

Operations of the Guantanamo Bay Detention and Human Rights Violation

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Abstract

Objectives: Operations of Guantanamo Bay Detention have attracted the attention of various authorities and key stakeholders, including human rights organizations and the overall public. The main reason behind the concern of Guantanamo Bay (GB) operations is the critical violation of human rights that has been confirmed to be happening, especially to the detainees. Most detainees at Guantanamo are suspects of serious war and terrorism cases that may possibly lead to serious long-term if not lifetime imprisonment. Therefore, professionals and military commissions are more likely to treat them as convicts while they are only suspects. Investigations on the treatment of detainees in GB have always proved violation of human rights, which is inconsistent with the International Human Rights Laws (IHRL) and among other domestic laws.

Methods: The systematic review assessed the operations of Guantanamo Bay detention based on existing reliable scholarly research and governmental and non-governmental relevant reports.

Results: The review is broken into background information, purpose of the study, the gap to that needs to be filled, deliverables of the study, analysis, discussion, and an informed conclusion based on available information.

Conclusions: The review reveals the critical situation at GB prison in terms of its operation, engagement with detainees, adherence to the law, and the essence of addressing international.

Keywords: *Guantanamo Bay, human rights, detention, international human rights law, violation of human rights.*

1. Introduction

Guantanamo Bay (GB) is considered one of the deadliest prisons in the world due to the nature of its operations and the experience prisoners of war enclosed in it undergo on a daily basis. Although accessing the facility is never easy, much of the reliable information gathered by researchers have shown that fundamental human rights are not being upheld in the facility as defined by international human rights laws, among other relevant institutions and documents. While some of the detainees in the facility are not convicted criminals, they are often treated as so without the consideration of their basic rights.

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Diverse governments have raised critical issues regarding the closure of the facility due to its improper operation and inhumane treatment, but the facility continues to operate. Persons from different nations incarcerated in the facility have raised critical concerns regarding the informality and irregularities going on in it without any relevant success. GB suspects are humans who deserve to enjoy all international and national human rights regardless of the accusations placed on them by the court. While war crimes are quite serious and may have serious harm to society, there is a need to always embrace and emphasize the adherence to human rights without fear of favor of certain citizens or authorities. U.S. presidents, such as President George Bush recommended and supported the existence and operation of GB, whereas the government of President Barak Obama did not support the facility and proposed its dissolution. Violation of human rights on the verge of attempting to serve justice appears irrational due to the aspect of failing to observe the law fully. Complaints and concerns regarding the emergence and mishandling of GB detainees have been raised for a relatively long time by activists, journalists, and the general public. If GB cannot be restructured and its operations realigned with the existing laws, it would be only prudent to dissolve it and let the detainees be held in other prisons that uphold the human rights law to the latter and operate in accordance with the approved *modus operandi*.

2. Establishment and Objective of Guantanamo Bay Prison

The core purpose of establishing GB prison was to curb terrorism and other serious cases of war. Some terrorism suspects could not be kept in ordinary prisons due to their advanced experience in security measures. For that reason, Guantanamo Bay was founded, and first detainees arrived at the facility on the eleventh day of 2002 (Human 2022). While the facility received a huge appreciation at the time of its foundation, various institutions and political leaders turned against it and recommended for its closure due massive violation of human rights and poor operation that is not based on the approved operations methodology. By the end of 2018, George Bush administration that supported its foundation transferred 500 detainees from Guantanamo Bay Prison whereas President Obama's administration transferred nearly 197 detainees. Therefore, governments are concerned about their citizens detained in the facility. Not only the U.S. government has been concerned about the effective and legal operation of GB, but also other states with some of their citizens detained. Today 39 men remain indefinitely detained at GB with 27 of them having no charges against them (Shamsi 2022). However, the major concern currently is the inhumane nature in which the detainees are treated that runs the reputation of the facility over time. Specific rules and regulations meant to control the operation of GB are hardly followed based on diverse past research on the safety and human rights of detained suspects.

