

# INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

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Volume 6 | Issue 4

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2023

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# Cries of the Caged: Investigating IHL Breaches During the War in Afghanistan in the Guantanamo Bay Detention Camp

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## ABSTRACT

*In the midst of a global war on terror, the Guantanamo Bay Detention Camp emerged as a notorious symbol of the complexities and contradictions surrounding international law and human rights. This research paper, titled "Cries of the Caged: Investigating IHL Breaches During the War of Afghanistan in the Guantanamo Bay Detention Camp," delves into the dark corridors of this facility to shed light on the violations of International Humanitarian Law (IHL) that have taken place within its walls.*

*Drawing upon historical background, legal context, and the principles of IHL, the paper explores the contraventions of detainees' rights, including torture, denial of due process, and violations of privacy and access to medical care. It reveals the unique challenges faced at Guantanamo Bay and the urgent need for reform.*

*The role of state and non-state actors is examined, uncovering the complex power dynamics that perpetuate injustice. Furthermore, the paper offers thoughtful recommendations for reform, aiming to restore justice, transparency, and respect for human rights.*

*This research paper serves as a poignant reminder of the moral imperative to uphold the dignity of all individuals, even in times of conflict. By investigating the cries of the caged and exposing the breaches of IHL, it ignites a call to action for readers to join the pursuit of justice and advocate for meaningful change in our world.*

**Keywords:** *Guantanamo Bay Detention Camp, Detainees' Rights, Prisoners of War or "unlawful enemy combatants", Role of State and Non-State Actors.*

## I. INTRODUCTION

*"No one truly knows a nation until one has been inside its jails. A nation should not be judged by how it treats its highest citizens but its lowest ones."* - Nelson Mandela<sup>2</sup>

The Guantanamo Bay, Cuba has served a dual purpose for the US forces during the War in Afghanistan – one being a naval base for their forces and the other, and more well-known, being

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<sup>2</sup> Nelson Rolihlahla Mandela was a South-African anti-apartheid activist and politician who served as the first President of South Africa from 1994 to 1999. He was the country's first black head of state and the first elected in a fully representative democratic election.

a detention camp for all the alleged Muslim militants and terrorists suspected to be behind the 9/11 attacks. These individuals were captured by the US forces in Afghanistan and Iraq.

The infamous Military Prison of the US started off as a naval base owing to its harbor and was secured by the US Forces in the July of 1898. However, the initiation of the prison facility took place in the year 2002 first and since then, has held over 800 detainees.

When the information of this detention camp was publicized, the veil over the US deeming it the “protector of human rights” was duly lifted. The entire world’s collective perception of the US took a hit.

Even though there have been multiple promises by the US administration and Presidents regarding the closing of this prison facility, the same has not come to fruition even after the US has acted upon its decision of withdrawing its forces from the territory of Afghanistan in the August of 2021. The current Biden administration, while declaring their intention to shut the prison down, has allegedly invested in the facility remaining open.

While there can be no doubt about the occurrence of violations of the humanitarian law in Guantanamo, there still remains a dispute about the magnitude of these violations.

This paper seeks to explain the kinds of violations that took place behind these barbed wires and the magnitude of the same which might leave the readers shocked.

The case studies that will be examined in this paper will not only give us a deeper understanding of the legal perspective of the violations of the rights of the detainees but will also help explore their moral dimensions bringing to the forefront the author’s outlook.

