



# GUANTÁNAMO REPORT CARD: FACTSHEET ON COMPLIANCE WITH THE OBLIGATIONS IMPOSED BY THE GENEVA CONVENTIONS

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*Front picture: a solitary confinement cell in Guantánamo Bay's Camp V, where a large number of prisoners continue to be held, in direct violation of the Geneva Conventions' prohibition of housing prisoners in "close confinement."*

## INTRODUCTION

Recently there have been claims in the media that Guantánamo Bay is now in compliance with U.S. obligations under the Geneva Conventions. The following analysis “grades” the U.S. military on its compliance with its obligations under the Geneva Conventions, based on unclassified information derived over more than fifty visits over a four year period running up to the present.

Reprieve welcomes any improvements made in the conditions of the prisoners in Guantánamo Bay. Reprieve notes, however, that it is important that government officials be held to the highest standards of honesty and transparency when discussing the quality of life of prisoners in detention.

**Conclusion:** The U.S. military is *not in compliance* with the Geneva Conventions in a majority of the areas studied. This is particularly so with respect to Camp V, where conditions remain far short of what the Geneva Conventions require. The recent report by Admiral Walsh on conditions in Guantánamo was, regrettably, silent about the ongoing violations of Geneva in this camp.

*Note: General reference is made below to the Third Geneva Convention. (With some – indeed, many – prisoners it might be appropriate to rely upon the Fourth Geneva Convention. Since many of the provisions are similar, the analysis has been limited for the sake of clarity.)*

## EVALUATION

### **Standard: Geneva Convention Prohibition on “Close Confinement”**

**Grade:** Non-Compliant

#### **Authority:**

**Art. 21.** Subject to the provisions of the present Convention relative to penal and disciplinary sanctions, prisoners of war may not be held in close confinement except where necessary to safeguard their health and then only during the continuation of the circumstances which make such confinement necessary.

**Art. 22.** Except in particular cases which are justified by the interest of the prisoners themselves, they shall not be interned in penitentiaries.

#### **Violations**

Camps 5, 6 and 7 are, by definition and design, “close confinement” camps, in direct violation of the Geneva Conventions. They are patterned on high security jails in the United States.

Camp 5 is a maximum-security facility where prisoners are housed in adjacent individual cells aligned in upper and lower tiers within four separate wings. Prisoners are housed in cells that allow in only minimal sunlight through a slit window (see cover photo). Unencumbered living space is approximately 56 square feet per cell; overall cell size is approximately 75 square feet.

Camp 6 is a climate-controlled facility with prisoners housed in eight pods, on two levels. The bottom floor cells open onto an indoor communal table/recreation area which until very recently was unavailable for prisoners’ use. The second floor cells are connected by way of a catwalk and stairway. No cell has a window to the outside.

Camp 7 is a climate-controlled, single-cell facility currently used to house the so-called “High-Value” Prisoners—former captives in secret CIA prisons. The cells in this facility are designed to limit communications between prisoners.

All prisoners in these camps are confined to their small cells for at least twenty hours a day. The prisoners have very limited human contact or mental stimulation. Food is delivered through a slot towards the front of the cell. The prisoners in Camps 5 and 6 may only communicate to each other if they shout to one another through their food slots. Doing so risks disciplinary sanctions.

Recent improvements in recreational facilities and interaction opportunities in Camp 6 are to be welcomed. The fact remains, however, that Camp 6 prisoners spend the vast majority of their time in a windowless metal box. Prisoners in Camp 5 have seen no such improvement (Admiral Walsh’s report failed to note this shortfall).

#### **Recommendations**

Reprieve recommends the closure of close confinement Camps 5, 6 and 7 if the DOD is to reach compliance with the Geneva Conventions.

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**Standard: Geneva Conventions requirement regarding Adequacy of Quarters**

**Grade:** Non-Compliant.

**Authority:** The Geneva Conventions require that prisoners be treated at least as favourably as the U.S. military personnel who are guarding them.

**Art. 25.** Prisoners of war shall be quartered under conditions as favourable as those for the forces of the Detaining Power who are billeted in the same area.

**Violations:**

See above.

**Recommendations:**

Reprieve recommends the closure of close confinement Camps 5, 6 and 7 if the DOD is to reach compliance with the Geneva Conventions.

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**Standard: Geneva Conventions right to the Free Exercise of Religion**

**Grade:** Non-Compliant

**Authority:**

**Art. 34.** Prisoners of war shall enjoy complete latitude in the exercise of their religious duties, including attendance at the service of their faith, on condition that they comply with the disciplinary routine prescribed by the military authorities. Adequate premises shall be provided where religious services may be held.

