



The
CENTER for
VICTIMS of
TORTURE

**Testimony to the Senate Judiciary Subcommittee
on the Constitution, Civil Rights, and Human Rights:**
*Closing Guantanamo: The National Security, Fiscal, and Human Rights
Implications*

Curt Goering, Executive Director
The Center for Victims of Torture
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The Center for Victims of Torture (CVT) commends Chairman Dick Durbin (D-IL) and Ranking Member Ted Cruz (R-TX) for holding this hearing on “Closing Guantanamo: The National Security, Fiscal, and Human Rights Implications.”

CVT is an international non-profit organization that provides treatment and rehabilitation services to torture and war trauma survivors in the U.S. and abroad. Founded in Minnesota in 1985, CVT was the first organized program of care and rehabilitation for torture survivors in the U.S. and one of the very first in the world. To date, we have extended care to nearly 24,000 survivors of torture and war trauma at our healing sites in Minnesota, Africa and the Middle East.

CVT opposes indefinite detention, which we define as detention without trial for an undefined duration over which the individual has no knowledge of when or whether he will be released. From our 27 years of experience healing torture survivors, we know indefinite detention causes such severe, prolonged and harmful health and mental health problems for those detained that it can constitute cruel, inhuman, and degrading treatment. Among the thousands of survivors CVT cares for are many who have suffered while being imprisoned without charge or trial and without being told when, if ever, they might be released.

CVT supports a safe environment where detainees held in U.S. custody are treated humanely in accordance with U.S. laws and obligations under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the Geneva Conventions, the International Covenant on Civil and Political Rights (ICCPR) and other international human rights standards. As such, we remain deeply concerned with the continued indefinite detention of most of the 166 detainees held at the prison in Guantanamo Bay, Cuba and the ongoing hunger strike among a large percentage of those detainees.

Consequences of Indefinite Detention

The very indeterminacy of indefinite detention, without charge or process for review and eventual determinate sentence or release, creates a degree of uncertainty, unpredictability and loss of control over the elemental aspects of one’s life, causing severe harm in healthy individuals, independent of other aspects or conditions of detention. For these reasons, the physical and psychological ramifications of indefinite detention rise to the level of cruel, inhuman, and degrading treatment (CID), a violation of U.S. treaty obligations under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and in contravention of U.S. constitutional law.

- ***Physical and Psychiatric Trauma Resulting from Indefinite Detention***

“Cruel, inhuman, or degrading” is not merely a value-laden set of words - measurable physical and psychiatric trauma result from CID. Medical examinations have disclosed that indefinite detention have

led to profound depression and vegetative symptoms, with all the attendant degradation of multiple aspects of health. The harmful psychological and physical effects of indefinite detention include:

- Severe and chronic anxiety and dread;
- Pathological levels of stress that have damaging effects on the core physiologic functions of the immune and cardiovascular systems, as well as on the central nervous system;
- Depression and suicide;
- Post-traumatic stress disorder (PTSD); and
- Enduring personality changes and permanent estrangement from family and community that compromises any hope of the detainee regaining a normal life following release.¹

These severe disorders arise because the indefinitely detained prisoner realizes that nothing he does matters and that there is no way to end, foreshorten or even know the duration of his incarceration. A 2008 study² in which former detainees from Abu Ghraib and Guantanamo underwent detailed medical and mental health evaluations found that uncertainty was one of the most stressful factors among detainees ultimately released without ever having been charged. This uncertainty resulted in tremendous anxiety, numbing and disconnecting from feelings of hope.

Many of our clients who were imprisoned without trial or charge speak of the absolute despair they felt, never knowing if their detention would come to an end. CVT clinicians who work with survivors of torture that have been indefinitely detained tell us that with no defined end, clients feel there is no guarantee there will ever be an end. This creates severe, chronic emotional distress: hopelessness, debilitation, uncertainty, and powerlessness.

These effects are exacerbated in detainees who have been traumatized or tortured prior to commencement of indefinite detention. Again, our experience tells us that the lack of control and having no sense of what will happen next re-stimulates the kinds of experiences detainees had while being tortured.

Moreover, indefinite detention affects individuals beyond the detainee himself. When a loved one is indefinitely detained, families are separated; parents, spouses and children can and have suffered similar feelings of uncertainty, unpredictability and uncontrollability leading to the physical and psychological effects described above.

- ***Indefinite Detention Undermines U.S. Foreign Policy, Security and Commitment to Rule of Law***

The United States, as a democratic society that respects the rule of law, has an interest in abiding by its legal obligation under both international and domestic law to uphold human rights standards, including prohibitions against cruel, inhuman or degrading treatment or punishment. The use of indefinite detention – either as an outgrowth of war or as a preventative measure - undermines the U.S.'s commitment to the rule of law.

¹ Physicians for Human Rights, "Punishment Before Justice: Indefinite Detention in the U.S.," https://s3.amazonaws.com/PHR_Reports/indefinite-detention-june2011.pdf

² Physicians for Human Rights, "Broken Laws, Broken Lives: Medical Evidence of Torture by the U.S. Personnel and Its Impact," <http://physiciansforhumanrights.org/library/reports/broken-laws-torture-report-2008.html>.