### **(A) Review of literature**

1. **“The Torture Memo<sup>3</sup>”**, officially known as the Memorandum Regarding Military Interrogation of Alien Illegal Combatants Held Outside the United States were written by John Yoo while serving as the country's deputy assistant attorney general and were approved by assistant attorney general Jay S. in August 2002.
2. **“The ‘War on Terror’ and International Law<sup>4</sup>”** is the doctoral thesis of the author and is the second edition of a book, published by Cambridge University Press in 2005, entitled “The ‘War on Terror’ and the Framework of International Law”. The book was widely

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<sup>3</sup> Yoo & Haynes II, *Memo regarding the torture and military interrogation of alien unlawful combatants held outside the United States*, (2003), [https://www.aclu.org/wp-content/uploads/document/yoo\\_army\\_torture\\_memo.pdf](https://www.aclu.org/wp-content/uploads/document/yoo_army_torture_memo.pdf)

<sup>4</sup> HELEN DUFFY, *THE ‘WAR ON TERROR’ AND INTERNATIONAL LAW*, (Leiden: E.M. Meijers Instituut, Instituut voor Rechtswetenschappelijk Onderzoek 2013)

used and favorably reviewed owing to which this thesis was written.

3. **“Guantanamo Bay and the Annihilation of the Exception<sup>5</sup>”** is written by a Lecturer at the University of Sydney, Faculty of Law, Sydney, Australia, The earlier versions of this article were presented at: the Inaugural Conference of the European Society of International Law (13–15 May 2004, Florence, Italy), the 12th Annual Australian and New Zealand Society of International Law Conference (18–20 June 2004, Canberra, Australia), and the 22nd Annual Australian Law & Society Conference (13–15 Dec. 2004, Brisbane, Australia).

### **(B) Statement of problem**

The problem addressed in this paper is the extensive violations of IHL observed within the Detention Camp of Guantanamo Bay. The persistence of such violations raises fundamental questions regarding the adherence to the principles of IHL within the context of detention facilities. This paper seeks to examine and analyze the extent and nature of these violations along with the psychological and socio-political impact on detainees and certain recommendations for the reformation of such systems of detention.

### **(C) Objectives of study**

1. The goal of the proposed project is to understand the meaning of prisoners of war under the Third Geneva Convention and use it to ascertain the legal status of these detainees.
2. To lay down the list of IHL violations to fathom their magnitude.
3. To examine the modus operandi of the different detention facilities around the world with special reference to the Guantanamo Bay Detention Camp
4. To study in detail the incidences of infringement of IHL and the role played by the State and non-State Actors.

### **(D) Research questions**

The proposed project focuses on the following problems: -

1. Whether the individuals detained at Guantanamo Bay classify as Prisoners of War or, as the US administration has repeatedly claimed, “unlawful enemy combatants”?
2. What are the rights of the detainees held in such detention camps?
3. Whether there were occurrences of violations of the rights of the detainees?

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<sup>5</sup>Fleur Johns, *Guantanamo Bay and the Annihilation of the Exception*, 16 EUROPEAN J. OF INT'L L. 613, 613-635 (2005)

**(E) Hypothesis**

The Guantanamo Bay Detention Camp has witnessed countless violations of IHL owing to the prolonged, arbitrary and indefinite detention of individuals; the reports of abuse and ill-treatment of the detainees; and the accountability discarded by the US administration over this treatment.

**(F) Research methodology**

The research work is conducted through Doctrinal research by relying upon secondary sources.

**II. HISTORICAL BACKGROUND AND THE LEGAL CONTEXT****(A) What is the historical background of the Guantanamo Bay Detention Camp?**

The Guantanamo Bay detention camp, located on the southeastern coast of Cuba, has been at the center of global attention since its establishment in 2002 as part of the United States' response to the September 11, 2001 terrorist attacks. Understanding the historical context of the War on Terror, which led to the creation of Guantanamo Bay, is essential to comprehending the complexities surrounding the detention camp.

The war in Afghanistan, which began in 2001, originated as a response to the September 11 attacks and the Taliban regime's harboring of Al-Qaeda. The United States, supported by coalition forces, aimed to remove the Taliban from power and disrupt terrorist networks. Over time, the conflict evolved into a complex insurgency, with the Afghan government, international forces, and various militant groups engaging in prolonged fighting. Despite significant military operations and efforts to promote stability and governance, the war in Afghanistan has persisted, resulting in extensive casualties, political challenges, and ongoing negotiations for a peaceful resolution.