Additionally, running the facility is relatively expensive, which creates a heavy burden on the people as it leads to huge consumption of taxpayers' money. GB costs about \$445 million to run annually and costs nearly \$10 million per detainee annually as opposed to \$78,000 used to manage one detainee per year in normal prisons. Guantanamo hardly serves the purpose for which it was established, which in turn raises many questions regarding its significance today in the international security domain. Most blames on the existence of Guantanamo Bay have been placed on the U.S. in the past, which has in turn deteriorates its bilateral and multilateral relationship with the diverse nations. Governments have always wanted to transfer their citizens from the prison without success regardless of the rational concerns they raise pertaining to the poor running of the facility. The issue of Guantanamo ineffective operation has made diplomacy relatively difficult for the U.S. and had adverse influence on the nation's facilitation and promotion of human rights across the globe. The fundamental reason for other countries demanding the closure of Guantanamo is its violation of human rights and failure to make necessary improvements on the same issue to maximize its effectiveness and efficiency as it serves

its purpose. The ACLU National Security Project report among many that have highlighted on the efforts other states have put to try and have GB shut down. However, efforts have been hindered mainly following the U.S. failing to have the prison shut down and ensuring the prisoners are released or charged and tried in court accordingly. The ACLU in its capacity has presented its petition to President Joe Biden seeking to have GB shut down once and for all during the 20 years recognition of the existence of the prison as a symbol of injustice, abuse and the absolute disregard for the rule of law (Shamsi 2022). The U.S. took over the Guantanamo territory from Cuba upon which the latter has demanded to take it back due to the U.S. reluctance in aligning the critical issues that affect proper and legal operation of the facility to assist in control and mitigation of terrorism across the globe. Notably, transfers of Guantanamo prisoners to the U.S. and numerous nations are highly prohibited by the National Defense Authorization Act (Fuchs et al. 2021), which complicates the whole process of closing the prison. While the persons detained at GB are considered suspects, they are also victims of human rights violation, which is another essential crime committed by the authorities in charge.

3. Legal Framework on Rights of Detainees

Governments, including the U.S. government, have the fundamental responsibility to serve justice equally among all citizens. For a long time, detainees at Guantanamo have not been enjoying basic human rights as they deserve, which in turn raises a critical question regarding their position in society and the law. Officer of the High Commissioner of Human Rights greatly discourage execution of detainees as it lowers human dignity (Assembly 1989). The concern of the violation of the rights of detainees needs to be addressed properly and in good time to mitigate the severity of the possible impacts over time. Responsible international institutions for human rights need adequate understanding and subsequent evidence to prove the violation of human rights at GB and find potential ways to mitigate it on the verge of considering its closure as it has been demanded by various authorities and governments across the world. Critical issues including imposition of severe physical pains, sensory deprivation, and religious humiliation take place at GB have been hidden from the public (Bhattacharya 2019). The United Nations Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment CAT requires signatory parties to take measures to end torture within their territorial jurisdiction and to criminalize all acts of torture. The United States being a signatory of CAT and having adopted its provisions in 1984 is obligated to adhere to the provisions of its articles against the use of torture against any person. However, the operations at GB over the 20 years of its existence have proven to be contrary to the obligations vested on the U.S with respect to CAT. Hence, the inhumane treatment of the detainees at GB are significantly in violation of CAT.

Issues regarding the location and management of GB are of less importance now because the institution hardly serves its purpose but only violates human rights in one way or another. The detention of some prisoners is not justified hence the need of the American government that is charge of the institution to focus on working on the legality subject of detainment, treatment, and release of detainees. Numerous detainees leaving GB have shown substantial signs of mental illnesses (Iacopino 2011; Gabriel 2015). Fairness is limited at GB since the law is not observed adequately as required. Inobservance of the law is the main cause of violation of human rights at GB as the authorities take actions that are unguided by the law. In the end, some detainees who fail to access fair trial are possibly imprisoned unnecessarily. The concern of enhancing and practicing human rights is a critical one for the modern world. Injustice committed against some humans may possibly spread to happen to other people. Therefore, it is important to assess and understand the current situation through accessibility and presentation of relevant information before the situation worsens even further. Institutions, such as the United Nations have raised concern regarding the essence of upholding human rights and

dissolving GB for the sake of promoting humanity but no implementation has taken place to end the facility (Falkoff 2007). Human rights provisions have to be adhered to as noted in the International Human Rights Law and among other relevant legal sources that are applicable globally. Every person, including foreigners, have the right to enjoy their constitutional rights at any given time regardless of their position in the society or allegations pertaining to crime-related issues. GB detainees have rights that are not observed accordingly. Therefore, there is a dire need to assess the current situation with an aim of identifying the main needs of the people, the essence and the need to uphold human rights, the challenges associated with the facility and detainees while in custody, and the need to find potential solutions through enhancement of adherence to the existing national and international laws.

