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Regime of Torture: Guantánamo Bay's ongoing detention and prosecutions of the CIA's Rendition, Detention, and Interrogation prisoners

Abstract

Under the Convention Against Torture, if states know of torture having taken place, they have obligations to provide redress and rehabilitation for victims, and pursue prosecution of those responsible. Despite this, the US continues to detain prisoners who were subjected to years of CIA torture in Guantánamo Bay. The US is pursuing the death penalty through the Military Commissions system which falls far short of any international standards for fair trial. Ongoing systematic physical and psychological abuse prolongs torture's effects. We argue that the ongoing arbitrary detention, abuse, denial of healthcare, and the MCs constitute a regime of torture that persists today, with the acquiescence of successive US administrations, and with the collusion of multiple agencies of the US state. This regime is deliberately intended to keep CIA torture victims incommunicado as long as possible to prevent evidence of the worst excesses of CIA torture from ever coming to light. This regime has profound implications for human rights accountability and the rule of law. Our argument offers an opportunity to revisit the prevailing narrative in International Relations literature, which tends to view the CIA torture as an aberration, and its closure an indicator of the restoration of the anti-torture norm.

Key words

Torture, CIA, Guantánamo Bay, Human Rights, International Law

Authors

Professor Ruth Blakeley

Faculty of Social Sciences, University of Sheffield, The Wave, Floor C, 2 Whitman Road, Sheffield, S10 2AH, UK. r.blakeley@sheffield.ac.uk

Ruth Blakeley is professor of Politics and IR at the University of Sheffield. Her work focuses on state violence and human rights. She has published widely on state terrorism and torture, and co-led the Rendition Project which provided the most comprehensive account of the CIA's programme for the Rendition, Detention and Interrogation of terror suspects in the 'War on Terror'.

Dr Megan Price

Faculty of Social Sciences, University of Sheffield, The Wave, Floor C, 2 Whitman Road, Sheffield, S10 2AH, UK. m.price@sheffield.ac.uk

Megan Price is a Postdoctoral Research Associate in International Relations at the University of Sheffield. Her work is broadly concerned with state violence, legitimacy and counterterrorism. Prior to joining Sheffield, Megan completed her PhD at the University of Queensland, Australia. Her monograph, *International Legitimacy and the Domestic Use of Force: A New Theoretical Framework* was published with Routledge Press in 2022

Introduction

The CIA's Rendition, Detention and Interrogation (RDI) programme, operational between 2001 and 2010, involved the kidnap, incommunicado detention, and years of torture of at least 119 men, across a global network of CIA secret prisons. While litigators, human rights advocates and researchers had uncovered details of the torture from 2006 onwards, as Blakeley and Raphael explain, 'excruciating detail of this programme emerged in December 2014 with the publication of the redacted 499-page executive summary'[1] of the US Senate Select Committee on Intelligence study'[2] (SSCI report). This provided clear evidence of the CIA's use of torture, including drowning to the point of unconsciousness, repeated beatings, ice baths and hoses to induce hypothermia, sleep deprivation for more than a week at a time, painful stress positions for months at a time, prolonged confinement in extremely small boxes, and sexual assault by force-feeding through the rectum.[3] Beatings and experimentation with torture techniques were so severe on Ammar al-Baluchi, who was used a prop for training personnel in use of the techniques, that they caused traumatic brain injury.[4] Those detained in the RDI programme were subjected to treatment designed, as one interrogator stated, to take them 'to the verge of death and back again'.[5]

The full SSCI 6,000 page study, and thousands of the underlying documents, remain classified. Therefore, even though information in the public domain provides some insight into the nature of the torture, we do not have the full picture of its true extent. Although the defense teams for the prisoners on trial in the Military Commissions (MCs) – established by the Obama administration under the Military Commissions Act 2009 for the expedited pursuit of the death penalty or life sentences on charges of terrorism – have full security clearance, they are constantly denied access to evidence available to the state prosecutors. Where they have been able to obtain evidence through discovery, this material is usually classified or, if it is released, is heavily redacted. Therefore, as Alka Pradhan, civil defense attorney for Ammar al-Baluchi explained, 'the SSCI report is a small fraction of what we have access to. What we have access to is a small fraction of what exists'.[6]

The RDI programme is seen by many as a terrible stain on democracy, including some senior officials. But even they speak as if it was an aberration, insisting that measures have been taken to end torture. In the words of President Barack Obama, we must look forward not backwards.[7] They also speak as if other agencies of the state were not implicated.

The problem with this narrative is that 30 men continue to be held in Guantánamo Bay following years of arbitrary and incommunicado detention. The Department of Defense Guantánamo detention facility was established in 2002 at the Guantánamo Bay Naval Base in Cuba following the terror attacks of 11 September 2001, to detain men captured as enemy combatants outside of US jurisdiction. The majority of the 780 men who have been detained in Guantánamo were Department of Defense detainees, captured during US military operations in Afghanistan, Iraq and elsewhere. They were designated 'enemy combatants', and denied protections under the Geneva Conventions and habeas corpus rights. Through litigation in 2004 and 2008, lawyers won US Supreme Court cases which established US court jurisdiction over the prison and affirmed detainees' rights to habeas corpus review.[8] This laid the ground for long struggles to secure the release of the vast majority of the Department of Defense detainees. But the so-called 'high value detainees' captured by the CIA remain.

When President Bush admitted the existence of the CIA's RDI programme and announced its closure in September 2006, 14 'high value detainees' (HVDs) held in secret CIA prisons were transferred to the Guantánamo facility. The other remaining CIA prisoners were rendered to other

states.[9] Despite Bush's announcement, the programme was not dismantled immediately, and was revived sporadically for the detention of at least two further prisoners, Nashwan al-Tamir, held by the CIA from November 2006 to April 2007, and Muhammad Rahim, held from July 2007 to March 2008, both subsequently transferred to Guantánamo.[10] Of the 30 prisoners who remain in Guantánamo, 13 were victims of sustained and brutal torture at the hands of the CIA, and face little hope of release.

We argue that the ongoing arbitrary detention, abuse, denial of healthcare, and the MCs, which fall far short of any international standards for fair trial, constitute a regime of torture that persists today, with the acquiescence of successive US administrations, and with the collusion of multiple agencies of the US state, most notably the CIA, FBI and Department of Defense. This regime is deliberately intended to keep the victims of CIA torture incommunicado as long as possible to prevent evidence of the worst excesses of CIA torture from ever coming to light. Our argument offers an opportunity to revisit the prevailing narrative in International Relations (IR) literature, which tends to view the RDI programme as an aberration, and its closure an indicator of the restoration of the anti-torture norm.