This comprehensive military campaign, led primarily by the U.S., involved military operations, intelligence activities, and legal measures to prevent future terrorist acts. The U.S. targeted not only the perpetrators of 9/11 but also groups and individuals suspected of involvement in terrorism worldwide.

As part of its counterterrorism efforts, the U.S. began detaining individuals captured in the context of the War on Terror. Guantanamo Bay became a significant detention facility where detainees, primarily suspected members of Al-Qaeda and the Taliban, were held indefinitely without trial. The legal status and treatment of detainees at Guantanamo Bay have been subjects of intense controversy, with allegations of human rights abuses and denial of due process.

**(B) Whether the legal detainees detained in the Guantanamo Bay Detention Camp fall under the ambit of Prisoners of War (POWs) or “unlawful enemy combatants” as claimed by the US Administration?**

The question of whether those detained at Guantanamo Bay should be classified as prisoners of war or as "unlawful enemy combatants" has caused significant debate and controversy. The US government has repeatedly advocated the latter designation, but this paper presents arguments in favor of classifying detainees as prisoners of war.

The term "unlawful enemy combatants" emerged as a separate classification from prisoners of war in response to the challenges posed by the war on terrorism. It refers to those who have not met the criteria for prisoner-of-war status and have engaged in armed conflict against the United States or its allies. This category allows for the lawful detention of individuals who may pose a threat to national security but who do not fit the traditional definition of a prisoner of war.

The legal framework for the classification of persons in armed conflict is basically determined by his four Geneva Conventions of 1949 and their Additional Protocols. These international agreements provide clear criteria for determining the status of persons detained during armed conflict. To qualify as a prisoner of war, you must meet certain requirements, such as being affiliated with a party to the conflict, wearing special insignia, and conducting operations in accordance with the laws and customs of war.

The Geneva Convention emphasizes the humane treatment of prisoners of war and guarantees their protection from torture, cruel treatment and degrading prison conditions. By classifying the Guantánamo internees as prisoners of war, they are entitled to all the rights and protections afforded them under these international treaties.

Applying the criteria set out in the Geneva Convention, it is clear that those held at Guantanamo Bay meet the requirements to be classified as prisoners of war. They were arrested in connection with the fight against terrorism, which under international law is classified as an armed conflict. Furthermore, they may not have belonged to the traditional national armed forces, but may have belonged to non-state armed groups involved in hostilities. Designating prisoners of war as prisoners of war ensures that their fundamental rights and protections, including due process, fair treatment and the right to legal representation, are respected. It will also help promote goodwill between nations and improve compliance with international humanitarian law.

### III. PROTECTIONS TO DETAINEES UNDER IHL AND OPTIONS FOR LEGAL DISCOURSE

#### (A) What are the rights of the detainees detained in such camps?

1. **Humane Treatment:** POWs and political prisoners have the right to be treated humanely and with dignity. Torture, cruel, inhuman, and humiliating treatment and punishment are all prohibited. Article 3, Geneva Conventions bans violence, cruelty, and humiliation and assures that POWs and detainees are treated with dignity.
2. **Protection from Violence and Abuse:** Detainees and POWs have the right to be protected from physical, mental, and sexual violence. They should not be threatened, pressured, or abused in any way. Physical or mental torture, as well as any other type of coercion or intimidation of internees or prisoners of war, are expressly prohibited in Article 17, Third Geneva Convention.
3. **Medical Care:** Detainees and POWs have the right to appropriate medical care and treatment without prejudice. This includes medical facilities, medication, and mental health care. Article 12, Third Geneva Convention states that prisoners of war and prisoners of war must be provided with sufficient medical care on par with civilians.
4. **Legal Rights and Fair Trial:** Internees and prisoners of war have the right to legal representation and a fair and impartial trial. They have the right to appeal their detention and are assumed innocent until proven guilty. Article 75, Additional Protocol I, Geneva Conventions (1977) guarantees the right to a fair and due procedure, including fast and full information about accusations made against them.
5. **Communication with the Outside World:** Internees and prisoners of war have the right to write, receive visits, and keep touch with their relatives, subject to security constraints. The need of establishing communication between prisoners of war and prisoners of war and their relatives is recognized in Article 71, Third Geneva Convention.
6. **Religious Freedom:** Prisoners of war and detainees have the right to freely practice their religion and beliefs. They should have access to religious leaders and volunteer opportunities. Article 34, Fourth Geneva Convention allows prisoners of war and detainees the freedom to practice their faith, subject to certain protections.
7. **Protection of privacy:** Detainees and prisoners of war have the right to privacy as well as the right to be free from arbitrary or unlawful search and seizure. According to Article 16, Fourth Geneva Convention, security and discipline measures must protect the