**Art. 35.** Chaplains who fall into the hands of the enemy Power and who remain or are retained with a view to assisting prisoners of war, shall be allowed to minister to them and to exercise freely their ministry amongst prisoners of war of the same religion, in accordance with their religious conscience. They shall be allocated among the various camps and labour detachments containing prisoners of war belonging to the same forces, speaking the same language or practising the same religion. They shall enjoy the necessary facilities, including the means of transport provided for in Article 33, for visiting the prisoners of war outside their camp. They shall be free to correspond, subject to censorship, on matters concerning their religious duties with the ecclesiastical authorities in the country of detention and with international religious organizations. Letters and cards which they may send for this purpose shall be in addition to the quota provided for in Article 71.

**Art. 36.** Prisoners of war who are ministers of religion, without having officiated as chaplains to their own forces, shall be at liberty, whatever their denomination, to minister freely to the members of their community. For this purpose, they shall receive the same treatment as the chaplains retained by the Detaining Power. They shall not be obliged to do any other work.

**Violations:**

Collective Friday prayers have not been allowed.

Imams in the Camp have not been permitted to minister to their colleagues.

**Recommendations:**

Reprieve recommends that the DOD immediately permit collective Friday prayers for all prisoners. All Imams who are being held in Guantánamo Bay should be permitted to minister as required by Article 36, if the DOD is to reach compliance with the Geneva Conventions.

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**Standard:** Geneva Conventions obligation to allow Physical and Intellectual Exercise

**Grade:** Non-Compliant.

**Authority:**

**Art. 38.** While respecting the individual preferences of every prisoner, the Detaining Power shall encourage the practice of intellectual, educational, and recreational pursuits, sports and games amongst prisoners, and shall take the measures necessary to ensure the exercise thereof by providing them with adequate premises and necessary equipment. Prisoners shall have opportunities for taking physical exercise, including sports and games, and for being out of doors. Sufficient open spaces shall be provided for this purpose in all camps.

**Art. 72.** Prisoners of war shall be allowed to receive by post or by any other means individual parcels or collective shipments containing, in particular, foodstuffs, clothing, medical supplies and articles of a religious, educational or recreational character which may meet their needs, including books, devotional articles, scientific equipment, examination papers, musical instruments, sports outfits and materials allowing prisoners of war to pursue their studies or their cultural activities.

**Violations**

Until very recently, only the minority of prisoners in Camps IV and Iguana were permitted to play team sports. Prisoners in Camp V are still not permitted to do so, and cannot take physical exercise in an outdoor area of reasonable size.

Prisoners are not permitted parcels of any sort from their families. Reprieve notes, and welcomes, some increase in access to informational and cultural materials in Camp VI. But to this day, prisoners in Camp V cannot receive books from the outside, pursue studies, or take part in any meaningful cultural activities.

**Recommendations:**

Reprieve recommends that the DOD immediately permit *all* prisoners to have meaningful access to intellectual and physical pursuits if the DOD is to reach compliance with the Geneva Conventions. Compliance will ease tensions between prisoners and guard staff and help prisoners prepare for release and reintegration into the free world.

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## **Standard: Geneva Conventions obligation of Humane Treatment**

**Grade:** Non-Compliant

**Authority:** Common Article 3

**Art. 13.** Prisoners of war must at all times be humanely treated ... prisoners of war must at all times be protected, particularly against acts of violence or intimidation...

**Art. 17.** No physical or mental torture, nor any other form of coercion, may be inflicted on prisoners of war to secure from them information of any kind whatever. Prisoners of war who refuse to answer may not be threatened, insulted, or exposed to unpleasant or disadvantageous treatment of any kind.

**Art. 27.** Clothing, underwear and footwear shall be supplied to prisoners of war in sufficient quantities by the Detaining Power, which shall make allowance for the climate of the region where the prisoners are detained. Uniforms of enemy armed forces captured by the Detaining Power should, if suitable for the climate, be made available to clothe prisoners of war.

### **Violations**

#### *Coercive interrogation*

Prisoners are still required to attend interrogation sessions, on pain of punishment. This also directly violates the command of the U.S. Supreme Court: “Certainly, we agree that indefinite detention for the purpose of interrogation is not authorized.” *Hamdi v. Rumsfeld*, 542. U.S. 507 (2004).

#### *Physical Violence / Excessive Use of Force*

Particularly in Camp 5 and Camp 6, prisoners live under the constant threat of the Guantánamo Emergency Reaction Force (ERF) that conducts what are known as Forced Cell Extractions (FCE). This is a squad of soldiers clad in riot gear — shields, batons, and body armor — who respond to prisoners who are deemed to be “resisting” or who refuse to leave their cells. The “resisting” need not be physical, and includes acts such as refusing to go to the shower.