4. Violation of the Rights of Detainees

Currently, there is adequate awareness regarding poor treatment and human rights violations of detainees at Guantanamo. The main concern is that little is done to either reverse or correct the situation. In turn, the responsible institutions and personnel get comfortable with the violation of human rights at the facility. Chlopak postulates that something is apparently wrong when detained persons are subjected to inhumane treatment unfairly while governments only raise complaints and later get reluctant on the issue (Chlopak 2022). GB detainees need to be attended to in terms of serving them justice through legal detainments, humanly treatment, and fair pre-trials and trials. Some institutions are apparently not pursuing their duties of enforcing the law accordingly. The overseers of international human rights laws are not undertaking their roles exhaustively as it required, especially in relation to the case of human rights violation by GB and its diverse stakeholders. Violation of human rights at the international level can also led to the same happening at the domestic levels.

One major problem that is evident in the case of GB operations is that the public and various governments are aware of the major human rights violation concern and little and close to nothing is being done to correct the situation (Dastyari 2009). Numerous researches also aim at identifying the problem without assessing the key causes and potential solutions to curb the situation regardless of several human rights violation cases being presented in the Supreme Court and other courts. Acts, such as, torture are prohibited by both national and international human rights laws, but continue to occur at the GB (Birdsall 2010). Moreover, some detainees overstay in the facility without their cases being reviewed as provided by the law. The gap in the assessment and exploration of ineffective operation and finding of potential problems and solutions for Guantanamo Bay is expanding. If the subject is not explored fully in good time, there may be more violations in the long-term effect, which may normalize illegality and possibly lead to further adverse effects on humanity.

5. Closure or Compliance

Significant deliverables of the study of GB operations and human rights violations include the scope of its operation, reasonable time to curb the problem or find potential solutions, the cost of undertaking the necessary actions or implementing the proposed recommendation, and the expected quality of service to humanity in the short- and long-term effects. As hinted hereto, GB prisons is considered as an international facility as it has persons from different parts of the world. Various governments have interest in it and consider themselves as stakeholders because of the possibly of their citizens being detainees in the facility (Crosby & Benavidez 2018). Guantanamo has American and non-American citizens captured in different war scenes and accused of different allegations. The scope of operation of GB would have increased but concerned governments

including the European Union members, non-governmental organizations such as the ACLU and Human Rights Watch do not want to be part of it as they fight for the transfer of their citizens due to the human rights violations associated with the institution. International human rights laws are applied in the cases of GB detainees due to its global scope and interest of the stakeholders.

The problem of human rights violation at GB has been addressed for a relatively long time as noted earlier, but it appears not to have ended as some people are still detained despite being innocent in the facility and the violations of human rights continues to be condoned in the U.S. following the continued operations of GB. Hoofman and Shellby reveal that closing the facility, however, may take some time and may not be easy due to various procedures that may need to be followed (Hoffman & Shelby 2017). International human rights organizations, including the United Nations, have a crucial part to play to facilitating the closure of GB. Governments with their citizens in the facility may also make legal claims regarding the unjust treatment of their people at the facility (Foley 2020; Rasmussen 2015). If all the states come together in support of closing Guantanamo Bay, it is bound to happen in a relatively short time. Nonetheless, GB is about 20 years old and may continue to exist and operate for some years before its closure if the issue is addressed with reluctance currently and in future. The recommendation by most governments and human rights organizations in that have noted the violation that takes place at the facility is that it should be closed within the shortest time possible (Clark 2019). The U.S. government, in conjunction with international courts and other relevant authorities, can lead the process of closing GB as a way of protesting and mitigating human rights violation at the expense of fighting terrorism and diverse national and international wars.

Closing the facility may not be as expensive as establishing it. The other alternative for enhancing observance of human rights is by making necessary changes of the operation of GB. However, various stakeholders and governments have lost hope in the effectiveness and legality of GB operations and are more specific on the need to close it rather making corrections and adjustments (Dastyari 2009). In closing the facility, there may be legal expenses to justify its closure in the court of law. The process of closing the facility in an attempt to mitigate human rights violation may also be procedural. The possibility of closing GB is relatively high based on the past outcomes of studies conducted on it and the justification of its embracement of illegalities and inconsistency with existing rules and regulations of its operations and international human rights laws. Nonetheless, its closure may possibly create a new problem or concern regarding a place where serious war criminals and suspects can be detained at the international level. Terrorism is a global concern that needs international solutions that meets the needs of various nations (Saul et al 2016). GB was initially viewed a facility that would help detain various war crime criminals at the time of its establishment by President George Bush until diverse significant human rights violations arose about it (Vogel 2002). Today, various stakeholders, including human rights organization propose the close of the facility regardless of whether a new similar institution will be established or not.