privacy of prisoners of war and detainees.

8. **Redress and Compensation:** Detainees and prisoners of war have the right to seek remedies for violations of their rights and reasonable compensation for losses sustained while detained. The duty to offer adequate remedies and remedies for abuses of prisoners' rights is emphasized in Article 87, Additional Protocol I (1977).

**(B) What are the options for the detainees in terms of legal discourse?**

The legal proceedings for detainees at Guantanamo Bay have involved different systems throughout the years. Here are the main legal proceeding systems that have been utilized:

1. **Military Commissions:** Military commissions are special courts established by the U.S. government to try individuals accused of terrorism-related offenses. They were initially created in 2001 and revised in 2006 through the Military Commissions Act. The military commission system is designed specifically for prosecuting individuals detained as "enemy combatants" and has been used to try several detainees at Guantanamo Bay.

The military commissions have faced criticism regarding their fairness, transparency, and adherence to international legal standards. Over the years, there have been legal challenges and debates regarding the rules and procedures governing the military commissions, including concerns about the admissibility of evidence obtained through coercion and the limited rights provided to the defendants.

2. **Habeas Corpus Petitions:** Habeas corpus is a legal mechanism that allows individuals to challenge the lawfulness of their detention before a court. The right to habeas corpus is a fundamental safeguard against arbitrary detention. In 2004, the U.S. Supreme Court ruled in *Rasul v. Bush*<sup>6</sup> that Guantanamo detainees have the right to seek habeas corpus relief in U.S. federal courts.

*Al Odah v. United States*<sup>7</sup>: The U.S. Court of Appeals for the District of Columbia Circuit addressed the issue of habeas corpus rights for Guantanamo detainees. The court ruled that detainees have the constitutional right to challenge their detention through habeas corpus petitions in U.S. federal courts.

Since then, detainees at Guantanamo Bay have filed numerous habeas corpus petitions, asserting their right to challenge their detention and seek release. These petitions have led to significant legal proceedings, with courts examining the lawfulness of the detentions, the sufficiency of

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<sup>6</sup> *Text of Decision*, 43 I.L.M. 1207 (2004).

<sup>7</sup> *Federal Jurisdiction and Procedure*, 118 HARV. L. REV. 386 (2004).



evidence, and the application of constitutional and international law.

3. **U.S. Federal Courts:** Aside from habeas corpus petitions, detainees at Guantanamo Bay have also been involved in legal proceedings before U.S. federal courts. These proceedings have addressed various issues, including challenges to conditions of confinement, allegations of mistreatment, and claims of rights violations.

In certain cases, detainees have sought redress for alleged human rights abuses, such as torture, cruel treatment, and denial of due process, through civil lawsuits filed in U.S. federal courts against government officials and entities involved in their detention and treatment.

