

# AMNESTY INTERNATIONAL MEDIA BRIEFING

DECEMBER 2011

## Guantánamo 10<sup>th</sup> anniversary: Timeline

### 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. Amnesty International considers the attacks to constitute a crime against humanity.

**14 September** – US Congress passes a resolution, Authorization for Use of Military Force (AUMF), giving 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** – US President George W Bush signs a memorandum 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.

**18 September** – President Bush signs the AUMF into law.

**7 October** – The USA leads military action against the Taleban government and members of al-Qa'ida 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", ordering the Secretary of Defense to find an "appropriate location" to hold non-US nationals 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** – A Justice Department memorandum to the CIA gives legal approval for the agency to use 10 interrogation techniques against Abu Zubaydah, who has been held in secret CIA custody since late March 2002. The techniques include stress positions, sleep deprivation, confinement in a small box and "waterboarding", a technique in which the process of drowning the detainee is begun. Abu Zubaydah is subjected to at least 83 applications of waterboarding, amongst other

techniques. After leaving office, President Bush will assert in his memoirs that he specifically authorized the use of “enhanced interrogation techniques” against Abu Zubaydah, including waterboarding.

**2 December** – Secretary of Defense Donald Rumsfeld approves interrogation techniques as a “matter of policy” for 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. In memoirs published in 2011, Donald Rumsfeld will confirm his involvement in approving interrogation techniques for use against Mohamed al-Qahtani after being advised that this detainee “had information that could save American lives”. He will claim that he had “understood that the techniques I authorized were intended for use with only one key individual”, that is Mohamed al-Qahtani, although in the same memoirs he will note that the Guantánamo military authorities under him were seeking the additional “counter-resistance techniques” because “some detainees” (plural) had “resisted our current interrogation methods”.

**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 and 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 the Guantánamo detention facility 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 a 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 of the Geneva Conventions 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 (at the same time officially confirming for the first time the very existence of the secret detention program). He uses their cases to seek passage of legislation to allow the secret detention program to continue, to solidify impunity for those involved in the secret detention program, and to reinstate military commissions.

**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.

**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".

**December** – Afghan detainee held in Guantánamo dies, reportedly of colon cancer.

**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. It will subsequently be revealed that there were 92 tapes, 90 of which were of Abu Zubaydah's interrogation while the other two related to the interrogation of 'Abd al Rahim al Nashiri. The tapes included recordings of the use of "enhanced interrogation techniques", including waterboarding, one of the techniques was used against both of these detainees.

## 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. He will be the last detainee transferred to Guantánamo

**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.

**12 June** - The US Supreme Court, in *Boumediene v Bush*, rules that the detainees held in Guantanamo 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 Kahlal 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 will be 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 assist in ending the situation at Guantánamo by agreeing to receive 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 (see 14 September 2001), authorized the indefinite military detention of a legal resident seized on US soil who the government alleged to have conspired with al Qaeda 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.

## **2009**

**14 January** -- Susan Crawford, convening authority for the military commissions at Guantánamo tells the *Washington Post* that the reason she would not allow the prosecution of Mohamed al-Qahtani to go forward is because he had been tortured.

**20 January** - Barack Obama is inaugurated as President of the United States of America.

**22 January** - President Obama signs three executive orders, one of which states that the detention facility at Guantánamo “shall be closed as soon as practicable and no later than one year from the date of this order.” The order also requires a review of all Guantánamo detentions and of conditions of detention and a halt to military commission proceedings. President Obama also orders the CIA to end the use of prolonged secret detention and to end the use of “enhanced interrogation techniques”. He also orders review of the case of Ali al-Marri.

**15 March** – A leaked confidential report by the ICRC describes the torture and other ill-treatment of 14 “high value detainees” in CIA custody prior to their transfer to Guantánamo in early September 2006. Four of the detainees have told the ICRC that during part of the time that they were held in secret CIA detention they were held in Guantánamo.

**16 April** – The administration releases largely unredacted four previously classified Justice Department memorandums to the CIA on interrogations written in 2002 and 2005

**15 May** - President Obama announces he will revive military commission trials of detainees.

**21 May** – In a major speech on national security, President Obama restates his commitment to closing Guantánamo but endorses indefinite detention without criminal trial of some detainees.

