

Counter Terror with Justice

AMNESTY
INTERNATIONAL



The Executive Orders

January 22, 2009 – in his second day in office President Obama signed three Executive Orders:

1. Setting in motion a review of the cases against those held in GTMO and of the options for closing the facility;
2. A review of future detention policy options;
3. Instructing all US agencies to conduct lawful interrogations within the parameters of the US Army Field Manual.

Sadly this has proved to be the highpoint of the Obama administration's concern for correcting the wrongheaded policies of the Bush administration.

Accountability

- In August 2009 Attorney General Eric Holder appointed Special Prosecutor John Durham to reopen investigation into a dozen cases of detainee abuse by CIA officers and contractors.
 - President Obama continues to repeat the mantra that he wants to ‘look forward not backwards’ and ‘turn the page’ on the Bush administration.
 - Interestingly enough in March 2010 in an interview with an Indonesian journalist, President Obama was asked whether the United States was satisfied with recent reforms in Indonesia. The President responded that there must be acknowledgement of past human rights abuses and that “we can’t go forward without looking backward.”
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Indefinite Detention

- In his national security speech at the National Archives in May 2009 President Obama stated publicly for the first time that his administration was prepared to hold some of the GTMO detainees indefinitely without trial and that it would explore and perhaps even create legal mechanisms to allow this to occur.
 - In July 2009 the General Counsel to the Department of Defense Jeh Johnson told Congress that the Obama administration may even consider continuing to detain individuals acquitted by the Military Commissions.
 - In January 2010, on the 1st anniversary of President Obama's apparently now moot Executive Order closing Guantanamo, the Department of Justice taskforce reported that it was recommending the indefinite detention without charge of 47 GTMO detainees.
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No Safe Haven

- In January 2010 the number of inmates cleared for release went up to 110 – 80 of whom could be released immediately if the US could find a country to take them and 30 when sufficient guarantees can be put in place in Yemen to ensure that they will not pose a threat to US interests.
 - The United States refuses to allow any cleared detainee to be resettled on US soil yet France, Germany, Ireland, Latvia, Cape Verde, Georgia, Spain, Portugal, Belgium, Switzerland, Albania, Hungary, Slovakia, Bermuda and Palau have all sought to help the Obama administration by accepting detainees with no other country to return home to because of non-refoulement concerns.
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No Remedy

- A study conducted by Lauren Fletcher and Eric Stover of UC Berkeley (Guantanamo and its Aftermath) into the post-GTMO and Bagram lives of 62 former detainees held on average for about 3 years found that only 6 had been able to find permanent jobs and that almost 2/3s reported having emotional difficulties since their release broadly consistent with PTSD. 13 detainees had gone heavily into debt to support their families, one former detainee was homeless
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Recidivism

- In January 2009 DoD claimed that as many as 61 former inmates of Guantanamo had “returned to terrorism.” This number consisted of 18 supposedly confirmed cases and 43 suspected cases. 8 of those on the list were accused of nothing more than making critical statements about US detention policy.
 - The final figure for the number of confirmed cases in which former GTMO detainees have subsequently been engaged in terrorist activities, including support functions such as recruitment, comes out at 15 of approximately 550 ex-inmates. A January 2011 study of now 600 former inmates conducted by the New America Foundation put the recidivism figure at 6%.
 - In June 2010 the Saudi government published the recidivism rate for its Islamic extremist rehabilitation program stating that 25 of 300 graduates had returned to “militancy.”
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Only One Act of Restitution

- Only one individual has been compensated by the US for being falsely imprisoned as a consequence of the 'War on Terror': Brandon Mayfield, an Oregon attorney erroneously connected to the 2004 Madrid train bombings by flawed fingerprint analysis. Mayfield was arrested as a material witness and held for two weeks by the Justice Department. He was never charged and has received an official apology and a payment of \$2million in compensation.
 - Article 9 of the ICCPR, to which the US is a signatory, guarantees an enforceable right to remedy for those arrested or held in detention unlawfully.
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Torture Relief