We begin with an overview of the norms literature in relation to torture, and then provide a brief account of our research methods, as well as some of the ethical issues relating to this research. We briefly set out the US' obligations under international law in relation to torture victims, before explaining who the remaining prisoners are. We then offer an overview of the nature of the torture inflicted on dozens of men within the CIA's RDI programme between 2001 and 2010, before providing a detailed account of the ongoing abuse of the prisoners since their transfer to Guantánamo Bay. We then explore the MCs to demonstrate how they fall far short of international legal obligations, and further exacerbate the impacts of torture. We also explain why we view this prolonged harm as the outcome of a deliberate effort to extend the prisoners' incommunicado detention and shield the CIA from exposure of the full extent of the torture. We then discuss the implications of our analysis for IR literature. Conclusions that the contestation over the anti-torture norm was settled and the norm restored with the closure of the RDI programme were premature. We argue instead that US War on Terror era torture should no longer be written off as an aberration, but as a persistent regime, influencing global counter-terrorism practices and possibly also border security regimes, or at least having parallels with them. This regime is intentional and deliberate and has profound implications for human rights accountability and the rule of law.

The torture prohibition, norms, and the issue of accountability

In IR, constructivist norms theorists produced a considerable volume of work on the CIA's RDI programme with a particular focus on the Bush and Obama administrations.[11] US use and sponsorship of torture long pre-dates the 'War on Terror'. Since the 1949 adoption of the Geneva Conventions, US collusion in torture (e.g. in counter-insurgency operations across Latin American during the Cold War) has tended to be clandestine. The novelty of post-9/11 torture is found in the extraordinary lengths the White House went to in seeking legal (and to some extent, public) legitimacy for torture, and in the implication of institutions of the state that would normally be shielded from any suggestion of collusion in torture, because of the role they play in upholding the rule of law. As we will show, the collusion of those institutions in torture, and in thwarting accountability for its use, provides strong grounds for defining 'War on Terror' torture as an enduring regime. Norms theorists were interested in this period precisely because the Bush administration advanced revisionist claims about the prohibition. In classified Office of Legal Counsel memos, government lawyers denied that captured Al Qaeda and Taliban members were

protected under the Geneva Conventions, argued the President's authority in war was unencumbered by domestic and international law, and narrowed the definition of torture and CIDT to exclude the CIA's and military's proposed methods.[12] Later, this revisionism took on a public dimension. US officials appealed to the 'ticking time bomb scenario' and characterised US practices as 'torture lite'.[13] For many scholars working on norms, the classified memos and the public claims were significant in that they challenged the prohibition.[14] As Sikkink puts it, the US government's 'rhetorical positions were so extreme that they went well beyond attempts to reinterpret the norm, and can only be understood as a rejection of the norm itself'.[15]

Noting the revisionism of the Bush administration, constructivists identified substantial pushback from domestic and international actors and from within and outside the administration.[16] Such contestation was associated with reversals like the withdrawal of the torture memos, the Detainee Treatment Act, closure of the black sites, and the mandating of the Army Field Manual on Human Intelligence Collector Operations for all US personnel.[17] Though cognisant these reversals did not touch on the issues of accountability and indefinite detention, most scholars viewed contestation over torture in the war on terror as largely settled in favour of the prohibition.[18] As Percy and Sandholtz state, 'US government actors who sought to narrow the scope of the anti-torture norm failed.'[19] Crucially though, because constructivists were interested in examining contestation over EITs, their inquiries have not extended to the question of how the prisoners are currently treated. Moreover, while cognisant that the issue of accountability is outstanding, they have paid less attention to its repercussions. Yet we have good reasons to unravel the implications of the accountability deficit. As we discuss later, when permitted, the practice of torture tends to corrupt other facets of government practice. Constructivists have not explored this possibility and if anything, in emphasising the success of pushback, they contribute to the overall impression that CIA-led torture was a temporary aberration rather than a source of profound and ongoing harm.

Where constructivists have not drawn out the implications of the accountability deficit, this is a strength of sociologist Lisa Hajjar's work.[20] In her relatively recent account of Guantánamo Bay, and the MCs, she argues that efforts to hide past torture have thwarted prospects of closing the prison.[21] While Hajjar's work is clearly concerned with the legacy effects of torture, her primary focus is on legal contestation or 'the war in court'. As such, she tells us less about how the detainees are currently treated. As we show later in the paper, in addition to extending the life of the Guantánamo prison, the imperative of stymieing accountability has resulted in an ongoing regime of torture.

Neil J. Mitchell's work provides valuable insights for understanding the nature of ongoing detention at Guantánamo because it is concerned with the strategies by which democratic leaders avoid holding to account agents responsible for human rights abuses. Mitchell argues that democratic leaders:

> will seek to confine and contain the consequences for the agent in order to minimise the wider impact on the morale of other agents, because he depends on their continued support in order to govern effectively. Accountability is not delivered. There is neither an honest account of what happened nor condign punishment for those responsible.[22]

Mitchell identifies four techniques used to shield those responsible for human rights abuses - denial, delay, delegation and diversion.[23] He argues, 'Denial, delay, and delegation are techniques that reject or at least do not admit responsibility for what happened. Diversion admits responsibility but then questions the standards applied to evaluate the action.'[24] In this paper we are most concerned with denial, although we also show how delay, delegation and diversion play out, particularly in the Military Commissions. Mitchell argues that 'denial takes various forms in relation to atrocities. The action may be denied, the existence of the victims themselves may be

hidden or denied, or the victims may be denied status as victims and turned into combatants'.[25] We argue that the systematic denial of the prisoners' status as torture victims, as well as the persistent denial of their fundamental rights to a fair and open system for justice, have transformed a clandestine programme designed to be an aberration from international law, into an entrenched torture regime in which the prisoners' abuse is perpetuated.

Revealing the existence of an ongoing regime of torture inevitably raises questions about the standing of the torture prohibition. Answers to such questions will vary depending on how theorists conceptualise norms and norm robustness. We will briefly relate our torture regime argument to three views on norm robustness; the compliance approach, the discursive approach, and approaches incorporating practice theory. The first two are commonly occurring while the third represents a relatively nascent development in the IR field.

On the first view, norm robustness depends wholly,[26] or at least significantly on the degree of compliance.[27] This literature sees a lack of compliance as evidence of norm erosion. These theorists are most likely to conclude that the Guantánamo regime of torture is evidence of further decline in the prohibition's standing.