#### **IV. THE CONTRAVENTION OF DETAINEES' RIGHTS**

##### **(A) Lack of Humane Treatment and Access to Medical Care**

- Reports have raised concerns about the overall conditions of detention and the denial of adequate medical care for detainees in Guantanamo Bay. These violations can be understood through the following provisions:
- Article 5, UDHR: This article states that no one shall be subjected to torture or to cruel, inhuman, or degrading treatment or punishment. Denying adequate medical care may fall within the scope of inhuman or degrading treatment.
- Article 10, UDHR: This article recognizes the right to humane treatment while in detention, including the provision of necessary medical care.
- *Aamer v. Obama*<sup>8</sup>: In this case, a federal judge ordered the release of Shaker Aamer, a British citizen and former Guantanamo detainee, on the grounds of his deteriorating physical and mental health. The judge found that Aamer's prolonged detention without charge and inadequate medical care constituted cruel and inhuman treatment.

##### **(B) Denial of Due Process and Right to Legal Counsel:**

- Detainees at Guantanamo Bay have faced challenges in exercising their right to due process and legal counsel, which violates their fair trial guarantees. The specific articles violated include:
- Article 10, UDHR affirms the right to a fair and public hearing by an independent and impartial tribunal.
- Article 14, ICCPR recognizes the right to a fair trial, including the right to be informed promptly and in detail of the charges, the right to adequate time and facilities for the preparation of the defense, and the right to legal assistance.

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<sup>8</sup> Aziz Z. Huq, *The President and the Detainees*, 165 U. PA. L. REV. 499 (2017).

- *Bensayah v. Obama*<sup>9</sup>: The U.S. Court of Appeals for the District of Columbia Circuit ruled that the government's evidence against an Algerian detainee, Farhi Saeed Bin Mohammed, was insufficient to justify his continued detention. The court held that the government's case relied on evidence obtained through coercion and that the detainee was entitled to a meaningful opportunity to challenge his detention.
- *Al-Ghizzawi v. Bush*<sup>10</sup>: In this case, a U.S. District Court ordered the release of Mohammed Abdul Rahman, a Libyan detainee, finding that his detention without charge violated his constitutional rights to due process and habeas corpus. The court held that the government failed to provide any credible evidence to justify his continued detention.
- *Al-Harith v. United Kingdom*<sup>11</sup>: The European Court of Human Rights held that the United Kingdom had violated the rights of Jamal Al-Harith, a British citizen and former Guantanamo detainee, by participating in his detention and interrogation at Guantanamo Bay without ensuring proper legal safeguards. The court found that the United Kingdom's involvement in his mistreatment amounted to a violation of his right to a fair trial.

**(C) Torture and Cruel, Inhuman, or Degrading Treatment:**

- Allegations of torture and cruel, inhuman, or degrading treatment of detainees in Guantanamo Bay are of significant concern and violate various international human rights instruments, including:
- Article 5, UDHR states that no one shall be subjected to torture or to cruel, inhuman, or degrading treatment or punishment.
- Article 7, ICCPR prohibits torture, cruel, inhuman, or degrading treatment or punishment. It establishes an absolute prohibition on such acts.
- The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT): The practices reported in Guantanamo Bay violate Article 2 which requires states to take effective measures to prevent and prohibit torture, and Article 16 prohibits cruel, inhuman, or degrading treatment or punishment.
- *El-Masri v. United States*<sup>12</sup>: In this case, the European Court of Human Rights ruled that the treatment of Khaled El-Masri, a German citizen who was mistakenly detained and

<sup>9</sup> Curtis A. Bradley & Jack L. Goldsmith, *Obama's AUMF Legacy*, 110 AM. J. INT'L L. 628 (2016).

<sup>10</sup> Lee Kovarsky, *Original Habeas Redux*, 97 VA. L. REV. 61 (2011).

<sup>11</sup> Clive Walker, *Keeping Control of Terrorists without Losing Control of Constitutionalism*, 59 Stan. L. REV. 1395 (2007).

<sup>12</sup> Christina M. Cerna, *Introductory Note to the European Court of Human Rights: El-Masri v. the Former Yugoslav*

subjected to torture at a secret CIA detention facility, amounted to torture and inhuman and degrading treatment. The court held that Macedonia, where he was initially detained, was complicit in his abuse.