In either times of war or peace, there is no legitimate basis in international humanitarian or human rights law for the prolonged, indefinite detention of individuals without charge or trial. In conflicts between states, detention of prisoners of war and civilians who pose an imperative security risk must be released or repatriated at the end of hostilities, or prosecuted for war crimes. In armed conflicts between states and non-state armed groups, persons detained for engaging in rebel activity may be detained and prosecuted pursuant to domestic laws, but are still afforded due process rights provided by international human rights law, most notably the ICCPR. Persons captured outside of an armed conflict may be detained and prosecuted for criminal conduct according to domestic and international human rights law.

The Fifth Amendment to the U.S. Constitution provides that “No person shall be... deprived of ... liberty... without due process of law.” Likewise, the ICCPR, to which the United States is a party, provides for prohibitions against arbitrary detention, requiring that “Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that the court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.”³

The continued indefinite detention of individuals at Guantanamo – some of whom have been held over 11 years without being charged or tried – is inconsistent with U.S. treaty obligations and constitutional principles.

Indefinite detention without charge or trial also has moral consequences for the United States. Not only does such a scheme run antithetical to U.S. values, but it also runs contrary to U.S. foreign policy and national security interests.

The United States needs to engage the international community on many complex issues requiring multilateral cooperation. U.S. leadership to promote and protect human rights encourages political, military, and intelligence cooperation from our allies. By contrast, U.S. engagement in practices such as indefinite detention discourages cooperation from allies and international partners critical to furthering interests abroad.

Furthermore, when the U.S. government violates its international legal obligations in the name of national security, it provides justifications for other governments and oppressive regimes to do the same against innocent civilians, journalists, democracy activists, people seeking to practice their own religion, and even puts U.S. troops in danger.

Hunger Strikes & Force Feeding

The recent hunger strike among the detainees at Guantanamo underscores the despair among detainees facing indefinite detention. Hunger strikes are a form of expression by individuals who have no other way of making their demands known. CVT takes the position that forced feeding of mentally competent hunger strikers is a breach of various bans on torture and other cruel, inhuman or degrading treatment or punishment.

Prison hunger strikes have occurred in democratic and totalitarian regimes around the world for hundreds of years. Prisoners in indefinite detention, at risk of torture, or who are held in other extreme

³ International Covenant on Civil and Political Rights, Article 9(4), Dec. 16, 1966, 999 U.N.T.S. 171, 6 I.L.M. 371.

conditions have resorted to hunger strikes or fasts to death as a way to publicize and create conditions for negotiations of grievances. Prison hunger strikes are often organized or understood as a form of political protest. Notable strikes have occurred during the course of civil and human rights struggles.

The World Medical Association, an international congress of 102 national medical associations, has adopted two documents that address the treatment of prisoners who are on hunger strikes. Specifically, the World Medical Association's 1975 Declaration of Tokyo - Guidelines for Physicians Concerning Torture and other Cruel, Inhuman or Degrading Treatment or Punishment in Relation to Detention and Imprisonment states in part:

Where a prisoner refuses nourishment and is considered by the physician as capable of forming an unimpaired and rational judgment concerning the consequences of such a voluntary refusal of nourishment, he or she shall not be fed artificially. The decision as to the capacity of the prisoner to form such a judgment should be confirmed by at least one other independent physician. The consequences of the refusal of nourishment shall be explained by the physician to the prisoner.

Additionally, the World Medical Association's 1991 Declaration of Malta on Hunger Strikers provides in part:

Forcible feeding is never ethically acceptable. Even if intended to benefit, feeding accompanied by threats, coercion, force or use of physical restraints is a form of inhuman and degrading treatment.

The International Committee of the Red Cross endorses these World Medical Association statements as does the American Medical Association.

Recommendations

CVT supports a safe environment where detainees held in American custody are treated humanely in accordance with U.S. laws and obligations under the Convention Against Torture, the Geneva Conventions and other international human rights standards. We were pleased to hear President Obama's recommitment to closing Guantanamo during his May 23rd national security speech, and we commend the Subcommittee for holding this hearing.

- CVT urges the U.S. government to put an end to the indefinite detention scheme at Guantanamo by either charging detainees with a recognizable criminal offence and trying them in a court which meets international standards for a fair trial or releasing them. To accomplish this, **the President** should begin transferring cleared detainees to foreign countries using his existing security waiver authority, and **Congress** should pass the Senate Armed Services Committee's version of the National Defense Authorization Act for fiscal year 2014, which includes provisions ending or lowering barriers on transferring all detainees from Guantanamo.
- CVT also urges the U.S. government to follow the World Medical Association's Guidelines for Physicians Concerning Torture and other Cruel, Inhuman or Degrading Treatment or Punishment in Relation to Detention and Imprisonment (Declaration of Toyko) and the World Medical Association's Declaration of Malta on Hunger Strikers and its accompanying Guidelines for the

Management of Hunger Strikers. To this end, the ***Secretary of Defense*** should order the immediate end of all force-feeding of Guantanamo prisoners who are competent and capable of forming a rational judgment as to the consequences of refusing food. He should also allow independent medical professionals to review and monitor the status of hunger-striking prisoners in a manner consistent with international ethical standards.