A second view of norm robustness affords a central role to the character of discursive contestation.[28] For instance, if actors explain their measures by challenging a norm, and those arguments are not significantly contested by others, the norm may become less robust.[29] For this area of norms work, our contribution is not necessarily to show norm erosion, but to reveal how governments violate prohibitions without the concomitant obligation to provide an explanation. No official has acknowledged the existence of a regime of abuse let alone engaged the question of whether it amounts to systematic torture. This 'non-justification' is a distinctive feature of the regime. Piecemeal and protracted, it limits opportunities for discursive opposition to coalesce around the torture prohibition.

For the third group - norms theorists who incorporate insights from practice theory - our findings will have different implications again.[30] In his recent book, Simon Frankl Pratt sets down this path. Rather than viewing norms as 'things' which influence action, he treats norms as configurations of unfolding practices and relationships containing a *normativity*.[31] Using this approach, Pratt developed a novel account of the rise of EITs and their subsequent contestation. Yet, like other constructivist norms work on US torture in the war on terror, he emphasised the success of pushback and characterised the current normativity as a return to the 'status quo ante'.[32] We suggest that if anything, the current normativity has not returned to the status quo ante but undergone further transformation. As with the era of EITs, abuse is acceptable but this time for the purposes of suppressing information and by the means of the regime.

Methods and Ethics

Our work has involved piecing together substantial amounts of fragmentary material including the SSCI report, related leaked and declassified cables, declassified but heavily redacted proceedings of the MCs, and reports by UN bodies, the ICRC, and various human rights organisations. The research was undertaken following a full University ethics review and approval, as well as the development of a comprehensive data management plan to ensure appropriate handling of sensitive data. The work has been challenging because of the highly restrictive classification of materials pertaining to the MCs, and the limitations on what the legal teams can disclose publicly. The classification regime for the defence attorneys puts them at risk of charges of espionage if they disclose classified material to which they have access. With our specific focus on the Guantánamo prisoners who had previously been detained in the CIA RDI programme, we sought

to engage with their legal teams. The teams for Ammar al-Baluchi and Nashwan al-Tamir were both willing to discuss their cases with us and engage in follow up email correspondence. Some of the information they shared was off the record and we have not included any of that material in the paper. We have only included material, whether shared in interviews or email correspondence, which the legal teams gave their permission for us to use, and the content was checked with them prior to inclusion, in line with our approved ethics protocols. The legal teams for other CIA RDI prisoners who remain in Guantánamo have not been giving interviews or speaking publicly about their clients' cases over the last 18-24 months while they have been exploring possible plea deals.

We acknowledge that there are limitations to the scope of our primary data collection. We therefore necessarily draw on the academic work and published reports of a limited number of scholars and human rights defenders who have managed to secure access to, and have spent years observing, the Military Commissions, often at personal cost both financially and in terms of their wellbeing. We continually ensure that in our engagements with the lawyers we fully respect their classification obligations and do not seek information that would in any way put them at risk. Given the incommunicado status of the prisoners, it is not possible to interview them directly. We have also chosen not to interview prisoners who have been released, given that we are not trained in the relevant psychotherapeutic techniques that are needed to ensure any interviews do not further traumatise torture victims, and given the inappropriateness of non-Muslim female researchers interviewing Muslim men who have been subjected to sexual torture. We also seek to ensure that where we are presenting details of the torture and suffering of the prisoners, we do so with sensitivity. Where material has been published that emanated from the CIA, we try to ensure that the prisoners themselves have confirmed with their lawyers that they wish this material to be shared and discussed in the public domain to raise awareness of their fate. In this paper we only use material relating to the torture of specific individuals where we know they consent to the sharing of these details. Finally, we seek to present this material as sensitively as possible, allowing the evidence to speak for itself, and giving the reader space to respond without being influenced by any of our own reactions to it.

Despite the limitations of our primary data collection, this paper makes an important scholarly contribution in bringing together a large range of primary and secondary sources to challenge prevailing assumptions about torture and its ongoing legacy. It is also important to note that the fragmentary information, continued over-classification, restrictions on the defense teams, and destroyed evidence is all part of the torture regime, which our research has had to operate within. It hampers everyone's ability, even after detailed and careful work to piece things together, to have a full understanding of what has happened and continues to happen.

International legal obligations relating to torture victims

Under the UN Convention Against Torture, to which the US is a signatory, Article 12 requires investigation wherever evidence of torture emerges. Article 14 mandates redress, compensation and rehabilitation for torture victims.[33]As Connell, Pradhan and Lander point out[34], in its 2012 General Comment No.3, the Committee Against Torture has explained that the obligation to ensure *the means for as full rehabilitation as possible* 'refers to the need to restore and repair the harm suffered by a victim whose life situation, including dignity, health and self-sufficiency may never be fully recovered as a result of the pervasive effect of torture'.[35] Further, the rehabilitation 'should be holistic and include medical and psychological care as well as legal and social services'.[36] As Connell et al point out, and as Sveaass has argued, torture rehabilitation is a universal duty which must be enacted regardless of where the torture occurred, or whether responsibility has been

formally attributed to an actor/s.[37]

One of the many issues over which the US government and the defense lawyers for the Guantánamo prisoners disagree is the enforceability of the Convention Against Torture. As Connell et al explain, 'One military commission has ruled that although the United States is bound by the Convention Against Torture, tortured individuals cannot enforce its provisions.'[38] The CAT provisions are very clear, however. All victims of torture must be provided with access to holistic rehabilitation by the state, those responsible for torture should be pursued, and the Istanbul Protocols provide clear guidance on what this should entail.[39] None of these obligations have been met for the remaining prisoners.

The remaining Guantánamo prisoners

As of February 2024, 30 men remain in Guantánamo Bay.[40] Although 13 have been approved for release, and a further 3 recommended for release, there are difficulties in finding states willing to take them. One further prisoner, Ali Hamza Al Bahlul has been held by the Department of Defense since 2002, and given a life sentence in 2008, although that conviction was largely, but not entirely, overturned on appeal. He remains in Guantánamo.

The other 13, who were all victims of sustained torture at the hands of the CIA, have little hope of release. Of these, 11 face trials on terrorism charges in the MCs. In the summary that follows, we include the prisoner numbers assigned by the SSCI in Appendix 2 of its Executive Summary for ease of cross referencing with the SSCI report,[41] e.g. Abu Zubaydah (RDI 1), and with the *CIA Torture Unredacted* report by Raphael et al,[42] which provides additional information about each of the prisoners beyond what the SSCI published.

