudi government to take custody of several Yemeni detainees who have tribal or family ties in Saudi Arabia; finding other countries willing to resettle a Yemeni or two; and repatriating a particularly low-risk Yemeni to see how it goes.” Charlie Savage, *Panel Recommends Transferring Yemeni From Guantánamo*, N.Y. TIMES, 9 Jan. 2014. But the Administration has made no discernible effort to transfer any Yemeni national to any country since the last Yemeni transfer in June 2010.

Ameziane, who were sent against their will to Algeria on 5 December. Both men had repeatedly expressed their fear of persecution if returned to Algeria, and, in the case of Mr. Ameziane, precautionary measures against the U.S. government by the Inter-American Commission on Human Rights specifically prohibited his involuntary return.³ CCR learned that following his transfer, Mr. Ameziane was subjected to abusive treatment, kept in secret detention in Algeria for approximately one week, in deplorable conditions, and fell seriously ill as a result. The U.S. government has taken no steps to ensure his safety or humane treatment in Algeria, and the prospect of a trial in Algeria on unspecified charges continues to hang over Mr. Ameziane's head.⁴ Additionally, the U.S. government refuses to return the property they seized during his capture in 2002, which rightfully belongs to Mr. Ameziane, in violation of domestic and international humanitarian and human rights law.⁵ The government's actions, in disregard of the principle of non-refoulement and the decision of an international human rights body, have been widely condemned by the domestic and international community, including the United Nations Special Rapporteurs on torture and on human rights and counter-terrorism.⁶

After nearly three years of delay, the inter-agency Periodic Review Board (PRB), which was established by executive order in 2011 to review the status of detainees designated by the Administration in 2009-10 for "continued law of war detention," held its first hearing on 20 November 2013.⁷ As of date, the PRB has completed hearings for only two prisoners out of the dozens presumably slated for review, and has issued a decision in only one of those cases.⁸ If the PRB continues at its current pace, these hearings will take years to complete for all detainees to be reviewed. Moreover, the PRB lacks authority to order a detainee's release, which raises questions as to whether being cleared will mean actual release or continued

³ The Administration's decision is also called into question by its own human rights assessment of Algeria. In its most recent human rights report, the Department of State criticized Algeria for numerous human rights abuses, including in its treatment of prisoners and use of pretrial detention. U.S. Department of State, Country Reports on Human Rights Practices for 2012, Algeria, <http://www.state.gov/documents/organization/204564.pdf>.

⁴ We note that Algeria continues to refuse access to international human rights organizations including the International Federation of Human Rights (FIDH), Amnesty International, and Human Rights Watch. See FIDH Press Release, "Algeria: Allow Rights Groups to Visit", 11 Feb. 2014, <http://www.fidh.org/en/north-africa-middle-east/Algeria/14629-algeria-allow-rights-groups-to-visit>.

⁵ See, e.g., Geneva Convention Relative to the Treatment of Prisoners of War art. 18, 12 Aug. 1949; Geneva Convention Relative to the Protection of Civilian Persons in Time of War art. 97, 12 Aug. 1949; Annex to the Convention Respecting the Laws and Customs of War on Land art. 4, Oct. 18, 1907, 36 Stat. 2277, 1 Bevans 631 (noting that "personable belongings" remain the property of prisoners-of-war, "except arms, horses, and military papers"); Standard Minimum Rules for the Treatment of Prisoners art. 45, adopted by the First U.N. Congress on the Prevention of Crime and the Treatment of Offenders (1955), approved by the U.N. Econ. & Soc. Council, E.S.C. Res. 663(C) (XXIV) (31 July 1957) and E.S.C. Res. 2076 (LXII) (13 May 1977); U.S. DEP'T OF ARMY, REG. 190-8, ENEMY PRISONERS OF WAR, RETAINED PERSONNEL, CIVILIAN INTERNEES AND OTHER DETAINEES para. 3-14 (1 Oct. 1997).

⁶ See IACHR Press Release, "IACHR Condemns Forced Transfer of Djamel Ameziane from Guantánamo to Algeria," 19 Dec. 2013, http://www.oas.org/en/iachr/media_center/PReleases/2013/103.asp; Press Release, "UN Rights Experts on Torture and Counter-Terrorism Concerned About the Fate of Guantánamo Detainees," 10 Dec. 2013, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14084&LangID=E>; Editorial, *A Bad Decision at Guantánamo*, N.Y. TIMES, 6 Dec. 2013, <http://www.nytimes.com/2013/12/07/opinion/a-bad-decision-at-guantanamo.html>.

⁷ Exec. Order No. 13567, Periodic Review of Individuals Detained at Guantánamo Bay Naval Station Pursuant to the Authorization for Use of Military Force, 3 C.F.R. 13567 (7 Mar. 2011).

⁸ U.S. Department of Defense, Periodic Review Secretariat, <http://www.prs.mil/ReviewInformation.aspx>.



detention. In the single decision the PRB has issued to date, the Board recommended the detainee for “conditional” transfer.⁹ His actual release from Guantánamo remains uncertain and at the discretion of the Administration.

Detainees also continue to suffer mistreatment and abuse at the hands of the authorities as Guantánamo. Approximately two dozen men, including CCR client Tariq Ba Odah, remain on hunger strike in protest of their continued detention and treatment. The U.S. military continues to force-feed Mr. Ba Odah and other hunger strikers through the nose using restraint chairs, despite widespread international condemnation of the practice.¹⁰ Indeed all that has changed since our last submission is that the U.S. military announced in December that it would no longer disclose the number of strikers in order to conceal the scope of ongoing protests at Guantánamo.¹¹ The use of solitary confinement also continues against detainees in “Camp 5” at Guantánamo. Degrading treatment, including genital searches of detainees prior to being moved for legal appointments and family phone calls, also continues, with the effect of causing many detainees to “refuse” such appointments to avoid the ordeal.

VII. Additional Suggested Recommendations and Questions

- 1) Exercise authority under the 2014 NDAA to effect additional transfers without further delay.¹²
- 2) Provide the anticipated date by which the Administration expects to complete PRB hearings for all detainees slated for review.
- 3) Disclose the number of detainees currently on hunger strike and currently being forcibly fed.
- 4) Disclose the number of detainees currently being held in solitary confinement at Guantánamo.

Dated: 12 February 2014

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⁹ U.S. Department of Defense Press Release, “Completion of First Guantanamo Periodic Review Board,” 9 Jan. 2014, <http://www.defense.gov/releases/release.aspx?releaseid=16473>.

¹⁰ See, e.g., Office of the High Commissioner for Human Rights Press Release, “IACHR, UN Working Group on Arbitrary Detention, UN Rapporteur on Torture, UN Rapporteur on Human Rights and Counter-Terrorism, and UN Rapporteur on Health reiterate need to end the indefinite detention of individuals at Guantánamo Naval Base in light of current human rights crisis”, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13278&LangID=E>.

¹¹ See *Guantánamo Detainees’ Hunger Strikes Will No Longer be Disclosed by U.S. Military*, WASHINGTON POST, 4 Dec. 2013.

¹² Revised from CCR’s 11 September 2013 submission.