

**South Lakeland & Lancaster City United Nations Association & Human  
Rights Law Department Lancaster University**

## **Close Guantanamo Bay and End Illegal Detention**

Tuesday, 10<sup>th</sup> March 2009  
Anglican Chaplaincy, Centre in the Campus  
Lancaster University

12.30 – 2.00 pm (Lunch time meeting)

### **Speakers**

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## **Introduction**

Thanks Luckshan and Emile, UNA South Lakeland and Human Rights Law Faculty, Lancaster University for inviting me to share a platform on the important and timely topic of *"Close Guantanamo Bay and end Illegal Detention."* It is timely because it is very hard not to open a newspaper or see a television programme on which aspects of Guantanamo Bay, torture or illegal detention of prisoners is not being discussed or shown. It is good in a way that this cruel treatment of detainees and violations of human rights has gone mainstream and discussed openly all over the world. When this happens it puts pressure on governments to face the situation instead of ignoring it or remaining silent.

It's nice to be here among students, future leaders, change makers who are the driving force for social change in the world. Many a revolutions have been started by students like yourself bringing profound changes to our society. It is the world wide condemnation and campaigning of all human rights activists which has borne fruit in President Obama ordering the closure of the Guantanamo detention centre, and end to techniques as water-boarding, CIA network of detention centres and suspension of military show trials. What I will like to explore today is the whole concept of Guantanamo Bay which is deplorable! The secret detention prisons, extraordinary Rendition, infringement of Geneva conventions, extra-judicial military trials. We will also examine what needs to be done with facilities like Guantanamo Bay and Bagram Air Base – and what should become of them.

In a recent TV. interview, I was asked that question, to which I replied that all the secret prisons, should be closed and converted into truth and reconciliation museums in which the horrific and painful stories of the prisoners and their torture can be documented and is available for public display like Robben Island Museum, South Africa.

## **Guantanamo Bay History 2001 – 2009**

Let us explore the history from 2001-09 and the timetable of illegal detentions which started with the first detainees flown to Guantanamo in January 2002 hooded, shackled and tied down like cargo to the present day.

The timetable runs as follows:

### **2001**

11 September – Nearly 3,000 people are killed when four hijacked planes are crashed into the World Trade Center in New York, the Pentagon, and a field in Pennsylvania.

14 September – Congress passes a resolution, Authorization for Use of Military Force (AUMF), purporting to give the President unprecedented authorization to use force against "nations, organizations and individuals" whom he determined were connected in any way with the attacks or with future acts of international terrorism.

17 September – President George W Bush signs a memorandum apparently authorizing the CIA to set up detention facilities outside the USA and containing specific information relating to the sources and methods by which the CIA was to implement this detention programme. This memorandum remains classified.

7 October – The USA leads military action against the Taleban government and members of al-Qaida in Afghanistan.

13 November – President Bush issues a military order on the "Detention, Treatment and Trial of Certain Non-Citizens, in the War Against Terrorism", purporting to authorize the Pentagon to hold non-US citizens in indefinite custody without charge. The order seeks to prohibit any detainee held under it from seeking any remedy in any proceeding in any US, foreign or international court. If any detainee were to be tried, the trial would be by military commission – a body created by the executive, not an independent or impartial ordinary court.

28 December – A memorandum from the Justice Department to the Pentagon claims that because Guantánamo Bay is not sovereign US territory, the federal courts should not be able to consider habeas corpus petitions from "enemy aliens" detained at the base.

## **2002**

11 January – The first detainees are transferred to Guantánamo from Afghanistan and are held in wire mesh cages in an area known as Camp X-Ray.

7 February – President Bush signs a memorandum stating that no Taleban or al-Qa'ida detainee will qualify as a prisoner of war and that Article 3 common to the 1949 Geneva Conventions (common Article 3) will not apply to them either. Among other things, Common Article 3 prohibits unfair trials, torture, cruelty and "outrages upon personal dignity, in particular humiliating and degrading treatment".

28 April – Detainees are moved from Camp X-Ray to Camp Delta in Guantánamo.

1 August – A memorandum from the Justice Department to then White House Counsel Alberto Gonzales claims that the President can authorize torture, that interrogators may cause severe pain before crossing the threshold to torture, and that there are a wide range of acts that might amount to cruel, inhuman or degrading treatment which would not amount to torture and therefore not be prosecutable under US law prohibiting torture by US agents outside the USA. Even if torture did occur, the memorandum argues, the theory of "necessity" or "self-defence" could be used to eliminate any criminal liability.