Six of the remaining CIA prisoners are on trial and facing the death penalty, five of these in *9/11 US vs Khalid Sheikh Mohammad et al*: Khalid Sheikh Mohammad (RDI 45); Walid Bin Attash (RDI 56); Ramzi Bin al-Shibh (RDI 41); Ammar al-Baluchi (RDI 55); and Mustafa al-Hawsawi (RDI 46), and the 6th in *USS Cole US vs Abd al-Rahim Hussayn Muhammad Al-Nashiri* (RDI 26). In January 2021, the Pentagon announced its decision to file charges against a further three, Riduan Isamuddin (Hambali) (RDI 73), Modh Farik Bin Amin (Zubair) (RDI 62), and Mohammed Nazir Bin Lep (Lillie) (RDI 72) in relation to the Bali and Marriott hotel bombings in Indonesia. In January 2024, following a plea deal, Bin Amin and Bin Lep were convicted, and a Guantánamo review panel recommended they serve 23 years in detention, although it is anticipated that their actual sentences will be far shorter. They both denied involvement in the bombings but admitted conspiring over previous years with the responsible militant group.[43] Al-Hadi al-Iraqi (RDI 118), actual name Nashwan al-Tamir, was a late entrant to the RDI programme, captured in Turkey after Bush announced the closure of the programme in September 2006, and held in a CIA black site before transfer to Guantánamo in April 2007. He was charged in a non-capital military commission in 2014 with a number of war crimes, conspiracy and terrorism offenses. In June 2022 he entered a guilty plea to reduced charges. The US government promised to find a country where he can be transferred as part of its obligations under the plea agreement. They have not done so to date, and sentencing and transfer are supposed to happen in summer 2024. If the US government fails to meet its obligation to find a country for his transfer, the plea agreement allows him to move to withdraw his guilty plea.[44]

Abu Zubaydah (RDI 1), described by some as the 'forever prisoner' is being held without charge or trial, and his case is only reviewed via administrative rather than legal process.[45] It is thought that his ongoing incarceration results from what he might disclose about the severity of his

torture.[46] The UN Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism, Fionnuala Ní Aoláin, recently concurred with this view when referring to those prisoners who are held without charge : 'The SR is concerned that the continued internment of certain detainees follows from the unwillingness of the authorities to face the consequences of the torture and other ill-treatment to which the detainees were subjected and not from any ongoing threat they are believed to pose'.[47] Abu Farah Al Libi (RDI 114) was recommended for prosecution in 2010, and for ongoing imprisonment in 2016. In 2019, he boycotted his hearing and his ongoing imprisonment was upheld then and again in 2022. Finally, Muhammad Rahim (RDI 119) had a plea hearing on 15 August 2023 and the outcome is pending.

Nature of CIA torture

Before exploring how Guantánamo and the MCs affect prisoners, we illustrate the severity of the CIA RDI program by providing a brief account of Abu Zubaydah's experience. As the first 'High Value Detainee', Zubaydah was the test-case for the 'Enhanced Interrogation Techniques' (EITS) developed by psychologists, James Mitchell and Bruce Jessen. From Zubaydah's interrogations, the CIA concluded the techniques were both successful and replicable.[48]

Abu Zubaydah was captured in Pakistan in March 2002 during joint US-Pakistani raids on a safe house in Faisalabad. During the raid, he was shot up to 3 times. He was briefly treated in hospital, but was transferred to the first CIA black site in Thailand before he could properly recover.[49] On arrival in Thailand, he had to be treated in hospital again. His liver malfunctioned, his pancreas and inter-abdominal mass near the site of the bullet wound became inflamed, and doctors decided to remove his eye, dead tissue from his thigh, one of his testicles, and a significant portion of his intestine. He was then returned to CIA custody in the Thailand black site where his wound required continual debridement. Nonetheless, his interrogation began and continued throughout March and April 2002.[50]

Zubaydah was subjected to sensory deprivation, extremes of noise, heat and light, and was in complete isolation for 47 days during April and May, while the architects of his torture sought approval for worse to come - extremely cramped confinement in coffin like boxes, waterboarding to the point of drowning, and the use of insects and mock burials to further intimidate him.[51] The plan was to force Zubaydah into a state of 'learned helplessness' in which he would give up intelligence when faced with the prospect of more torture. He has depicted these experiences in 40 detailed drawings. Since most prisoners have been unable to testify about their abuse in open court, the drawings provide a rare glimpse of torture from the victim's perspective.[52]

We now know that Zubaydah was subjected to waterboarding on 83 separate occasions (video tapes of which were destroyed by the CIA),[53] and that he spent more than 11 days in a coffin-like box, and a further 29 hours in a box too small to stand or sit in.[54] He was transferred through various CIA black sites (Poland, the CIA black site in Guantánamo, Morocco, Lithuania, and Afghanistan). When President Bush publicly acknowledged the sites' existence in 2006, Zubaydah and 12 other CIA prisoners were transferred to DoD custody in Guantanamo Bay.[55] Though the interrogation team at the Thai black site concluded he had no valuable information, he was tortured at *all* the black sites.[56] He had falsely confessed to being Al Qaeda's number 3, though by this point, his captors knew he held no such position.[57] Zubaydah continues to suffer from seizures and vomiting, triggered by aspects of the prison infrastructure that cause him to relive his torture, including the noise of air conditioning units, and brightness of fluorescent lights.[58] This snapshot of Abu Zubaydah's experience sheds light on how the CIA physically harmed him, as well as the lasting physical impacts of their abuse. The psychological impacts must not be underestimated

either. Successive UN special rapporteurs on torture have long argued that solitary confinement causes mental and physical suffering that amounts to CIDT, and even torture.[59]

Ongoing denial of CIA prisoners' rights

Incommunicado arbitrary detention

Rather than accept its obligations under the CAT, the US engages in denial and diversion by continuing to insist on the exceptionality of the prisoners and the need for ongoing detention. This detention is itself an important dimension of their current abuse. In a 2017 report on current detainee Ammar al Baluchi, the UN Human Rights Council Working Group on Arbitrary Detention[60] challenged the US claims of exceptionality directly, concluding that the CIA and then the DoD have detained the prisoners arbitrarily. According to the Working Group, the detainees' detention falls into categories I, III and IV of the International Convent of Civil and Political Rights,[61] i.e.: that 'it is clearly impossible to invoke any legal basis justifying the deprivation of liberty';[62] 'that the total or partial non-observance of the international norms relating to the right to a fair trial is of such gravity as to give the deprivation of liberty an arbitrary character';[63] 'and that the deprivation of liberty constitutes a violation of international law on the grounds of discrimination […]that aims towards or can result in ignoring the equality of human beings'.[64] In reaching these conclusions, the Working Group noted that the detainees were not afforded their right to be promptly brought before a fair hearing or given an adequate habeas corpus remedy.[65] These same delays also enable the US government to put off the issue of accountability for torture. The Working Group argued that because the 'war on terror' was not an armed conflict, the US could not claim the right to detain the men as enemy combatants. They concluded that while the effects of such arbitrary detention are largely psychological, they are still damaging enough to be considered a form of torture.