**1 June** – Yemeni national dies in Guantánamo, reportedly as a result of suicide

**24 August** – Attorney General Eric Holder expands the mandate of US Attorney John Durham, who is investigating the destruction of the interrogation videotapes, to include a “preliminary review” into whether federal laws were violated in connection with the interrogation of certain detainees at overseas locations.

**13 November** – Attorney General Holder announces that five Guantánamo detainees accused of involvement in the 9/11 attacks will be transferred to the USA and prosecuted in ordinary federal court. These same five detainees had been charged by the Bush administration for trial by military commission in 2008.

**15 December** – President Obama issues memorandum directing the eventual relocation of some Guantánamo detainees to the Thomson Correctional Center in Illinois. Congress subsequently blocks any such a move.

## **2010**

**22 January** - President Obama’s one-year deadline for closure of the Guantánamo detention facility passes with 198 detainees still held in the base, about half of them Yemeni nationals. The Guantánamo Review Task Force issues its final report, revealing that it has, among other things,

decided that 48 detainees could neither be prosecuted nor released and had been “unanimously approved for continued detention under the AUMF”.

**05 January** - The White House announces that the decision had been taken to suspend transfers of Yemeni detainees from Guantánamo to Yemen due to the security situation there.

**April** - The Pentagon releases rules governing military commission proceedings. The new manual confirms that the US administration – like its predecessor – reserves the right to continue to detain individuals indefinitely even if they were acquitted by military commission.

**July** - Sudanese national Ibrahim al-Qosi pleads guilty to terrorism-related charges and is sentenced the following month to 14 years’ imprisonment.

**October** - Canadian national Omar Khadr, who was 15 years old at the time he was taken into US military custody in Afghanistan in July 2002, pleads guilty to five “war crimes” charges. He is sentenced to 40 years in prison by a military commission “jury”, but under a plea trial agreement this is limited to eight years. The Canadian and US authorities agree to support his transfer to Canada after he serves one year in US custody.

**9 November** – The Department of Justice announces, without further explanation, that no one will be prosecuted for the “destruction by CIA personnel of videotapes of detainee interrogations”.

## 2011

**6 January** – Saeed Farhi bin Mohammed transferred from Guantánamo, where he had been held since 2002, to his native Algeria. His detention had been ruled unlawful by a US judge in November 2009. Saeed bin Mohammed had told his lawyers he did not want to be returned to Algeria because of his fears of persecution there.

**22 January** – The first anniversary of the missed deadline for closure of Guantánamo passes with 174 detainees still held at the base

**1 February** – Afghan detainee dies at Guantánamo, reportedly of natural causes

**18 February** – Sudanese national Noor Uthman Muhammed is sentenced to 14 years in confinement on terrorism related charges following his guilty plea in front of a military commission. In exchange for his guilty plea and promise to cooperate and testify in other cases, the convening authority agrees to suspend any period of confinement greater than 34 months.

**04 April** – Attorney General Holder announces that the five Guantánamo detainees accused of responsibility for the September 11 attacks will be tried in military commissions, reversing the previous decision announced 18 months earlier to try them in federal court in the USA.

**20 April** – Charges sworn against ‘Abd al Rahim al Nashiri for trial by military commission.

**16 May** – the US Supreme Court, without comment, dismisses the *Mohamed v. Jeppesen* case, brought by five detainees alleging they were subjected to enforced disappearance, torture and other violations under the CIA’s rendition program, leaving in place the divided decision of the Court of Appeals upholding the US administration’s invocation of the “state secrets privilege” as justification for dismissing the lawsuit without any review of its merits

**18 May** – Afghan detainee dies in Guantánamo, reportedly as the result of suicide

**31 May** – Charges sworn against the five “9/11” defendants for trial by military commission. The government confirms it wishes to seek the death penalty.

**30 June** – Attorney General Holder announces that the preliminary review being conducted by Assistant US Attorney John Durham into interrogations in the CIA program is at an end. Attorney General Holder has accepted Durham’s recommendation for “a full criminal investigation regarding the death in custody of two individuals.” Beyond that, he says, “an expanded criminal investigation of the remaining matters is not warranted.”

**28 September** – Charges against ‘Abd al Rahim al Nashiri referred on for trial as capital by the military commission convening authority, thereby authorizing the government to pursue a death sentence

**9 November** – arraignment of ‘Abd al Rahim al-Nashiri held at Guantánamo.

**1 December** – 171 men from more than 20 countries remain held at Guantánamo, most of them without charge or trial.

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