The need for a higher quality of services at GB is evident based on its current situation and existing complaints. Quality is needed in terms of enhancement of good health of the detainees, adherence to the law and institutional operational rules and regulations, timeliness of case assessments, trials, and verdicts, and overall humane treatment of all the accused persons (Sweeny 2014; United 1948). Currently, GB stakeholders, especially the human rights organizations and personnel are not pleased with the situation and demand for dire change if not the closure of the facility. The changes should last for a long term rather than otherwise. Notably, changes at GB are mostly implemented for a short time to exhibit a positive image only to be discarded in the short- term effect (Von & Pamela 2003). Importantly, health of the war prisoners is essential and one of their primal human rights that always be observed by the administration, military

commissions, among other responsible personnel. The health of the detainees can be assessed in terms of the type of the environment they stay, the food they consume, and accessibility to medical treatment. Moreover, observance of all the applicable international laws reflects on the quality of service (McDonnell 2019). Currently, the services offered in terms of observance to the International Human Rights Laws (IHRL) indicate relatively poor services that need improvement if not cancellation. Timeliness is a crucial factor in the management of cases and provision of quality services. McNamara (2005) opines that making detainees to overstay at GB before opening their cases for trial and appeal processes points at violation of human and individual rights. Detainees should be treated accordingly and availed of all the necessary requirements as per the law and predetermined GB institutional rules and regulations.

6. Discussion

The existence of GB was important to the global criminal justice domain. Essentially, the world needed GB at the time of its formation in late 2001 through 2002. GB has served a crucial role in sending direct and indirect messages regarding enhancement of security, mitigation of terrorism and political wars, and coherence of nations in protecting the global society against wars that would lead to catastrophic impacts (Lorek 2017; Steyn 2004). However, the operation of GB over time has necessitated the need to question the core purpose and objectives of its existence. The institution appears not to serve its purpose as intended initially. Stakeholders have diverse concerns pertaining the objectivity of GB and most are calling for major changes with respect to the observation of human rights and the respect of the statutory rights of detainees in terms of its operation if it has to continue operating. Little has been done in the past and more detainees continue to suffer as their rights are violated at the GB prison.

The world yearns to overcome all forms of terrorism that may arise in the present and future worlds. According to Wittes and Gitenstein, establishment of GB was viewed as a relevant strategy for curbing terrorism (Wittes 2020). Even though the facility, through its administration, has had some potential benefits in counterterrorism, it has also contributed to violation of human rights. One of the core purposes of the law is to enhance upholding of human rights and maintain order; this appears not to be happening effectively and efficiently in the case of GB and the respective detainees (Macura 2018). Rights of the detainees are a fundamental part of human rights that must always be upheld regardless of the situation, gender, race, or crime committed by an individual subject to the provisions of the Basic Principles for the Treatment of Prisoners. The dominance of the U.S. in controlling GB prison has made the American government get more blames on the poor management of the facility in the short- and long-term effects. U.S. has a big interest in the 9/11 crimes and has taken the initiative to lead the fight against terrorism and critical political wars even though it is hardly doing it in the recommended manner (Jenks 2016). Nonetheless, it not only the U.S. to be blamed, but also all other personnel and authorities involved. Every professional, institution, and government that plays a role in the control and management of GB has an obligation to ensure that the rule of law is observed to the latter.

The fact that the world needs a global system remains because crimes are not acceptable in any part of the world. However, the view and interpretation of some acts as either crime or not differ from one nation to another. International platforms and laws enable countries to share views and have a common ground of reference when dealing with global cases. Most terrorism and political war cases tend to involve more than one nation. Besides, the world has a primary responsibility of taking appropriate and legal action in mitigating serious wars that take place within certain countries and violate human rights (Jacobson 2015). The existence of international organizations, such as the United Nations and international courts is an indication of the essence of world's unity in addressing

human-related issues. Failure to fight terrorism unitedly may weaken the process of weakening the whole process. Also, different nations may hardly agree on specific facts and laws pertaining to terrorism and political wars. Further, nations may be rivals or have relatively poor relationships with each other. In turn, they may never view any situation or verdict fairly and possibly presume misjudgment or injustice. Therefore, creation of a workable and effective global detention system would ensure that all political war and terrorism suspects are subjected to international laws as per the agreement of the involved nations if not the whole world.

