**Human Rights Commission**



**The question of the rights of prisoners still being held in Guantanamo.**

I. Introduction

A. Historical Background

1- The issue of the rights of prisoners held in Guantanamo Bay, Cuba, is deeply rooted in the aftermath of the September 11, 2001 terrorist attacks on the United States. In response to these attacks, the U.S. government, under President George W. Bush, launched the "War on Terror" with the objective of combating terrorism globally. As part of this effort, the United States established detention facilities, most notably Guantanamo Bay Naval Base, to hold individuals suspected of terrorism or association with terrorist organizations. Guantanamo Bay, located on the southeastern coast of Cuba, was chosen as a detention site due to its status as a U.S. naval base leased from Cuba since 1903. The U.S. government argued that Guantanamo fell outside the jurisdiction of U.S. courts and that detainees could be held there without the protections afforded by the U.S. legal system. The treatment of detainees at Guantanamo Bay quickly became a subject of controversy and debate, particularly concerning the legal rights and status of those held there. Many detainees were subjected to indefinite detention without trial, and reports emerged of harsh interrogation techniques, including waterboarding and other forms of torture, which raised significant human rights concerns. The question of the rights of Guantanamo prisoners has been the subject of legal battles and international scrutiny. One of the key issues is whether detainees are entitled to the protections of the Geneva Conventions, which outline the rights of prisoners of war and non-combatants during armed conflicts. The U.S. government argued initially that Guantanamo detainees did not qualify as prisoners of war under the Geneva Conventions because they were not members of a regular armed force and did not wear uniforms. The legal status of Guantanamo detainees was further complicated by the creation of military commissions to try suspected terrorists. These commissions, established by President Bush through executive order, were criticized for their lack of transparency and adherence to due process standards.

2-In 2008, the U.S. Supreme Court ruled in Boumediene v. Bush that Guantanamo detainees had the constitutional right to challenge their detention through habeas corpus petitions in U.S. federal courts. This decision affirmed the principle that detainees held at Guantanamo Bay are entitled to some legal protections under U.S. law. Despite this ruling, significant challenges remain in addressing the rights of Guantanamo prisoners. Many detainees have been held for years without being charged or given a fair trial, leading to ongoing concerns about arbitrary detention and the erosion of fundamental rights. The question of what to do with the remaining detainees at Guantanamo Bay remains a contentious issue, with calls from human rights organizations and some politicians to close the detention facility and either release or transfer detainees to other countries for trial or resettlement. However, political and security concerns have hindered efforts to close Guantanamo, and the facility continues to operate, albeit with a reduced population compared to its peak in the early 2000s.

 II. Current situation

As of January 2024, the situation regarding the rights of prisoners held in Guantanamo Bay remains largely unchanged. Despite promises by successive U.S. administrations to address the issue, the detention facility continues to hold individuals suspected of terrorism-related activities without trial, some for nearly two decades. The Biden administration, like its predecessors, has expressed a desire to close the Guantanamo Bay detention facility. President Biden reiterated this commitment early in his presidency, signing an executive order to review the facility's status. However, significant obstacles persist, including legal, political, and logistical challenges. One of the primary hurdles to closing Guantanamo is the difficulty in finding suitable destinations for transferring detainees. Many detainees cannot be repatriated to their home countries due to concerns about human rights abuses or lack of adequate judicial systems. Additionally, legal restrictions imposed by Congress complicate efforts to transfer detainees to the United States for trial or imprisonment. While some detainees have been cleared for release or transfer, the process is slow and often stalled by bureaucratic hurdles. Others remain in indefinite detention, caught in a legal and geopolitical limbo with no clear path to resolution. The continued detention without trial of these individuals raises significant human rights concerns and has drawn criticism from international organizations and human rights advocates. Efforts to address the situation at Guantanamo have been further complicated by security concerns and the evolving nature of global terrorism threats. The Biden administration faces pressure to balance national security interests with the protection of human rights and adherence to the rule of law. In summary, despite repeated pledges to close the facility, the Guantanamo Bay detention center remains operational, and the rights of prisoners held there continue to be a subject of controversy and debate. While there have been some efforts to address the issue, significant challenges remain in finding viable solutions and ensuring that detainees are treated in accordance with international human rights standards.

Iii. Key concerns and priorities

The question of the rights of prisoners still being held in Guantanamo Bay encompasses several key concerns and priorities that have been at the forefront of international debate and advocacy efforts. These concerns revolve around ensuring fundamental human rights, upholding the rule of law, and addressing the unique legal and ethical challenges posed by the Guantanamo detention facility. Some of the key concerns and priorities include:

1.Right to Due Process: One of the primary concerns is the denial of due process rights to detainees held at Guantanamo. Many individuals have been held for years without being charged with a crime or given a fair trial. Ensuring that detainees have access to legal representation, a fair trial, and the opportunity to challenge their detention through habeas

corpus petitions is essential for upholding the principles of justice and the rule of law.