The men experience this arbitrary detention in conditions which also constrain their capacity to communicate with the outside world and effectively engage with their legal counsel. For many years, CIA prisoners were held in Camp 7 - the most secure section of the Guantánamo prison. Described by a reviewing admiral in 2009 as effectively a 'supermax facility',[66] its existence was entirely secret until 2008. Since then, few details about it have been released, and few people were ever allowed inside. Those who have seen Camp 7 are subject to strict classifications restrictions that prevent them from disclosing any details.[67] In its discussion of Ammar al Baluchi, the UN Working Group report sheds further light on how the detainees are kept incommunicado. According to the report, there have been long periods where al Baluchi has had no access to legal representation, including the 18 months after his transfer to DoD custody. The report notes that attorney-client privilege has been repeatedly undermined through seizure of materials in relation to his defence.[68] His capacity to engage with the outside world is particularly constrained. He is only entitled to limited and infrequent video messaging with family. Even this communication is subject to a ten-minute time delay for censoring purposes. Ammar al Baluchi's indefinite incommunicado detention itself constitutes ongoing torture and CIDT.[69] As we aim to show in the following sections, indefinite and arbitrary detention is compounded by other aspects of the detainee treatment.

Ongoing abuse

While the overt torture of the CIA RDI programme may have ceased, the prisoners still face routine physical and psychological abuse. During court testimony, Ramzi bin Al-Shibh and Hassan

Guleed spoke about the prevalence of abuse in Camp 7. Closed in 2021, Camp 7 was in a condition of extreme dilapidation.[70] The men accused the authorities of subjecting them to sounds and vibrations, hammering, high pitched noises as well as chemical smells reminiscent of the sensory torture they were subjected to in the CIA black sites. Al-Shibh testified that when he complained, a US Navy psychiatrist provoked further terror by drugging him:

> The worst time in my life was at that moment when they gave me injection, more worse than black site. Black site was physical abuse, was torture. But this one, the injection without reasons, that was the worst thing I have ever went through.[71]

Knowing of no clear medical reason for the injection, al-Shibh experienced profound fear. Al-Shibh's and Guleed's testimony alludes to the possibility that Guantánamo staff deliberately make detainees relive aspects of their past torture.

Abuses have occurred in the form of physical violence, and humiliating and degrading treatment. At the end of March 2023 the UN Human Rights Council published a complaint[72] submitted to the US government two months prior. Co-authored by seven UN Special rapporteurs, the document centred on the physical and mental health of Guantánamo prisoner, Nashwan Al-Tamir (Al Hadi al-Iraqi). Al-Tamir is 60 years old and has a permanent physical disability. According to the complaint, while he was able to walk when he arrived at Guantánamo, he now requires a wheelchair. He lives in constant pain due to injuries which include 'degenerative disc disease and spinal stenosis, significant peripheral neuropathy and neuropathic pain, and visible muscle atrophy in his lower limbs'.[73] Drawing from court filings and transcripts including several emergency motions filed in the military commission, the complaint details Al-Tamir's mistreatment and inadequate healthcare. The authors allege that authorities have subjected Al-Tamir to forcible cell extractions in the full knowledge he has a spinal condition. In one such incident in January 2017, he had refused to be escorted by a female guard to a Military Commission hearing. Wielding batons and dressed in riot gear, the guards 'extracted' Al-Tamir by beating him, shackling him, then dragging him into the courtroom.[74] The complaint characterised this treatment as 'disproportionate' and 'unnecessary' and pointed out that Mr Al-Tamir was entitled to refuse to be escorted by a female guard on religious grounds.[75] What happened to Al-Tamir can be understood as an example of arbitrary physical violence, compounding his already poor health.

Like Ramzi bin Al-Shibh's testimony about an involuntary injection, the UN complaint also refers to 'allegations of humiliating and degrading treatment by medical staff'. During a medical appointment in September 2021, a nurse asked Al-Tamir if they could perform 'a rectal examination'. Al-Tamir has previously declined such requests and did so again on this occasion.[76] The complaint states that 'The Senior Medical Officer then allegedly decided to test his physical abilities, directing guards to hold him upright by his shoulders and then to release him to see whether he could stand. Mr Al-Tamir collapsed immediately[…].'[77] This alleged incident should be understood in the context of the men's past torture.

Requests to perform rectal examinations are significant because several of the CIA prisoners were subjected to rectal force feeding.[78] Dr Sandra Crosby, a court approved medical expert on torture and trauma in *USS Cole US vs Abd al-Rahim Hussayn Muhammad Al-Nashiri*, provided a detailed insight into what the practice entailed. The transcripts from her testimony at the MCs have not been published on the MCs website (publication is often delayed for months), so we are often reliant on reporting by journalists permitted to attend and sit in the public gallery. Even for them, there is a 40-second delay in the relaying of the hearings to prevent the release of classified information. Nonetheless, *New York Times*' Carol Rosenberg reported that in proceedings on the 24th of February 2023, Dr Crosby:

> held up a tube that is designed to be put in a patient's windpipe and said that – according to the agency's once secret records – CIA prison staff inserted one just like it into Mr Nashiri's anus in May 2004, Agency personal then used a syringe to inject a protein enriched nutritional shake into his body.[79]

According to Rosenberg, Crosby also:

> testified that at Guantánamo Bay in 2013, Mr Nashiri confided that, years earlier, CIA personnel grabbed him from his cell, stripped him naked, shackled him at the wrists and ankles, bent him over a chair and administered the liquid. He asked that she never speak to him about it. And he did not attend the court sessions when she discussed it at length. "This was a very, very distressing painful, shameful, stigmatising event", Dr Crosby testified. "He experienced it as a violent rape, sexual assault".[80]

According to Rosenberg, Crosby went on to say, ""There is no medical benefit ever to administering any form of nutrition through the rectum"".[81] This conclusion is shared by Physicians for Human Rights, who, on publication of the SSCI report in 2014, described the practice as 'sexual assault masquerading as medical treatment'.[82] When medical professionals offer prisoners rectal examinations, they do so against a backdrop of this historic sexual assault.