GB abuse of power is apparent and marks the main reason for its change if not closure. However, the blame for GB mismanagement is more on its foundation and normalization of illegalities by various authorities and the administration of the institution (Bhattacharya 2019). Detention of various suspects must be done in accordance to the law. The main reason for detention is to protect the society from possible danger by the suspects and allow for smooth investigation of the case without interference (Khan 2019). Also, detention is done to protect witnesses from jeopardy by the alleged suspect. In the past, persons of Muslim origin have been treated with cruelty and high-rate suspicion because of their religion. Persons in authority have misused their powers to violate human rights without basing their decisions and recommendations on the law and logic (Von 2016). The U.S. government has more power on the control of GB. Human rights activists and organizations have always noted that the U.S. government abuses power in the control of the facility (Moore 2003). However, U.S. presidents in power have always viewed the issue of GB prison differently even though they have both agreed that there is an issue with the management and operation of the facility about human rights observance and violation.

The terms of engagement with the detainees were not clear for a relatively long time after the establishment of GB. Therefore, the existing authorities took advantage of the situation to violate human rights and existing policies on the management and operation of the facility. Unfortunately, GB prison authorities have not been consistent with these laws and continues to take advantage of the lenient system while detainees continue to suffer (Sanders 2018). Although the number of GB detainees has reduced significantly to current figures indicating there are only 39 indefinite detainees at the prison, a good number of people continue to suffer in the hands of the authorities. They hardly enjoy the protection they deserve and human rights as defined by the law. Instead, they are tortured due to mere accusations and unconfirmed terrorism and political war crimes. Detention of suspects should be guided by specific terms that all professionals that deal with the detainees directly or indirectly are expected to know (McNamara 2005). While they know the rules of detention the suspects, they fail to observe them as required. Webb et al. (2015) postulate that the top leadership takes the blame due their reluctance and dormancy while the law is broken all professionals under them. The GB system is answerable to its mismanagement and violation of human rights at the facility. Criminals have humans' rights that should be observed even as they are detained, while they await and undergo judgement, and after conviction.

All suspects at GB are innocent until declared guilty by the jury after a fair and public hearing of the case. While researchers may not focus on determining the guilt and innocence of the detainees, there is need to assess the validity, legality, and effective of GB operation and the fulfillment of its objectives on the verge of serving its role (Schabas 284; Tracy 2016). Many times, GB suspects have always been treated as confirmed criminals without presuming their innocence as required. The intervention of responsible institutions and authorities also appears to have failed in the long-term effect. Issues concerning detainees have been maintained as top secrets regardless of how sensitive they are to the world and the involved stakeholders (Webb-Murphy et al. 2015). Critical information of GB detainees is important for assessing the progress of the institutional

operation. Treating suspects as convicts is illegal and amounts to violation of human rights as defined under various international and domestic laws.

7. Conclusion

The review reveals the critical situation at GB prison in terms of its operation, engagement with detainees, adherence to the law, and the essence of addressing international security and protection. Human rights are fundamental to the world and should be upheld at all costs. Violation of the rights of some people across the world is a threat to the whole world. If the rights of one person can be overlooked, other people may as well be at the risk of being victims of illegalities. The need for change at GB is apparent and should be executed within the shortest time possible since the majority of the stakeholders are in agreement of human rights violation at the facility. Importantly, the U.S. government should lead all other stakeholders in making the necessary corrections needed for proper operation of GB if not ending it. Human rights activists and organizations should continue addressing the issue of violation of human rights at GB until a long-term or permanent solution is reached and implemented. The issue at GB prison is not new and has lasted for about two decades while research collects, analyze, and present relevant information without any serious action taking place to correct the irregularities. Nonetheless, war crimes should be treated with the seriousness and weight that they deserve while focusing on mitigating the violation of human rights. The world can still invent an effective global detention system that operates under different rules and regulations and upholds human rights properly through exhibiting equality, fairness, and humanly treatments for the detainees.

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