1 August – An 18-page Justice Department memorandum advises the CIA on the legality of "alternative interrogation methods". This memorandum remains classified.

2 December – Secretary of Defense Donald Rumsfeld approves interrogation techniques for discretionary use at Guantánamo that include hooding, stripping, sensory deprivation, isolation, stress positions and the use of dogs to "induce stress". He rescinds this blanket approval six weeks later, stating that his authorization of such techniques is to be sought on a case-by-case basis.

4 and 10 December – two Afghan detainees die in US custody in Bagram as a result of torture or other ill-treatment.

## **2003**

14 March – A memorandum to the Pentagon from the Justice Department claims that "any effort by Congress to regulate the interrogation of enemy combatants would violate the Constitution's sole vesting of the Commander-in-Chief authority in the President". It also claims that if interrogation methods were inconsistent with US obligations under the UN Convention against Torture, "but

were justified by necessity or self-defense", "we would view those actions still as consistent ultimately with international law".

Furthermore the memorandum argued that if a US interrogator were to harm an "enemy combatant" in a way that could be said to constitute a criminal act, it could be a defence against criminal liability that the interrogator was acting in order to prevent attacks against the USA by al-Qa'ida.

April – Secretary Rumsfeld authorizes interrogation techniques including isolation, "environmental manipulation" (such as adjusting temperature) and "sleep adjustment". Additional techniques may be requested on a case-by-case basis.

27 May – The President of the International Committee of the Red Cross (ICRC) meets senior US officials in Washington, DC, and in relation to Guantánamo, urges the US authorities "to institute due legal process and to make significant changes for the more than 600 internees held there".

June – Qatari national Ali Saleh Kahlah al-Marri is declared an "enemy combatant" by presidential order and transferred from the US criminal justice system to military custody in South Carolina.

3 July – The Pentagon announces that President Bush has made six Guantánamo detainees eligible for trial by military commission. Two of the six are subsequently released without charge or trial to the UK.

## **2004**

30 January – The ICRC expresses its concern that the "US authorities have placed the internees in Guantánamo beyond the law. This means that, after more than eighteen months of captivity, the internees still have no idea about their fate, and no means of recourse through any legal mechanism. Through its visits, the ICRC has been uniquely placed to witness the impact this uncertainty has had on the internees. It has observed a worrying deterioration in the psychological health of a large number of them."

28 April – Photographs of torture or other ill-treatment of Iraqi detainees by US soldiers in Abu Ghraib prison in Iraq are broadcast by CBS News and subsequently around the world.

May – Guantánamo's Camp 5 is opened, and receives its first detainees.

28 June – The US Supreme Court rules in *Rasul v Bush* that US courts can consider challenges to the legality of the detention of the Guantánamo detainees.

7 July – The Pentagon announces the formation of the Combatant Status Review Tribunals (CSRTs) – panels of three military officers who will review whether Guantánamo detainees are "properly detained" as "enemy combatants". The CSRTs are allowed to rely on classified or coerced evidence against detainees, who are denied legal representation and presumed to be "enemy combatants" unless they prove otherwise.

14 September – Administrative Review Boards, similar to CSRTs, are established to conduct "discretionary" annual reviews to determine if detainees should continue to be held by the USA.

November – A challenge brought on behalf of Yemeni detainee Salim Ahmed Hamdan in federal court leads to the suspension of military commission pre-trial proceedings.

## **2005**

25 May – Amnesty International calls for Guantánamo to be closed. The call is subsequently joined by UN experts, former US Presidents Carter and Clinton, heads of state from Europe and elsewhere, and other human rights and legal organizations.

30 December – President Bush signs into law the Detainee Treatment Act of 2005, which bans the use of cruel, inhuman or degrading treatment (only, however, as defined by US law, which is markedly narrower than the prohibition under international law) but also severely curtails the right of Guantánamo detainees to judicial review of the lawfulness or conditions of their detention.

## **2006**

27 February – Five UN experts issue report on the detainees at Guantánamo concluding, among other things, that international human rights law is applicable to their situation; that the detainees are entitled to challenge the lawfulness of their detention in a court of law; that the attempt by the US administration to redefine “torture” is “of utmost concern”; that interrogation techniques authorized by the administration violate international law; that the absence of impartial investigations into abuses violates the USA’s obligations, and that the conditions of detention “have resulted in profound deterioration of the mental health of many of the detainees”.