- Al-Zahrani v. Rodriguez<sup>13</sup>: The U.S. Court of Appeals for the District of Columbia Circuit allowed a lawsuit to proceed on behalf of the families of two detainees who died at Guantanamo Bay, Yasser Al-Zahrani and Salah Al-Salami. The court found that the plaintiffs had sufficiently alleged that their sons were subjected to torture and cruel treatment, in violation of their constitutional rights.
- Al Qahtani v. Bush<sup>14</sup>: A military judge at Guantanamo Bay dismissed the charges against Mohammed al-Qahtani, a Saudi Arabian detainee, after finding that he had been subjected to torture and coercive interrogation techniques. The judge concluded that the treatment of al-Qahtani violated the prohibition on cruel and inhuman treatment and rendered his confession unreliable.

#### **(D) Inadequate Review Mechanisms:**

- The lack of effective and independent review mechanisms has been a point of criticism. Detainees have faced challenges in challenging their detention and obtaining meaningful reviews of their cases, undermining their rights to a fair and prompt judicial process.
- Boumediene v. Bush<sup>15</sup>: In this landmark case, the U.S. Supreme Court held that Guantanamo detainees have the constitutional right to challenge their detention through habeas corpus petitions in U.S. federal courts. The court found that the review mechanisms in place at the time were inadequate and did not provide detainees with a meaningful opportunity to contest the legality of their detention.
- Al-Wazan v. United Kingdom<sup>16</sup>: The European Court of Human Rights ruled that the United Kingdom violated the rights of Jamil El-Banna and Bisher Al-Rawi, former Guantanamo detainees, by failing to conduct a prompt and effective review of their detention. The court held that the absence of a meaningful review mechanism prolonged their arbitrary detention and violated their rights under the European Convention on Human Rights.

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*Republic of Macedonia*, 52 INT'L LEGAL Materials 558 (2013).

<sup>13</sup> Tara Leigh Grove, *The Article II Safeguards of Federal Jurisdiction*, 112 COLUM. L. REV. 250 (2012).

<sup>14</sup> M. Cherif Bassiouni, *The Institutionalization of Torture under the Bush Administration*, 37 Case W. Res. J. INT'L L. 389 (2005-2006).

<sup>15</sup> Robert M. Chesney, *Boumediene v. Bush*, 102 AM. J. INT'L L. 848 (2008).

<sup>16</sup> Amnesty International, *USA: Who are the Guantanamo detainees? case sheet no.3: Detainees from the UK*, AMNESTY INTERNATIONAL (2004), <https://www.amnesty.org/en/documents/amr51/072/2004/en/>

- Hamdan v. Rumsfeld<sup>17</sup>: In this case, the U.S. Supreme Court held that the military commissions established to try detainees at Guantanamo Bay lacked proper legal authority and violated both U.S. domestic law and international law. The court found that the review mechanisms in place did not meet the standards required for fair and impartial trials.

**(E) Communication with the Outside World:**

- Restrictions on communication between detainees and their families, as well as limitations on access to legal representation, have been reported at Guantanamo Bay. Detainees have faced difficulties in maintaining regular contact with their families and obtaining legal counsel, impeding their ability to exercise their rights.
- Parhat v. Gates<sup>18</sup>: The U.S. Court of Appeals for the D.C. Circuit held that the government had improperly designated Huzafa Parhat, a Guantanamo detainee, as an "enemy combatant" based on unreliable evidence. The court found that the government's decision was arbitrary and that Parhat should be given the opportunity to challenge his designation. The case touched upon the issue of limited communication with the outside world, as detainees' ability to contest their detention often relies on access to legal counsel and external communication.
- Khan v. Obama<sup>19</sup>: The U.S. District Court for the District of Columbia ruled in favor of the detainees' right to access communication with their attorneys. The court held that the Guantanamo Bay detainees had a constitutional right to communicate with their lawyers and that the government's practice of monitoring attorney-client communications violated that right.

