

Human Rights Watch

Torture, Former Combatants, Political Prisoners, Terror Suspects, & Terrorists

<https://www.hrw.org/news/2002/01/11/us-geneva-conventions-apply-guantanamo-detainees>

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(New York) -- Human Rights Watch questioned Secretary of Defense Donald Rumsfelds statement today that captured fighters from Afghanistan shipped to Cuba were unlawful combatants not entitled to protection under the Geneva Conventions. Human Rights Watch also criticized the reported use of chain-link cages to confine the detainees.

The Secretary seems unaware of the requirements of international humanitarian law, said Jamie Fellner, director of Human Rights Watchs U.S. Program. As a party to the Geneva Conventions, the United States is required to treat every detained combatant humanely, including unlawful combatants. The United States may not pick and choose among them to decide who is entitled to decent treatment.

News reports indicate that Taliban and al-Qaeda detainees will be confined at Guantanamo Bay in small cages with chain-link sides, concrete floors and metal roofs. The cages will offer scant shelter from wind and rain. Details about sanitary and hygiene facilities are not available.

This is not the first time detainees have been held at Guantanamo Bay. In 1994, the U.S. government responded to refugee flows from Haiti and then Cuba by creating a temporary holding facility at the base. While conditions there were stark and hardly hospitable, the detainees were held in permanent hard-walled shelters.

The proposed cages are a scandal, said Fellner. The United States should not be transporting detainees to Cuba until it can provide decent shelter.

The United States is a party to the Geneva Conventions, the laws governing the treatment of persons captured during armed conflict. Every captured fighter is entitled to humane treatment, understood at a minimum to include basic shelter, clothing, food and medical attention. In addition, no detainee even if suspected of war crimes such as the murder of civilians may be subjected to torture, corporal punishment, or humiliating or degrading treatment. If captured fighters are tried for crimes, the trials must satisfy certain basic fair trial guarantees.

Prisoners of war (POWs) are entitled to further protections, commensurate with respect for their military status as soldiers. Indeed, the Geneva Conventions provide that prisoners of war must be quartered in conditions that meet the same general standards as the quarters available to the captors forces, e.g. the U.S. armed forces. In addition, POWs prosecuted for war crimes must be tried by the same court under the same rules as the detaining countrys armed forces. In the current conflict, an Afghan POW could not be tried by the proposed military commissions, although they could be tried by an American court-martial.

Under the Geneva Conventions, captured fighters are considered prisoners of war (POWs) if they are members of an adversary states armed forces or are part of an identifiable militia group that abides by the laws of war. Al-Qaeda members, who neither wear identifying insignia nor abide by the laws of war, probably would not qualify. Taliban soldiers, as the armed forces of Afghanistan, may well be entitled to POW status. If there is doubt about a captured fighter's status as a POW, the Geneva Conventions require that he be treated as such until a competent tribunal determines otherwise.

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