Where incidents of sexual assault should inform the sensitive provision of medical care, in Al Tamir's case, they were likely weaponised. As the UN complaint explains, the request to perform a rectal examination 'is particularly worrying given Mr al-Tamir's prior refusals to consent, and considering the rectal abuse and other torture, cruel, inhuman and degrading treatment that he allegedly suffered in secret detention sites'. The report noted that this 'risked triggering serious past traumatic experiences, belying any sensitivity to trauma-informed healthcare'.[83] It is difficult not to conclude that the Senior Medical Officer's subsequent instruction to test al-Tamir's physical strength was to punish him for his refusal to comply with the request for a rectal examination. The Senior Medical Officer certainly would have known both of the prior torture and his ongoing debilitating medical conditions. This example further illustrates how the prisoners experience degrading forms of physical and psychological abuse at the hands of prison staff, including medical professionals. The example also adds weight to the argument there is a regime of torture.

Inadequate physical and psychological healthcare

The CIA prisoners receive only the most basic primary healthcare even though many suffer complex physical and psychological problems. This paper has already drawn attention to Nashwan Al-Tamir's spinal condition. Mustafa al-Hawsawi's and Ammar Al Baluchi's cases are also telling. Al Hawsawi was subjected to extensive rectal force feeding leading to medical complications which prevent him from sitting comfortably.[84] Between 2015 and 2020, Ammar al Baluchi's legal team was able to send 4 different medical professionals to assess him. They concluded that he suffers profoundly from the effects of torture such as 'walling' – repetitively slamming the detainee against a wall. As one neuropsychologist notes, this past torture has 'seriously diminished' his 'psychological functioning and has left him with mild to moderate Traumatic Brain Injury and moderate to severe anxiety, depression, and Post-traumatic Stress Disorder'.[85]

While torture caused many of the aforementioned health issues, the prisoners are denied access to the comprehensive care needed to improve their health.[86] In their complaint about Al-Tamir, the UN special rapporteurs highlight several issues. Lawyers are not informed of their clients' medical appointments and neither they nor their clients are given access to their medical records.[87] There

is a lack of long-term treatment plans to address now complex health issues.[88] The Guantánamo facilities offer little more than the most basic primary healthcare provision, but there is a reticence to bring the necessary experts and equipment to treat their conditions.[89] Indeed, al-Tamir's defence team allege that emergency surgery to address his spinal stenosis failed because of the wholly inadequate facilities. Consequently, he needed several more surgeries, again, in wholly inadequate facilities.[90] Where expert evaluation is sought, recommendations have been overruled by the Guantánamo Medical Officers.[91] Concerns have been raised that drugs are administered inappropriately, with insufficient attention paid to the effects of different drugs in combination, and sometimes for reasons other than to treat prisoners' conditions, including sedation and the prevention of resistance.[92] There is no provision at all of rehabilitative psychotherapeutic care to address the long term psychological effects of prolonged torture.[93] There is evidence that both significant pain and suffering, as well as the administration of certain types of medication, are impacting cognitive abilities and hampering the prisoners' capacity to engage meaningfully with the MCs.[94] In a rare statement from the International Committee of the Red Cross in April 2023, Patrick Hamilton, head of delegation to the US and Canada, called on the US to address their urgent health needs, commenting that he was 'particularly struck by how those who are still detained today are experiencing the symptoms of accelerated ageing[...]'.[95]

Guantánamo's healthcare staff make poor candidates for helping the prisoners with their rehabilitation. As Sveaass points out:

> For the survivor, it is possible that not *any* doctor or health professional in *any* hospital would be acceptable as care-providers. Doctors at hospitals in post-conflict states may have been involved in severe human rights violations years ago, for instance by falsifying certificates of death or birth, by refusing to assess and document signs of torture, or in other ways assisting the infliction of pain.[96]

Medics at Guantánamo are implicated in the ongoing abuse of the prisoners. They do not adequately document past torture, provide the care needed for rehabilitation, and they engage in practices that exacerbate the effects of torture in ways that potentially constitute CIDT. Again, the evidence points to a persisting regime of torture and abuse.

Past torture and the lack of healthcare undermines the prisoners' capacity to participate in their own legal defense. Establishing productive attorney-client relationships is already difficult because detainees often associate the defense counsel with their torturers. As Connell et al explains:

> the Military Commission Defense Organization is primarily composed of US military personnel. Many of its civilian and contract employees have military or intelligence backgrounds similar to those of officials who initially tortured the prisoners at the black sites or at Guantánamo […] Prisoners often suspect the loyalty or motives of their appointed legal teams.[97]

The US government has contributed to the mistrust by interfering in attorney-client communications.[98] In 2013, hidden listening devices were found in attorney-client meeting rooms. In 2014, the FBI sought to recruit a member of one of the defense teams as an informant.[99] Authorities have also improperly seized legal materials from prisoners' cells.[100] Health issues add another layer of difficulty. No legal team has been allocated an independent psychologist for their client. At best, some have succeeded in obtaining funding for non-Guantánamo-based, security-cleared psychologists to meet with their clients occasionally.[101] Baker discusses the challenge of representing unrehabilitated torture victims:

> The impact of past torture continues to permeate every aspect of the attorney-client relationship. Many detainees continue to lack the necessary medical care appropriate for lengthy periods of abuse. While defense team attorneys should be devoting their efforts to case building and research, they unfortunately spend a disproportionate amount of time on "care and feeding" of the client.[102]

By contributing to the deterioration in detainee health, Guantanamo and the MCs frustrate the already limited prospect of productive attorney-client relationships.

The Military Commissions: prolonging torture

The Military Commissions further prolong the impacts of torture. Far from delivering a fair trial, the MCs protect the CIA from scrutiny by suppressing information about the full extent of historical torture and ensuring its victims remain in incommunicado detention. Currently, the MCs are still at pre-trial hearing stage, 14 years after they were established, while defense teams challenge aspects of the prosecution's approach on the basis that they fall far below international legal standards.