To give just one recent example, *Reprieve* has received multiple reports of Reprieve client Ahmed Abdul Aziz, ISN 757, being beaten three times by the ERF team, and being taken to the hospital on January 8, 2009 for refusing to be tube fed. When Mr. Abdul Aziz’s attorney met with him on January 19, 2009, it was still clear that Mr. Abdul Aziz’s left knee was crooked, and swollen at least a third larger than its proper size. There was visible bruising. His right ankle was also swollen. His shoulder was injured and he could not lift his arm more than sixty degrees from the waist in any direction. His left thumb was also swollen. He was unable to make a grip strong enough to hold a pen for more than the briefest time.

The use of the ERF squad to physically punish “resisting” prisoners constitutes corporal punishment that is contrary to the Common Article 3 obligation to preserve the bodily integrity of detained individuals from physical violence or the threat thereof.

### *Force-Feeding*

In force-feeding hunger strikers, Guantánamo authorities make use of a six-point restraint chair. Hunger striking prisoners are strapped in the chair for at least two hours, twice per day, but have reported being left in the chair for as long as four hours at a time. Others have been force-fed in two-hour shifts, resulting in at least four hours of total immobilization per day. The chair is applied without regard to whether an individual prisoner physically resists feeding. It continues to be applied to prisoners who Guantánamo authorities have conceded are compliant with the procedure, and to prisoners who are severely medically disabled and physically unable to resist.

Even hunger strikers who are severely weakened by the force feeding process and have dropped below 85% of their body weight have been taken to forced feeding by FCE. The use of FCEs on hunger strikers is confirmed in Adm. Walsh's report.

### *Temperature Extremes*

Among the physical conditions of detention at Guantánamo, the routine exposure to temperature extremes stands out as both abusive and unnecessary. Although Guantánamo is a tropical climate, the cells there are kept extremely cold, in particular in Camps V and VI. Prisoners are not permitted to block the air-conditioning vents in their cells. Requests to adjust the temperature are generally ignored. The prisoners are denied clothing and bedding commensurate with the temperature.

### **Recommendations**

There must be a thorough and independent investigation into prisoner abuse. An independent investigation would necessarily include giving an observer access to FCE tapes to assess whether excessive force has been used. Under the Geneva Conventions, there may be *no physical abuse*.

People may not be forced from their cells, except under the most extreme circumstances, which must be preceded by intervention by the Block Rep who should be allowed into the prisoner's cell to persuade him to come out. Pepper spray should never be used, except in self-defense when an attack has been made.

There has to be a punishment structure but the Conventions are very specific on this, distinguishing between crimes (which may be prosecuted) and disciplinary punishments, which cannot exceed 30 days. There should be a structure where the first disciplinary process is in the hands of the Prisoners' Council, which would give them some investment in the process. Any discipline by the military must be done with the trappings of due process that must include the assistance of Prisoner Counsel of the prisoner's choice.

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**Standard:** Geneva Conventions obligation to Establish Prisoner Council

**Grade:** Non-Compliant.

**Authority:**

**Art. 79.** In all places where there are prisoners of war, except in those where there are officers, the prisoners shall freely elect by secret ballot, every six months, and also in case of vacancies, prisoners' representatives entrusted with representing them before the military authorities, the Protecting Powers, the International Committee of the Red Cross and any other organization which may assist them.

**Violations**

No prisoner council, as required by the Conventions, is permitted.

**Recommendations:**

Reprieve recommends that the DOD immediately recreate the Prisoner Council that briefly existed in August 2005 if the DOD is to reach compliance with the Geneva Conventions.

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## CONCLUSION

There remain a substantial range of areas in which the Joint Task Force in Guantánamo Bay falls far short of the basic requirements of the Geneva Conventions. (We have focused on the more serious violations of the Conventions. This Report should not be considered an exhaustive listing of violations.)

A detention center cannot be deemed “in compliance” with the requirements of the Geneva Conventions when it is actually in violation of a substantial proportion of the most serious provisions of the Conventions.

The report recently issued by Adm. Walsh fails to address these concerns for two critical reasons:

- 1) Only a dozen *unidentified* prisoners of over 240 were consulted—**less than 5% of the prisoner population** and presumably those picked out by the authorities. A favored individual in Camp Iguana is likely to have a *much* different view of his living conditions than in a prisoner in Camp V.
- 2) The report is **nearly silent as to conditions in Camp V**, where conditions remain extremely harsh for all prisoners.

Taken as a whole, these shortcomings give the regrettable impression that—rather than a candid assessment of compliance with Geneva for *all* prisoners—the Walsh report seeks to paint an unduly rosy picture of life at Guantánamo and papers over uncomfortable facts. Camp V violates Geneva’s command to treat prisoners humanely to this day. This fact is omitted from Adm. Walsh’s report.

The U.S. Department of Defense should either (a) admit that it is not in compliance with the Geneva Conventions, or (b) take immediate steps to redress the issues discussed in this Report.