

*Spring 2015*

## CLOSING GUANTÁNAMO

**A**ll people have the right to a fair trial and the right to be free from arbitrary detention. These are rights that are guaranteed under the International Covenant on Civil and Political Rights, which the U.S. ratified in 1992. Yet 122 men are still held at Guantánamo, most without charge, including dozens who have reportedly been cleared for transfer out of the facility. Shaker Aamer is one of these detainees. The British government says he should be free with his wife and children in London, yet he remains held without charge for over a decade.

When he first took office, President Obama pledged to resolve the Guantánamo detentions and close the facility by January 22<sup>nd</sup>, 2010. This pledge remains unfulfilled. Furthermore, the U.S. government has continued claims made by the previous Administration that it can hold people without charge or criminal trial under what it defines as a “global war” against al-Qa’ida and associated groups. The “global war” legal framework has been widely rejected and continues to dangerously undermine human rights.

The September 11 attacks were a crime against humanity and those responsible must be brought to justice. There is a safe, secure and just alternative to Guantánamo: each detained person should either be charged and fairly tried in U.S. federal court, or be released to a country that will respect his human rights. The ordinary criminal justice and law enforcement systems in the U.S. are equipped to ensure justice for the September 11 attacks and address any security risks posed by those held at Guantánamo.

The Obama administration has blamed its failure to close the Guantánamo detention facility on Congress, which in fact has repeatedly moved to put obstacles in the way of the U.S. meeting its human rights obligations in this context. The latest obstacles come in the form of this year’s National Defense Authorization Act (NDAA) with both the Senate and House versions of the bill containing harmful restrictions that would make it far more difficult for the president to close Guantanamo.

The House has already passed its version of the NDAA. The bill reinstates harsh transfer restrictions that make it exceptionally difficult for the government to transfer a detainee out of Guantánamo unless the Secretary of Defense can certify that a series of security requirements has been met. Further, the House version of the bill bans transfers to entire regions of the globe determined to be “combat zones” for purposes of the U.S. tax code that include the countries of Turkey and the Philippines, and most of the Arabian Peninsula.

The Senate version of the bill – approved by the Senate Armed Services Committee and due for a floor vote next month - has its own set of restrictions. The current bill requires the Secretary of Defense to prepare a plan on Guantánamo that includes a detailed assessment of the disposition of each detainee currently at Guantánamo and that addresses how continued detention and intelligence operations will continue in the future. It further puts in place a ban on transfers to any country in the world that has ever accepted a Guantanamo detainee who later was confirmed to have “reengaged” (i.e. that a detainee is “directly involved in terrorist or insurgent activity”). It is important to note that the vast majority of detainees whom the government considers to have “reengaged” were released during the Bush administration (95%), before the Obama administration’s imposition of heightened security measures as part of the detainee transfer process. With only six of the 115 detainees released under Obama considered to have “reengaged,” it is unreasonable and overbroad to ban transfers on the failings of old security policies. Both the House and Senate versions of the bill maintain a ban on transfers to the United States and on construction of facilities in the U.S. to house detainees.

The Administration has recently made long overdue and responsible progress toward closing the facility. In the last few months defense, intelligence, and diplomatic officials have secured the transfer of 27 men from the prison, shrinking the population by almost twenty percent. Each of these transfers was conducted based on a finding by an interagency process among national security agencies – conducted either in 2009 as part of the Guantanamo Detainee Review Task Force process or more recently as part of the detainee’s Periodic Review Board (PRB) hearing—that the detainee in question did not represent a security threat to the United States; an updated assessment immediately prior to transfer; a determination by the Secretary of Defense that any risk of the individual reengaging upon transfer has been “substantially mitigate[d]”; and an assessment by the Secretary of Defense that the host country in question has the capacity and willingness to meet security assurances by that country prior to transfer.

Amnesty International urges members of Congress to oppose Guantánamo transfer restrictions and support removal of all conditions on Guantánamo transfers.

**AMNESTY INTERNATIONAL USA RECOMMENDATIONS TO SENATORS AND HOUSE MEMBERS:**

- To the Senate:
  - Support any amendments on the floor that strike Guantánamo transfer restrictions from the committee's markup of the National Defense Authorization Act.
  
- To all members of Congress:
  - Reject transfer restrictions made on the basis of confirmed detainee reengagement given that 95% of all detainee reengagement took place after a now out of date transfer process.
  - Support closure of the Guantánamo detention facility by ensuring that each detainee is either charged and fairly tried in US federal court, or released to a country that will respect his human rights.
  - Call on the president to veto the NDAA if the final legislation includes the harmful Guantánamo transfer restrictions currently included in the House or Senate versions.

**For more information, please see this coalition letter urging a “no” vote on Senate Bill 165 <http://bit.ly/1vPQsFt> and Amnesty International's report: “*Guantánamo: A Decade of Damage to Human Rights*” <http://bit.ly/GD7X0Y>**

*Amnesty International is a global movement with 7 million supporters worldwide campaigning to promote and defend human rights.  
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