- The use of stress positions, sleep deprivation, mock executions, environmental manipulation, white noise, water-boarding, beatings, and sexual humiliation have all been recognized as torture or cruel, inhuman and degrading treatment under international law. All of these practices were used routinely by the US in the early years of Global War on Terror.
 - The following is a extract from the testimony of former Abu Ghraib detainee Haidar Muhsin Saleh: “[The abuse included] roping Plaintiff Saleh and 12 other naked prisoners together by their genitals and then pushing one of the male detainees to the ground, causing the others to suffer extreme physical, mental and emotional distress; [r]epeatedly shocking Plaintiff Saleh with an electric stick and beating him with a cable; . . . [and] [t]ying his hands above his head and sodomizing him.”
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Foreign Claims Act

- Some very limited redress is available through the FCA to those “friendly to the United States” injured during operations conducted by US military personnel outside the United States. Of the tens of thousands of individuals detained by US forces in Iraq and Afghanistan only 2 have successfully sought redress under the FCA and they received \$350 and \$5,000 respectively.
 - The latter award was made to Haidar Muhsin Saleh whose experiences in Abu Ghraib you just heard described.
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Black Sites and Extraordinary Rendition

- There are even fewer avenues for redress for those held and abused in CIA-run black sites or rendered to third countries where the torture was out-sourced to local security officials.
 - The Obama administration continues to use the State Secrets Privilege to prevent Maher Arar, a Canadian national rendered to Syria, and Khalid el Masri, a German national kidnapped in Macedonia and tortured in a CIA black site, both victims of faulty intelligence, from suing the United States government for compensation.
 - Canada by contrast launched an enquiry into Arar's case that ultimately led to the Canadian government paying Arar C\$10.5m in compensation. Khaled el Masri is currently pursuing a claim for compensation against the Macedonian government at the European Court of Human Rights. Sweden has reportedly made awards of compensation to rendition victims in two cases.
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Military Commissions

- As of January 2010 the Obama administration plans to try 35 current GTMO detainees in court – the vast majority before Military Commissions.
 - Make no mistake – the only reason the Military Commissions exist is because the government knows that it does not possess sufficient evidence to make cases stand up in a real court.
 - President Obama accurately denounced Military Commissions as “an enormous failure” on the campaign trail. Candidate Obama had it right. President Obama should listen to that guy!
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We Don't Need Kangaroo Courts

- Federal courts successfully prosecuted 523 terrorism-related defendants between September 11th, 2001, and December 31st, 2009. 235 defendants are still on trial. About 70 have been acquitted or had charges dismissed. The present conviction rate is 88%.
 - The Military Commissions have only convicted 5 people to date. Four pled guilty and 2 left US custody shortly thereafter - Salim Hamdan to Yemen and David Hicks to Australia. Another Canadian national Omar Khadr soon will. Ali Hamza al-Bahlul, an Al Qaeda propagandist sentenced to life imprisonment, and Ibrahim al Qosi, bin Laden's former cook sentenced to 14 years, are still in US custody.
 - To date Military Commissions have successfully convicted less than 1% of the inmates who have passed through GTMO.
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Past Success

- We seem to forget that our prisons already hold such Al Qaeda affiliated terrorists as the World Trade Center bomber Ramzi Yousef (who also happens to be Khalid Sheikh Mohammed's nephew), four individuals convicted in connection with the 1998 Embassy bombings in Tanzania and Kenya, the failed millennium bomber Ahmed Ressam and the aspirant 9/11 hijacker Zacarias Moussaoui. All men successfully convicted in the federal courts.
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Evidence not Intelligence