**(F) Arbitrary Detention:**

- Detainees at Guantanamo Bay have been held for prolonged periods without charge or trial. This practice has been criticized as a violation of the principle of non-arbitrary detention, which requires that individuals be detained only on lawful grounds and with proper legal justification.
- The practice of detaining individuals without charge or trial in Guantanamo Bay contravenes several provisions of international human rights law. Specifically, it violates:

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<sup>17</sup> Neal Kumar Katyal, *Hamdan v. Rumsfeld: The Legal Academy Goes to Practice*, 120 HARV. L. REV. 65 (2006).

<sup>18</sup> Robert M. Chesney, *Boumediene v. Bush*, 102 AM. J. INT'L L. 848 (2008).

<sup>19</sup> CURTIS, *supra* note 7, at 11.

- Article 9, UDHR: This article guarantees the right to liberty and security of the person. Detaining individuals indefinitely without trial undermines their right to liberty and infringes upon the presumption of innocence until proven guilty.
- Article 9, ICCPR: Similar to the UDHR, this article also guarantees the right to liberty and security of the person. It affirms the right to be promptly brought before a judge and to challenge the lawfulness of detention. The indefinite detention at Guantanamo Bay undermines these rights.
- *Ameziane v. Obama*<sup>20</sup>: The Inter-American Commission on Human Rights (IACHR) ruled that the United States violated the rights of Djamel Ameziane, an Algerian national and former Guantanamo detainee. The IACHR found that Ameziane had been subjected to torture, arbitrary detention, and violations of due process and fair trial rights.
- *Qassim v. Trump*<sup>21</sup>: In this case, the U.S. District Court for the District of Columbia ordered the release of Abdul Rahim Al Janko, a Guantanamo detainee, finding that his continued detention without charge violated his constitutional rights. The court determined that the government's evidence did not meet the standard necessary to justify his indefinite detention.

## V. ROLE OF STATE AND NON-STATE ACTORS

Hereinafter is a further elaboration on the role of state and non-state actors in the Guantanamo Bay Detention Camp:

### (A) State Actors:

1. **United States Government:** The United States government, particularly the executive branch, is responsible for establishing and implementing policies and procedures related to the detention of individuals at Guantanamo Bay. This includes decisions on who is considered an "enemy combatant" and eligible for detention, as well as the legal framework governing their treatment and potential prosecution.

The government sets guidelines on issues such as interrogation techniques, detainee classification, and release or transfer processes. It is also responsible for engaging in diplomatic efforts, negotiations, and discussions with other countries regarding the detention and potential repatriation or transfer of detainees.

2. **Military Personnel:** The U.S. military plays a central role in the day-to-day operations and security of the Guantanamo Bay Detention Camp. Military personnel, including

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<sup>20</sup> AZIZ, *supra* note 6, at 11

<sup>21</sup> Elena Chachko, *Administrative National Security*, 108 GEO. L.J. 1063 (2020).

members of the Army, Navy, and other branches, are responsible for the custody, care, and control of detainees. They manage the physical facilities, maintain security, and oversee activities such as detainee transfers and interactions.

Military personnel follow guidelines and protocols established by the U.S. government and the military chain of command. They may be involved in interrogations, intelligence gathering, and the overall management of the detention camp.

3. **Intelligence Agencies:** Certain U.S. intelligence agencies, such as the Central Intelligence Agency (CIA), have been involved in the interrogation and intelligence-gathering processes at Guantanamo Bay. Their specific roles and activities have been the subject of scrutiny and controversy.

**(B) Non-State Actors:**

1. **International Committee of the Red Cross (ICRC):** The ICRC is an independent and neutral humanitarian organization with a mandate to protect and assist victims of armed conflict. It plays a crucial role in monitoring the conditions and treatment of detainees at Guantanamo Bay.

