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Political prisoners? Surely, that can't be right, can it? Surely, it's only dictatorships in far-flung corners of the world who hold political prisoners, and not the United States of America?

Sadly, no. As the "War on Terror" prison established by President Bush begins its tenth year of operations, and as it begins to be forgotten that President Obama swept into office issuing an [executive order](#)

promising to close the prison within a year, but

[failed spectacularly to do so](#)

, the bleak truth is that, for a majority of the 173 men held at Guantanamo, their chances of being released, or of receiving anything resembling justice, have receded to such an extent in the last two years that most face indefinite detention without charge or trial and may still be in Guantanamo a year from now, two years from now, or even five, ten or twenty years from now.

The key to understanding how we reached this grim impasse two years into Barack Obama's presidency is the review of all the prisoners' cases that was conducted by the Guantanamo Review Task Force, a sober and careful collection of 60 career officials and lawyers from various government departments and the intelligence agencies, who reviewed all the cases throughout 2009 and issued recommendations a year ago regarding the "disposition" of the [remaining prisoners](#)

Although the Task Force's appraisal was infected with credulity regarding the quality of the Bush administration's supposed evidence against the men (which is largely unreliable, as it was extracted under duress and torture), and the members were desperate not to make any mistakes by releasing men who might then prove to be dangerous, the Task Force nevertheless cleared 89 of the remaining 173 prisoners for release.

That's an impressive figure, considering that it is rarely mentioned in the mainstream media that

the government itself has conceded that it no longer wishes to hold over half of the remaining prisoners, but, a year after the Task Force issued its report, these men are still held, and it is this failure - and the explanations provided for it - that lead me to conclude that it is appropriate to describe them as political prisoners.

Of the 89 men, 58 are Yemenis, part of the largest national group at Guantanamo, consisting of 89 men in total. Just 23 Yemenis [have been freed](#) throughout Guantanamo's long history, for a variety of reasons, but primarily because the Saudis, held in similar numbers but largely released in 2006 and 2007, had a government which is a closer ally of the US than Yemen, was prepared to argue more aggressively on their behalf and was also able to create a state-of-the-art rehabilitation center to re-educate the men on their return and to provide them with support and financial assistance to reintegrate into Saudi society.

Nevertheless, the Task Force approved 58 of the Yemenis for release (or, to use the careful language of lawyers, approved them for transfer). There was, however, a caveat. Twenty-eight were approved for immediate release, but 30 others were designated in a special category of their own, who "should not be transferred to Yemen in the near future," and should be held in "conditional" detention - a novel category of detention - until "the security situation improves."

While it could be argued that the "conditional" detention of these 30 men made them political prisoners a year ago, developments on Christmas Day 2009 ensured that the other 28 cleared Yemenis would also be held as political prisoners as well. The trigger for the administration's refusal to honor the Task Force's findings regarding these 28 men was the failed plane bomb plot of a young Nigerian, Umar Farouk Abdulmutallab. When it was discovered that he had been recruited in Yemen, President Obama capitulated to a wave of unprincipled hysteria by announcing a [moratorium](#) on the release of any more Yemenis from Guantanamo, a moratorium which still stands a year later, which shows no sign of being abandoned and which, by subjecting the men in question to collective punishment, or guilt by nationality, ensures that all 58 of the cleared Yemenis can legitimately be regarded as political prisoners.

The other 31 men cleared for release by the Task Force are still held because, for the most part, they cannot be repatriated as they would face torture or other ill treatment in their home countries, which include China, Libya, Syria and Tunisia. To its credit, the Obama administration has found new homes in 15 countries for 36 prisoners in a similar situation, but as the pool of willing countries dwindles, it will become harder for the US government to refute allegations that they, too, are political prisoners, held only because the country responsible for unjustly detaining them in the first place - the United States - has refused to accept its own responsibility to offer them new homes, [resisting calls to do so](#) - by a district court judge and by White House

counsel Greg Craig - in the Justice Department, in the DC Circuit Court, in Congress and in the Oval Office.

Of the other men, 33 were recommended for trials by the Task Force, but the administration has backed away from proposals to try them in federal court, because of opposition by Congress, or in the military commission trial system at Guantanamo, because of opposition from liberals and progressives.