Reports by the Bar Human Rights Committee of England and Wales provide a sense of the extent to which the MCs deny the prisoners basic fair trial principles. After gaining official observer status to the MCs, Amanda Weston and Jacob Bindman compiled a report on *9/11 US vs Khalid Sheikh Mohammad et al* in 2021[103] while Jodie Blackstock compiled one on *USS Cole US vs Abd al-Rahim Hussayn Muhammad Al-Nashiri* in 2023.[104] They noted the following issues: an absence of a presumption of innocence; admissibility of evidence obtained or tainted by torture; admissibility of hearsay evidence; over-classification of evidence and withholding of this evidence from defendants and their clients; undue delays; and the arbitrary pursuit of the death penalty. Specifically, they argue that given the MCs do not meet the most fundamental principles required for a fair trial, should the death penalty be imposed, it would be arbitrary, and in breach of international law.[105]

The absence of a presumption of innocence exacerbates the prisoners' suffering. In order to exercise jurisdiction, the MCs designate defendants as 'unprivileged enemy belligerents'.[106] This term plays a few important roles. Were the prisoners simply 'combatants', then consistent with the widely accepted article 102 of the Third Geneva Convention, they would be entitled to a trial 'in the same courts according to the same procedure as in the case of armed forces of the Detaining Power'.[107] The category of 'unprivileged enemy belligerents' also facilitates efforts to prosecute detainees for crimes which are not established law of war offenses (eg conspiracy, providing material support for terrorism, and murder in violation of the laws of war).[108] Additionally, the term 'unprivileged enemy belligerents' undermines the presumption of innocence because it is the *same* basic categorisation which initially sanctioned prisoner abuse.[109] Having assumed the men were terrorists, the CIA justified the RDI programme on the basis that it was necessary for securing intelligence. The prisoners' ongoing assumed guilt now justifies the denial of their most basic rights within the Military Commissions.

The MCs also force CIA prisoners to relive traumatic experiences in the sense that torture derived 'evidence' provides the basis for their ongoing prosecution and the associated pursuit of the death penalty. Although the 2009 Military Commissions Act contains a provision prohibiting the use of statements obtained through torture or CIDT,[110] in relying on FBI-led 'Clean Team' interrogations, the US is subverting that prohibition. Consisting of purportedly fresh interrogators, FBI 'Clean Teams' collected purportedly torture-free evidence.[111] Referring to the practice as 'attenuation',

prosecutors assume that with the passage of time, and the transfer of the prisoners from CIA to DoD custody, it is possible to re-interrogate the prisoners and produce evidence that is admissible in court.

Defense teams in both the 9/11 and al-Nashiri case have challenged the logic of attenuation and in doing so, revealed how past torture pollutes 'clean team' evidence. Al-Nashiri's team pointed out that his 'clean team' interrogation was in the same Guantanamo black site where the CIA had detained and tortured him; he was questioned within 6 months of his formal military detention; and some of those involved in FBI interrogation were previously involved in CIA-conducted interrogations.[112] As Carol Rosenberg observed during MC hearings in June 2023, the al Nashiri defense team buttressed their arguments by calling on a witness with years of CIA experience in interrogation:

> "The debility, dependency and dread doesn't disappear when they [FBI interrogators] walk into a clean room in suits," said Steven M. Kleinman, who served in the C.I.A. and then the Air Force from 1983 to 2015 and retired as a colonel with a specialty in human intelligence. Mr. Kleinman said prolonged isolation, sleep deprivation and brutality like that experienced by the C.I.A. prisoners degrades memory and leads to false confessions. Such treatment impairs a prisoner's "ability to answer reliably".[113]

Attenuation entails a conscious effort not just to ignore such effects, but to worsen them with the pressure of interrogation and prosecution.

Evidence of the FBI's historical involvement in torture and its reliance on torture derived evidence came to light in a pre-trial hearing in December 2017. It transpired that prior to 'clean teaming' Mustafa al-Hawsawi in January 2007, former FBI agent Abigail Perkins reviewed al-Hawsawi's statements to the CIA. Her testimony also undermined the FBI's image as a relatively upstanding intelligence player. Perkins stated that when al-Hawsawi was held in the CIA black sites, the FBI fed questions to the CIA interrogators.[114] Writing in July 2019, Carol Rosenberg reported even more damning evidence of FBI involvement, 'A partially redacted transcript of a national security hearing held last summer at Guantánamo also shows that FBI agents questioned Mr. Hawsawi during his time at a CIA black site but hid their affiliation from him'.[115] In a recent and rare victory for the defense teams, on 19 August 2023, the judge in the *USS Cole US vs Abd al-Rahim Hussayn Muhammad Al-Nashiri* case, threw out al-Nashiri's confessions and declared the statements resulted from torture. In his 50-page decision, Colonel Lanny J. Acosta Jr concluded: 'Even if the 2007 statements (to the FBI) were not obtained by torture or CIDT, they were derived from it'.[116] The US government has already lodged an interlocutory appeal against this decision, and it is likely to be months if not years before the appellate court will rule.[117] Meanwhile, the government will continue to use statements obtained by torture in the other commissions. For their part, the prisoners will go on being confronted with things they said under duress in trials where the stakes are as high as the death penalty.

Regime of torture

On the basis of the evidence, we conclude that the ongoing arbitrary detention, abuse, denial of healthcare, and the Kafkaesque MCs constitute a regime of torture. We use the term regime in two senses. First, to capture the way abuse permeates the prisoners' existence, prolonging the effects of their past torture. Second, to make a claim about the broader system of governance and administration. Through bureaucratic and systematised processes, this system of incarceration subjects the prisoners to extreme violations of human rights. It is sustained by multi-agency

collusion most notably on the part of the CIA, FBI, Department of Justice, Department of Defense and the White House.

Multi-agency collusion commenced the moment the CIA sought approval to conduct EITs. The CIA, the Department of Justice and its Office of Legal Counsel, as well as the White House shielded CIA personnel from recriminations by attempting to legitimise torture in certain prescribed circumstances. This activity was exposed by the declassification in 2009 of the CIA Inspector General's 2004 Special Review of Counterterrorism, Detention and Interrogation,[118] and then the Senate Select Committee on Intelligence Report in 2014.[119] The reports also revealed that the CIA far exceeded what had been approved in terms of the techniques used, the cruelty of them, and their prolonged use. Institutions beyond the government were also corrupted. The American Psychological Association colluded with the CIA and Department of Defense by 'loosening professional ethics and other guidelines to permit psychologist participation in torture'.[120] This action enabled RDI architects, psychologists Bruce Jensen and James Mitchell, to receive $80 million for their services.[121] Neither has been held accountable for designing and implementing systematic torture though both have been key witnesses for the prosecution in the MCs.

Medical professionals have been corrupted in other ways. While it is widely known that detainees were subjected to extreme sleep deprivation, as Brigadier General John G. Baker, explains:

> missing from the story is that some were forced to urinate and defecate on themselves, and that CIA medical personnel were not required to intervene until "evidence of loss of skin integrity due to contact with human waste materials". Medical personnel could leave detainees suffering in their own filth until they developed open sores.[122]

From the very inception of the RDI programme, an array of institutions became complicit in torture.

