

TIME TO CLOSE THE DOORS OF GUANTANAMO

Dear President,

Dear Prime Minister,

As leaders of the associations of jurists identified below, we are calling for the immediate closure of the U.S. prison facility at Guantánamo Bay.

Few governmental operations in democratic countries have shown such a profound disrespect for the rule of law. Guantánamo Bay has come to signify injustice for some at the hands of the powerful. The rule of law – that everyone, including governments, is subject to the law, and that the law itself is fair and free from the influence of arbitrary power – has become an inconvenient afterthought.

One example is that of Omar Khadr, a Canadian arrested when he was 15 years old for allegedly killing an American soldier in Afghanistan in 2002. For five years, Omar Khadr, a “child” under the terms of the UN Convention on the Rights of the Child, has languished without trial in Guantánamo. There is reason to believe that he has been subjected to treatment that is at best degrading and abusive and at worst amounts to torture. His trial is still not complete. During his detention, he has been denied many of the most basic procedural rights normally afforded an accused. His confidential communications with his lawyers have been compromised. His rights under the UN Convention have been cavalierly ignored.

He is the only Canadian – indeed the only citizen of a Western state – still detained at Guantánamo. Other Western nations – France, the U.K. and Germany – has sought and obtained the repatriation of their citizens. We call for Omar Khadr to be transferred immediately into the custody of Canadian law enforcement officials, to face due process

under Canadian law and the principles of the rule of law. It is the duty of Canada to request his repatriation and it is incumbent on the United States to transfer him to the custody of the Canadian authorities. Transferring him to Canada is not synonymous with impunity.

The U.S. Military Commissions Act of 2006, the authority under which the detainees are tried, undermines the rule of law. The Act subjects individuals to trial by military commission solely on the basis of their status as aliens. In effect, U.S. citizens are not subject to its provisions. The Act criminalizes certain conduct for the first time and applies the law retroactively. It fails to meet the requirements of the Geneva Convention Relative to the Treatment of Prisoners of War. It permits military commissions to consider coerced statements. It denies defence counsel access to evidence that may be essential to a proper defence on the basis of national security.

Together, these measures, and many more, constitute grievous affronts to the rule of law. Yet many governments remain silent about Guantánamo Bay.

We do not deny that some of those detained at Guantánamo may have committed criminal acts. If so, they should be tried by a properly constituted court operating under rules that guarantee a fair trial. If convicted they should be punished accordingly. But we must not tolerate – nor permit our respective governments to tolerate – the continuing denial of the principles underlying the rule of law. We have seen the result recently in Pakistan of continuing further down this road.

By calling for the closure of Guantánamo, we do not detract from the horror of acts of terrorism in the U.S. or other countries. However, with many threats from many quarters to the basic rights of human beings, the world cannot afford to tolerate Guantánamo.

This is no time to be silent. It is time for us all, including governments, to bring whatever pressure we can to end the inhuman and inhumane treatment of the Guantánamo detainees, and the violations of the principles of the rule of law there that have stained the concept of justice. Six years after it opened, it is time to close the doors of Guantanamo.

Sincerely yours,

- Asociacion Libre de Abogados (ALA)
- Australian Bar Association
- Bar Council of England & Wales
- Canadian Bar Association
- City of London Law Society
- Conseil du Barreau de Montréal
- Conseil National des Barreaux (France)
- Consiglio Nazionale Forense
- Deutscher Anwaltverein
- European Young Bar Association
- Finnish Bar Association
- General Council of the Bar of South Africa
- Ilustre Colegio de Abogados de Madrid
- Iraqi Bar Association
- Istanbul Bar Association
- Kölner Anwaltverein
- Law Council of Australia

- Law Society of England and Wales
- Law Society of Ireland
- Law Society of Scotland
- Nederlandse Orde van Advocaten
- Norfolk Island Bar Association
- Orde van Vlaamse Balies
- Ordem dos advogados de Portugal¹
- Ordre des avocats du barreau de Luxembourg
- Ordre des avocats du barreau de Paris
- Ordre des barreaux francophones et germanophones de Belgique
- Swedish Bar Association
- Slovenian Bar Association
- Society of Black Lawyers, UK
- Solicitors' International Human Rights Group of England and Wales
- The Faculty of Advocates of Scotland
- Union internationale des avocats
- Uniunea Nationala a Barourilor din Romania

¹ The fight against terrorism must be conducted in the name of the fundamental principles that represent irreversible achievements of Mankind. Amongst those principles, the respect for the principle of legality in criminal law and, above all, the utmost respect for the dignity of the human being, stand out. Herein lies the moral superiority of modern states over the hordes, of Civilization over Barbarism.

Guantánamo Prison does not reflect this superiority since it violates in a shocking way those fundamental values, essential to modern societies.

Guantánamo represents a dangerous civilizational regression which must come to an end.
A. Marinho e Pinto (President of the Portuguese Bar Association).