10 June – Three detainees die at the Guantánamo facility, apparently after committing suicide.

29 June – The US Supreme Court, in *Hamdan v. Rumsfeld*, rules that the military commissions as constituted under the 2001 Military Order violate US and international law. The Court also rules that at minimum common Article 3 does apply to detainees, reversing the 2002 presidential determination.

6 September – President Bush announces the transfer to Guantánamo of 14 detainees who had been held in secret CIA custody for up to four and a half years.

17 October – President Bush signs into law the Military Commissions Act (MCA), which strips the US courts of jurisdiction to hear habeas corpus appeals from any foreign national held as an “enemy combatant” in US custody anywhere in the world. The MCA authorizes the President to establish a revised system of military commissions to try such detainees and narrows the scope of the USA’s War Crimes Act, which had previously criminalized all violations of common Article 3. The MCA also substitutes a list of specific acts for the broader language of common Article 3, failing to expressly criminalize common Article 3’s prohibition on unfair trials or “outrages upon personal dignity, in particular, humiliating and degrading treatment”. President Bush announces that the MCA will allow the CIA’s secret detention programme to continue.

December – Camp 6 opens at Guantánamo

13 December – A federal judge dismisses Salim Ahmed Hamdan’s habeas corpus petition on the grounds that the MCA strips the federal courts of jurisdiction to consider such appeals.

## **2007**

20 February – The US Court of Appeal rules that federal courts lack jurisdiction under the MCA to hear habeas corpus appeals from Guantánamo detainees.

30 March – Australian national David Hicks becomes the first Guantánamo detainee to be convicted by military commission. Under a pre-trial agreement he pleads guilty to “providing material support for terrorism” and is sentenced to nine months’ imprisonment which he will serve in Australia.

27 April – The Pentagon announces that it has transferred Iraqi national ‘Abd al-Hadi al-Iraqi to Guantánamo. Prior to his transfer he had been held in secret CIA custody.

30 May – The Guantánamo authorities announce that a Saudi Arabian detainee had been found dead in his cell, the result of an apparent suicide.

7 June – Amnesty International and five other human rights organizations publish the names and details of 39 people who are believed to have been held in secret CIA custody and whose current whereabouts remain unknown.

11 June – A three-judge panel of the US Court of Appeal for the Fourth Circuit rules that the military detention of Ali Saleh Kablah al-Marri must end because “the President lacks the power to order the military to seize and indefinitely detain” him. The court finds that, as a legal resident in the USA, Ali al-Marri was entitled to certain constitutional protections, including the right not to be deprived of his liberty without due process of law. The full Court subsequently agrees to rehear the case, and oral arguments are presented on 31 October. Ali al-Marri remains in indefinite military detention.

20 July – President Bush issues an executive order authorizing and endorsing secret detention. The order determines that common Article 3 applies to the CIA’s secret detention programme and deems the CIA programme to fully comply with the obligations of the USA under common Article 3, so long as “the conditions of confinement and interrogation practices of the programme” remain within the limits set out in his order.

9 August – The Pentagon announces that the CSRTs had determined that all 14 detainees transferred to Guantánamo in September 2006 met the criteria for designation as “enemy combatants”.

6 December - The CIA Director reveals that videotapes of interrogations conducted in 2002 held in the CIA’s secret detention program had been destroyed by the agency in 2005. The tapes may have included a record of the use of the torture method known as “waterboarding” – simulated drowning – and other so-called “enhanced” interrogation techniques used by the CIA.

## **2008**

5 February - The CIA Director confirms that “waterboarding” was used in 2002 and 2003 by the agency as an interrogation technique against three detainees held in secret custody.

14 March - The Pentagon announces that it has transferred Afghan national Muhammad Rahim al-Afghani to Guantánamo. Prior to his transfer he had been held in secret CIA custody.

13 May - The US government refers capital charges against five Guantánamo detainees for joint trial by military commission. The five - Khalid Sheikh Mohammed, Walid bin Attash, Ramzi bin al-Shibh, ‘Ali ‘Abd al-‘Aziz ‘Ali and Mustafa al Hawsawi - are accused of involvement in the 11 September 2001 attacks in the USA. Prior to their transfer, they were subjected to enforced disappearance, held in secret custody by the CIA for up to four and a half years.