Importantly, our work shows that multi-agency complicity is ongoing. Consider the Military Commissions. The MCs prevent scrutiny of the CIA's torture, and in turn, shield those responsible from prosecution. This is evident in the classification rules. While the lead defense lawyer on each team has the highest level of security clearance (top secret), they are not permitted access to all the relevant discovery material. Following their trial observations, Weston and Bindman remarked upon the inconsistency of the system:

> The nature and volume of evidence withheld from the defense teams (and the public) appears to evolve over time and not conform to accessible and established criteria. It therefore does not appear to provide adequately for equality of arms between the parties.[123]

Such over-classification contributes to suppressing information about the CIA RDI program.

It is noteworthy that the CIA has the wherewithal to halt the commission's proceedings.[124] Prior to Weston's presence as an observer, Baluchi's defense team 'noticed the presence in court of a box which emitted a signal'. The judge immediately halted the hearing during the testimony of Dr James Mitchell, one of the psychologists behind the CIA's torture programme. While observing a subsequent proceeding, Weston learned that prosecutors had asked the judge to allow 'the CIA and other "Original Classification Authorities" ("OCAs")' a means to 'follow proceedings in real-time and communicate directly with prosecution lawyers present in the courtroom'.[125] Using the

signal box, OCAs can 'prompt the Government lawyers to ask the – notionally independent – Court Security Officer ("CSO"), who sits beside the Presiding Judge, to stop evidence for reasons of national security, or to prevent potential "spills" of classified information.'[126] The fact that the CIA blocked evidence when Mitchell was testifying about EITs lends support to the conclusion that their interference in the MCs is for the purposes of obscuring details of their *own* involvement in torture. The fact that they have such a capability at all, tells us these endeavours have broader institutional support.

Healthcare plays an important role in further stymieing the prospect of a fair trial and suppressing information about past abuse. With their complex health needs unaddressed, the men are unable to recall details about their own lives let alone properly participate in their defense. With its so-called 'clean team interrogations', the FBI provides a particularly dubious contribution to the MCs. This evidence lends weight to defense lawyer J. Wells Dixon's conclusion about the purpose of the MCs: 'to maintain the status quo', 'provide a thin veneer of legal process and keep the prisoners largely incommunicado so that they could not talk about the torture'.[127] Indeed, the MCs could never deliver a just outcome, given that the torture and its legacy permeate and corrupt every facet of the Guantánamo edifice.

In the previous sections, we talked about how this interlocking bureaucratic action causes the detainees further harm. To be sure, this harm does not have the overt and physical brutality of the CIA's RDI programme. However, the EIT era makes the current abuses far more impactful than they might otherwise seem. As Meghan Skelton, defense attorney to al-Tamir explains:

> In so many ways, Mitchell's learned helplessness has continued relevance. They don't need to engage in the physical brutality now because they already have caused so much damage that the smallest thing now has the same impact. With no efforts to break the cycle, the torture continues, particularly when the jailers can continue to act with impunity and arbitrarily.[128]

Having sought to make the men 'helpless', the CIA ensured they could be kept in a state of duress with little effort.

Our findings are consistent with the 'slippery slope' cautions raised by torture opponents. When Alan Dershowitz suggested that the government institute a system of warrants to regulate the use of torture,[129]others countered that torture was not amenable to containment.[130] The 'slippery slope' is typically understood as a concern that exceptions to the anti-torture norm lead to more brutal and widespread torture. Yet as Yuval Ginbar points out, the slippery slope argument is broader than this too:

> [I]t covers a wide range of other claims, regarding the involvement - and possible corruption - of a vast array of social institutions, including the judicial and medical professions; long term negative effects on wider conflicts within the context of which terrorism - and torture, take place; the weakening of international mechanisms for the protection of human rights; and more.[131]

Even where 'regulated', torture creates an institutional legacy characterised by arbitrariness and state violence. This institutional legacy is what we observe in the workings of Guantánamo and the Military Commissions.

In drawing attention to the legacy effects of the EIT era, our work cuts against a tendency to characterise US torture as an aberration. In many cases, this impression is the product of a focus

on the period of the CIA RDI programme combined with a relatively narrow definition of torture. Yet it is also sustained by a tendency, especially in constructivist norms work, to emphasise the success of internal pushback against EITs.[132] We agree that a diverse range of actors within and outside the Bush administration sought an end to CIA and military torture. Yet our work shows that many of these same actors have become complicit in the systematic abuse of the remaining prisoners, through the ongoing denial of their status as torture victims rather than enemy belligerents, the denial of access to necessary evidence to adequately represent them in the Military Commissions, denials that the torture is ongoing despite ample evidence to the contrary, and persistent and deliberate delays in resolving their status. This complicity stems from a commitment to an imperative succinctly expressed in the phrase; 'look forward and not back'.

Our findings potentially intersect with work on the politics of detention in other contexts such as 'irregular' migration. A range of accounts note that immigration detention facilities tend to harm people in a protracted and cumulative manner, capable of breaching the threshold of torture.[133] In cases such as Australia's Manus Island and Nauru offshore detention centres, the documented harms bear striking similarities with what we observed at Guantánamo. Asylum seekers are often already vulnerable, they have limited access to legal assistance, communication with the outside world, medical care, they experience profound uncertainty, and physical violence.[134] It seems distinctly possible that these sites of detention share similarities with the 'regime of torture' at Guantánamo. Indeed, in developing his 'Manus Prison Theory', former Manus Island detainee Behrouz Boochani sought to capture what he regarded as 'systematic torture'.[135] His work has parallels with ours in that it aims to demonstrate the institutionalised nature of torture in a detention context. Further work could examine the similarities between the regime of torture in Guantánamo and incarceration in the context of 'irregular' migration.

Conclusion

Successive US (and UK)[136] governments have sought to position the events of CIA RDI programme as an aberration in the increasingly distant past. In emphasising the efficacy of internal and external pushback against CIA-led torture, existing IR scholarship has largely left these government narratives unchallenged. In contrast, our findings show how the overt physical torture of the CIA RDI programme has morphed into a more diffuse and bureaucratised torture regime. The regime is sustained by a multi-agency effort to suppress information about past torture and deny victims' rights. Such action causes profound harm to the remaining 13 former CIA captives precisely because it is built upon the edifice of CIA-era abuses. The US is unwilling to come clean, prosecute those who colluded in torture, or adopt practices, such as the Méndez principles on interrogation without torture and coercion, that would signal they are serious about setting an example for other states. Instead, they have left the door wide open for continued use and condonement of torture in contexts that range from minority populations in China to 'irregular' migration in the West. Whether the damage done to human rights protections is irreparable remains to be seen. Certainly, more scholarly circumspection is required given the severe limitations on accountability and redress for torture victims, and the extent to which torture's legacy has corrupted multiple institutions responsible for upholding the rule of law.

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