I have no sympathy for the administration's problems with the discredited commissions, which should never have been [revived](#) after Bush left office, especially because the lowest point in their tawdry history was reached in October last year, when the former child soldier Omar Khadr accepted a [plea deal](#) in which he confessed to "war crimes" invented by Congress. These purported to criminalize his participation in a firefight with US soldiers in Afghanistan that led to his capture in July 2002, but the plea deal was met with such disdain around the world that the Obama administration is apparently unwilling to proceed with any further trials at Guantanamo.

Compounding this problem is the administration's refusal to press ahead with the federal court trial of [Khalid Sheikh Mohammed](#) and four other men accused of involvement in the 9/11 attacks, which was announced by Attorney General Eric Holder in November 2009. By failing to proceed with this plan, the administration allowed critics in Congress the opportunity to include a [provision](#) banning the transfer of any Guantanamo prisoner to the US mainland to face a trial in a military spending bill passed before Christmas and when, this week, the president [refused](#) to veto the bill, or to issue a signing statement disagreeing with it, the 33 men proposed for trials were consigned instead to indefinite detention without charge or trial, meaning that they, too, can realistically be regarded as political prisoners.

The last group of prisoners (leaving aside the three who are held because they lost their trial by military commission, or accepted a plea deal) are 48 men explicitly recommended for indefinite detention without charge or trial by the Task Force, on the basis that they are too dangerous to release, but that the information used to justify their detention would not stand up to scrutiny in a court of law.

I should hardly need to explain that this recommendation by the Task Force is fundamentally unacceptable, not only because it perpetuates the very system of arbitrary detention initiated by the Bush administration, which was deliberately designed to subvert domestic and international laws and treaties, but also because, if the government's supposed evidence would not stand up

in a court of law, then it is not evidence at all, but rather hearsay and unverifiable information contained in intelligence reports, which is fundamentally tainted by the torture and abuse to which prisoners were subjected.

The proposal also sidelines the District Court in Washington, DC, where the prisoners' habeas corpus petitions are ongoing and where 57 cases have been decided to date, with 38 won by the prisoners. In many of these 38 [cases](#), the judges have exposed exactly these kinds of problems with the government's supposed evidence. In addition, in the majority of the 19 cases won by the government, the men who have lost their petitions and who, in all probability, are among the 48 men designated for indefinite detention without charge or trial, are nothing more than foot soldiers for the Taliban in the military conflict with the Northern Alliance in Afghanistan, which morphed into a War on Terror after the US-led invasion in October 2001.

If anything, these men should be held as prisoners of war, not held up as some sorts of terrorists, but on this problem, the executive, Congress and the judiciary are all silent, even though it reveals a fundamental problem with the entire detention system invented under George W. Bush and maintained under Obama.

The legislation that supposedly justifies the prisoners' detention is the [Authorization for Use of Military Force](#) (AUMF), passed by Congress the week after the 9/11 attacks, which authorized the president "to use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons, in order to prevent any future acts of international terrorism against the United States by such nations, organizations or persons."

President Obama continues to rely on the AUMF, even though it fails to distinguish between al-Qaeda and the Taliban, and even though it perpetuates the Bush administration's ruinous notion that, instead of criminal suspects and prisoners of war protected by the Geneva Conventions, there is a third category of prisoner - what Bush called "enemy combatants," and what Obama calls "alien unprivileged enemy belligerents," as in the case of Omar Khadr - when this, clearly, should not be accepted at all. In Obama's determination to continue with this dark folly, administration officials recently announced that the president is close to signing an [executive order](#) formalizing the indefinite detention of these 48 men, but providing them with some sort of regular review process to ascertain whether they can be released.

This sounds better than no review process at all, but the truth is that these 48 men are also political prisoners, held as a result of the administration's refusal to accept that, if soldiers are to be detained, it should be as prisoners of war and that, if men are suspected of terrorist activities, they should be tried rather than arbitrarily detained forever.

Until these problems are solved and the Guantanamo prisoners are either tried or released, President Obama's contribution to this bitter legacy of the Bush administration is to be presiding over the unthinkable: a prison where, however the prisoners have been designated, they are almost all held in indefinite detention and are, indeed, political prisoners.

It is time for those who believe in justice to call for this miserable situation to be brought to an end.