June - The US government reveals to the UN Committee on the Rights of the Child that approximately 2,500 children have been held in US custody in Iraq, Afghanistan and Guantánamo. It says that approximately 90 of them have been held in the US air base in Bagram in Afghanistan, with 10 children there as of April 2008. It says that it has held eight children in Guantánamo. It later revises this to 12.

12 June - The US Supreme Court, in *Boumediene v Bush*, rules that the detainees held in Guantánamo as “enemy combatants” have the right to challenge the lawfulness of their detention in a court of law. The Supreme Court declares as unconstitutional attempts by the administration and Congress (through the 2006 Military Commissions Act) to strip the detainees of their right to habeas corpus and dismisses as deficient the substitute scheme established by the administration and Congress to replace habeas corpus proceedings.

15 July - By five votes to four the US Court of Appeals for the Fourth Circuit rules that the Congress has empowered the President to detain Ali Saleh Kahlah al-Marri as an “enemy combatant”.

July/August - The first trial takes place before a military commission convened under the Military Commissions Act of 2006. Salim Hamdan, a Yemeni national, is convicted by a panel of six US military officers of “providing material support for terrorism” and acquitted of “conspiracy”. He is sentenced to five and a half years, but is credited with time already spent in detention. In November 2008, Salim Hamdan was transferred to Yemen to serve the remaining one month of his sentence.

7 October - A US federal judge orders the US government to release into the USA the 17 Uighur detainees still held in Guantánamo. The government had earlier conceded that the 17 men are not “enemy combatants”. The government appeals the decision and their release is indefinitely postponed.

11 November - Amnesty International and five other human rights organizations call on European governments to provide international protection to Guantánamo detainees who will not be charged with any crime but who cannot be returned to their country of origin for fear of torture or other human rights violations.

20 November - The US District Court for the District of Columbia orders five of six men seized in Bosnia and Herzegovina in January 2002 to be released, and rules that the government can keep the sixth in detention. The six men become the first of the men still held in Guantánamo and labelled by the USA as so-called “enemy combatants” to have their habeas corpus petitions ruled on following the US Supreme Court’s *Boumediene* judgment in June 2008.

5 December - US Supreme Court agrees to hear the case of Qatari national Ali al-Marri, detained in the USA as an “enemy combatant” since June 2003. At issue will be whether Congress, in passing the Authorization for Use of Military Force authorized the indefinite military detention of a legal resident seized on US soil who the government alleged to have conspired with al Qa’ida to carry out attacks against the USA.

11 December - US Senate Armed Services Committee releases executive summary of its findings on detainee abuses in the “war on terror”. Among them is the conclusion that “senior officials in the United States government solicited information on how to use aggressive techniques, redefined the law to create the appearance of legality, and authorized their use against detainees”. It also finds that “aggressive” interrogation techniques authorized in 2002 by then Secretary of Defense Donald Rumsfeld for use in Guantánamo had also made their way to Afghanistan and Iraq.

11 December - Portuguese Foreign Minister Luis Amado says Portugal is willing to accept Guantánamo detainees who cannot return to their home countries, and sends a public letter to his European Union counterparts urging them to do the same.

## **2009**

In January, President Obama passed a presidential executive order ordering the closure of the Guantanamo detention centre, and end to techniques as water-boarding, CIA network of detention centres and suspension of military show trials.

According to a recent United Nations investigators report, foreign intelligence agents sent to question U.S.-held terrorism suspects at Guantanamo Bay had violated international human rights laws.

They were acting in breach of their legal obligations in regard to the prohibition on torture and arbitrary detention. The report further said "We have had a witch hunt for alleged terrorists for the past 7 1/2 years. The witch hunt is over and it is time for the law to step in."

The UK government has also, for the first time, admitted that Iraq suspects were handed to the US and knowledge of the transfer of two prisoners in 2004, and inaccurate information regarding Extraordinary Rendition was given to MPs.

### **Closing Guantanamo Bay and fair trial of prisoners**

The passing of the order to close Guantanamo Bay by President Obama is major achievement for Human Rights Activists committed against the uphill struggle of fighting terrorism. The closure announcement has come after world wide criticism of keeping the detainees without recourse to due justice.