The ICRC conducts regular visits to the detention camp, interviewing detainees in private, assessing their well-being, and monitoring compliance with international humanitarian law, including the treatment of prisoners of war. They provide confidential reports to the detaining authorities, advocating for improvements and addressing any concerns.

2. **Non-Governmental Organizations (NGOs):** Numerous human rights organizations, such as Amnesty International and Human Rights Watch, actively monitor and advocate for the rights of detainees at Guantanamo Bay. These NGOs raise awareness about the situation at the detention camp, conduct research and investigations, and provide information to the public and policymakers.

NGOs often highlight concerns about human rights violations, advocate for the closure of the detention camp, and seek accountability for alleged abuses. They may engage in legal actions, public campaigns, and lobbying efforts to bring attention to the plight of detainees and promote adherence to international human rights standards.

3. **Legal Defence Organizations:** Various legal defence organizations, both domestic and international, play a critical role in representing and advocating for the rights of detainees at Guantanamo Bay. These organizations provide legal counsel, advice, and representation to detainees, seeking to ensure their fair treatment and access to due

process.

Legal defence organizations challenge the lawfulness of detentions, file habeas corpus petitions, and pursue legal actions on behalf of detainees. They aim to protect detainees' rights, challenge any alleged abuses or violations of international law, and work towards securing their release or fair trials.

These actors collectively contribute to the ongoing scrutiny, monitoring, and advocacy surrounding the Guantanamo Bay Detention Camp. They play crucial roles in ensuring transparency, accountability, and the protection of detainees' rights in this complex and contentious context.

## **VI. RECOMMENDATIONS FOR REFORM AS CONCLUSION**

1. **Closure of the Detention Camp:** Many human rights organizations and advocates have called for the closure of the Guantanamo Bay Detention Camp. The closure would help address the legal and ethical concerns surrounding the facility and promote compliance with international human rights standards. It would also alleviate the ongoing challenges associated with indefinite detention and provide an opportunity for detainees to be transferred to appropriate legal jurisdictions or released.

2. **Transparent Legal Process:** Ensuring a transparent legal process is crucial. Detainees should have the right to a fair trial or due process, with access to legal representation, an opportunity to challenge their detention, and a timely review of their cases. Legal proceedings should be conducted in accordance with international human rights standards and the principles of justice.

3. **Prohibition of Torture and Abuse:** Clear and unequivocal prohibitions on torture, cruel, inhuman, or degrading treatment or punishment should be strictly enforced. The U.S. government should ensure that all detainees are treated in accordance with international human rights law, including the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

4. **Independent Oversight and Monitoring:** Establishing independent oversight mechanisms to monitor conditions, treatment, and adherence to human rights standards at the detention camp is crucial. This could involve granting access to international organizations such as the International Committee of the Red Cross (ICRC) and independent human rights organizations, allowing them to regularly visit and assess the situation. Enhanced transparency would help ensure accountability and prevent potential abuses.

5. **Review and Release Procedures:** Implementing transparent and efficient review procedures for all detainees is essential. Regular and meaningful review processes should be established to assess the ongoing necessity of detention and determine the appropriate course of action for each individual. Detainees who are not charged with a crime and do not pose a significant threat should be released promptly.

6. **International Cooperation:** The United States should actively engage with the international community and seek cooperation in addressing the situation at Guantanamo Bay. This could involve working with other countries to facilitate the transfer or repatriation of detainees who cannot be charged with a crime or pose no threat. Collaborative efforts could help find appropriate legal solutions for individual cases and promote accountability.

**Reconciliation and Support for Former Detainees:** Efforts should be made to support the rehabilitation and reintegration of individuals who have been released from Guantanamo Bay. This could involve providing appropriate medical, psychological, and social support to address the physical and emotional consequences of their detention. Additionally, assistance in reintegrating into their communities and rebuilding their lives can contribute to a successful transition.

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