

Oral Statement
Item 4 General Debate
March 11 2013

The United States continues to detain individuals for indefinite periods without charge or trial at Guantanamo Bay in Cuba and at Bagram Airbase in Afghanistan in violation of its obligations under international human rights law. Though when the United States became a member of the Human Rights Council in 2009 it announced its intention to close the detention facility at Guantanamo, it is now entering its 12th year of operation. Of the 779 prisoners once detained there, 166 remain. In Afghanistan, the US has turned over control of significant portions of its detention facility at Bagram to the Afghan government, but several dozen prisoners remain in US custody, some of whom have been in detention for years.

The United States has asserted over the years that these individuals can be held without charge or trial until the "end of the armed conflict" with al-Qaeda. This simplistic formulation did not take into account the end of the inter-state armed conflict in Afghanistan in 2002, the current applicability of Afghan criminal law to those apprehended during the Afghanistan's non-international armed conflict, and individuals taken into custody in law enforcement situations outside of any recognized armed conflict. These persons should be charged with a cognizable criminal offense and fairly prosecuted, or released.

Of the 166 prisoners who remain at Guantanamo, 86 have been designated by the US for release (some for the third or fourth time) since 2010. The US has designated another 46 Guantanamo detainees for indefinite detention-- on the grounds that they are unsuitable for prosecution yet "too dangerous" to release. An executive order issued in March 2011 provided that these detainees should have the ability to challenge their designation, but two years later, the board before which they would appear has not yet been created. Another 34 prisoners have been slated for prosecution, but only 6 of those face any formal charges.

The United States also continues to use fundamentally flawed military commissions at Guantanamo, which fall far short of international fair trial standards, to prosecute terrorism suspects even though US federal courts also have jurisdiction. The commissions allow the use of evidence obtained by coercion, lack independence, and provide little meaningful access to the proceedings for the public. In February it was uncovered that a government agency had installed listening devices disguised as smoke detectors in attorney-client meeting rooms. Members of the defense also say it takes weeks, if not months, to get information to their clients under the system set up to deliver mail from the United States to prisoners at Guantánamo. This, combined with a lack of resolution over what materials are prohibited, has prevented them from effectively communicating with their clients for more than a year.

Indefinite detention without charge at Guantanamo and Bagram and unfair military commission trials are a damaging blight on the human rights record of the United States. We urge the US government to bring an end to these illegal practices by either prosecuting these detainees in civilian courts or releasing them.