However, closing Guantanamo Bay poses the question what will become of the prisoners and also of other detention sites like Bagram. How can we give fair trials to the prisoners, granting them legal representation at detention hearings by giving federal judges and not military officers, the power to decide where suspects should be held or released.

A mechanism has to be found by which detainees can be sorted out into two categories, those who should be released immediately and are of no danger whatsoever. The others, high security detainees who should to be prosecuted but after giving them a fair trial. The new administration should begin a new extensive international effort to resettle detainees in European countries with due respect for human rights and rule of law.

### **What now needs to done**

- End Torture, Rendition and Illegal Detention. From Guantanamo to Abu Ghraib, from secret CIA "black sites" to proxy detention in other countries that engage in torture, the U.S. has created a system of illegal detentions and justified the use of torture with direct approval from the highest levels of government.
- To ensure habeas corpus rights are always observed. So that the US government could operate with impunity, they tried to twist the law to strip habeas corpus, to redefine the meaning of the word torture, to keep their deeds out of view of the courts and the public, and to create sham proceedings in place of fair trials.

- Close Guantanamo and either try people in U.S. federal courts or resettle them safely in a country where they do not risk persecution or torture.
- Close CIA "black sites" and all other secret detention sites, and end proxy detentions.
- End the use of extraordinary rendition and launch a Justice Department investigation into its use.
- End the use in any court of evidence obtained through torture.
- Officially reject all the legal memos, executive orders and signing statements that justify the use of torture.

### **Make Guantanamo Bay a peace and reconciliation centre**

Guantanamo Bay and other detention centres should be closed and converted into peace and reconciliation centres. The stories of the detainees, including interrogation techniques, water boarding, torture need to be told for future generations so that this could never happen again. The museum should serve as a eye opener like Robben Island for future generations so that injustices to innocent people never happen again. People should never be detained without ensuring their Habeas Corpus rights and no infringement of UN and Geneva Conventions against torture should ever happen again.

Guantanamo Bay and other detention centres should be converted into museums like Robben Island. Robben Island served as a place of banishment and imprisonment, and was also used to exile political prisoners of the apartheid era between the 1960s and 1991.

Today it is a World Heritage Site and museum, a poignant reminder to the newly democratic South Africa of the price some paid for freedom.

Thank you very much for listening

### **Notes:**

The following publications and programs were consulted and excerpts have been taken from them during the writing of this article:

1. Amnesty International – Timeline End Illegal US Detentions (December 2008)
2. Vijay Mehta Press TV Interview “Guantanamo: is it really the end of an era” (20 Nov. 2008)
3. “Hutton admits Iraq suspects were handed to US.” Guardian, 27/02/09 (UK)
4. “Interviews of terror suspects challenged.” The Washington Post, 27/02/09 (UK)

For further information please visit:

- Action for UN Renewal [www.action-for-un-renewal.org.uk](http://www.action-for-un-renewal.org.uk)
- VM Centre for Peace [www.vmpeace.org](http://www.vmpeace.org)

## **Biography**

Vijay Mehta is president of VM Centre for Peace, Founding Trustee of Fortune Forum Charity, Chair of Action for UN Renewal, and co-Chair of World Disarmament Campaign. He is an author and global activist for peace, development, human rights and the environment. Some of his notable books are The Fortune Forum Summit: For a Sustainable Future, Arms No More, and The United Nations and Its Future in the 21st Century. He is also a member of the national CND Council.

He along with his daughter Renu Mehta founder of Fortune Forum charity ([www.fortuneforum.org](http://www.fortuneforum.org)) held two summits in London in 2006 and 2007. The summits raised over a million pounds for charity and attracted a worldwide audience of 1.3 billion people (one fifth of humanity) including print and media coverage. The keynote speakers for the first and second summit were Bill Clinton, former US President and Al Gore, former US vice-President, and recipient of the Nobel Peace Prize 2007.

Vijay Mehta has appeared in various TV programmes including BBC World, Press TV, Ajtak-24 hour Indian news channel, and Think Peace documentary, Canada, among others. The Independent, Observer and Guardian newspapers, among other journals have written about him. His life is devoted to the service of peace, humanity and our planet.

He has written a book called 'Climate Change 365,' which will be soon available to download free of charge in electronic form from the website [www.climatechange365.eu](http://www.climatechange365.eu).