2.   Prohibition of Torture and Ill-Treatment: Reports of torture and ill-treatment of detainees at Guantanamo have raised significant human rights concerns. Ensuring that detainees are treated humanely and that torture and other forms of cruel, inhuman, or degrading treatment are strictly prohibited is essential for upholding international human rights standards and principles.

3.   Transparency and Accountability: There is a lack of transparency surrounding the operations of the Guantanamo detention facility, including the conditions of detention and the legal proceedings against detainees. Ensuring greater transparency and accountability in the treatment of detainees, including independent monitoring and oversight mechanisms, is crucial for addressing human rights abuses and ensuring respect for the rule of law.

4.   Closure of the Detention Facility: Many human rights organizations and advocates have called for the closure of the Guantanamo Bay detention facility, citing its tarnished reputation, human rights abuses, and failure to adhere to legal and ethical standards. Closing the facility and either prosecuting detainees in accordance with international law or releasing them to countries that respect their rights is seen as a priority for addressing the ongoing human rights crisis at Guantanamo.

5.   Rehabilitation and Reintegration: For detainees who are cleared for release or transfer, ensuring their successful rehabilitation and reintegration into society is essential. This includes providing support services, such as counseling, education, vocational training, and assistance with resettlement, to help individuals rebuild their lives after years of detention.

6.   Respect for International Law: Upholding international law, including the Geneva Conventions and other relevant human rights treaties, is paramount in addressing the rights of prisoners held in Guantanamo. Adhering to legal standards and norms, including the prohibition of arbitrary detention and the right to a fair trial, is essential for ensuring justice and accountability for all parties involved. Overall, addressing the rights of prisoners held in Guantanamo requires a comprehensive approach that prioritizes respect for human rights, adherence to the rule of law, and accountability for past abuses. It is a complex and challenging issue that demands sustained attention and concerted efforts from the international community to achieve meaningful progress towards justice and accountability.

Iv.  international Legal Framework   The international legal framework surrounding the rights of prisoners held in Guantanamo Bay is governed by various treaties, conventions, and customary international law principles. Several key legal instruments establish fundamental human rights standards and protections that apply to detainees, regardless of their status or location. Some of the most relevant aspects of the international legal framework include:

1.   Geneva Conventions: The Geneva Conventions are a set of four treaties adopted in 1949 that establish the standards of international humanitarian law (IHL) governing the treatment of individuals during armed conflict. Of particular relevance to Guantanamo detainees is the Third Geneva Convention, which outlines the rights and protections afforded to prisoners of war (POWs). While the United States has argued that Guantanamo detainees do not qualify as POWs under the Geneva Conventions, international legal experts and human rights organizations have challenged this interpretation.

2.   International Covenant on Civil and Political Rights (ICCPR): The ICCPR is a multilateral treaty adopted by the United Nations General Assembly in 1966 that sets forth civil and political rights, including the right to a fair trial, the prohibition of torture and cruel, inhuman, or degrading treatment, and the right to liberty and security of person. While the United States is a signatory to the ICCPR, its applicability to Guantanamo detainees has been a subject of debate.

3.   Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT): Adopted by the United Nations General Assembly in 1984, the CAT prohibits the use of torture and other forms of cruel, inhuman, or degrading treatment or punishment. The United States is a party to the CAT, and its provisions apply to all individuals under U.S. jurisdiction, including detainees held in Guantanamo Bay.

4.   Customary International Law: In addition to treaty-based obligations, customary international law, which arises from consistent state practice and opinio juris (a sense of legal obligation), establishes binding norms that govern the treatment of detainees. Principles such as the prohibition of arbitrary detention, the right to a fair trial, and the prohibition of torture are considered customary international law and apply to all states, including the United States.

5.   International Court of Justice (ICJ) Jurisprudence: The ICJ, also known as the World Court, has issued several opinions and judgments relevant to the rights of detainees in cases brought before it. While its jurisdiction is limited to disputes between states, the ICJ's interpretations of international law provide authoritative guidance on the rights and obligations of states regarding the treatment of detainees. Overall, the international legal framework regarding the rights of prisoners held in Guantanamo Bay establishes clear standards and protections derived from international humanitarian law, human rights law, and customary international law. Upholding these standards is essential for ensuring the rights, dignity, and well-being of detainees and for promoting accountability and justice in the context of counterterrorism efforts.