- Of the more than 770 individuals known to have been held in GTMO by October 2008 only 23 have been charged with War Crimes by the US government.
 - More than 550 detainees have been released from GTMO – 525 of those by the Bush administration.
 - Of the 38 detainees whose habeas cases had been heard in the federal courts by September 2009 – 30 were ordered released by civilian judges. This is a loss rate of 80% for government lawyers. 18 individuals ordered released by a federal judge are still in custody.
 - The evidential standard protects us from putting our faith in lies, half truths and innuendo.
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The Fruit of the Poisoned Tree

- The fruit of the poisoned tree is poisonous. Consider the case of Ibn al-Shaykh al-Libi rendered to Egypt by the CIA where he was tortured. To make his interrogators stop he told them that there was a link between Saddam Hussein and Al Qaeda. This intelligence was used in part to justify the Iraq War. No such link existed.
 - Speaking at Fordham University in March 2010 Michael Sulick, the Head of the CIA's National Clandestine Service, told his audience "I don't think we've suffered at all from an intelligence standpoint" because of the President's decision to outlaw all interrogation methods not compatible with the US Army Field Manual.
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Interview not Interrogate

- The two most important tactical successes in the war on terror to date – the capture of Khalid Sheikh Mohammad in Pakistan and the elimination of Abu Musab Al Zaraqawi in Iraq both came out of interview conducted by law enforcement officers (FBI and AFOSI) utilizing standard police rapport building approaches.
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Bryant Neal Vinas

- Vinas was arrested in November 2008 in Peshwar by the Pakistani authorities. Because Vinas was an American citizen he was not shipped to GTMO but instead treated like an ordinary criminal and transferred to the custody of the FBI.
 - FBI agents operating within the constraints of the criminal justice system were able to persuade Vinas to cooperate with the US authorities and provide valuable and timely intelligence regarding potential terrorist plot. He is a key witness in several upcoming trials.
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Umar Farouk Abdulmutallab

- On Christmas Day 2009 Nigerian national Umar Farouk Abdulmutallab was apprehended by passengers on Northwest Airlines Flight 253 trying to ignite explosives concealed in his undergarments.
 - When the flight landed in Detroit he was arrested and interviewed by FBI agents under the public safety exemption to the Miranda warning. He was subsequently handled solely within the confines of the criminal justice system.
 - Abdulmutallab would have had no incentive to cooperate with investigators locked up indefinitely in Guantanamo. By contrast, in the criminal justice system investigators have plenty of leverage to encourage cooperation.
 - Abdulmutallab's family has also continued to cooperate with federal investigators which would not likely have been the case if he had sent to GTMO. As a result, Abdulmutallab has provided significant intelligence while in detention.
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The Perils of Profiling

- According to the Southern Poverty Law Center US law enforcement officials foiled over 60 domestic terrorism plots involving rightwing extremists in the decade following the 1995 Oklahoma City bombing which claimed 168 lives.
 - In December 2008 police investigating the murder of James G. Cummings in Belfast, Maine, discovered that he had been in the process of assembling a homemade dirty bomb. Cummings, a white supremacist, was reportedly “very upset” about the election of President Barack Obama.
 - A similarly disturbing incident occurred in April 2003 when federal investigators stumbled across an arms cache assembled by 63-year-old white supremacist William Krar which included 800 grams of sodium cyanide – enough to kill 1000s of people. He had also sought to obtain fake UN and DoD identity cards.
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The Bottom Line

- The bottom line is that international human rights law protects us from our worse impulses and helps us to carry out counterterrorism more effectively.
 - It holds us to a higher standard and forces us to work smarter.
 - It also helps us hold on to the single most important strategic commodity in counterterrorism: Legitimacy.
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CTWJ Asks

- Close Guantanamo, abandon Military Commissions and end indefinite detention for terrorism suspects without charge.
 - Investigate the use of torture by the US government – establish a commission and prosecute individual offenders. Campaign for remedy for those wrongly imprisoned by the Bush and Obama administrations.
 - Reestablish the norm against torture in American political life. Provide remedy to victims of torture, extraordinary rendition and illegal detention.
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We are Better than This

- In the 1998 Torture Victim Protection Act Congress declared:

“The American people abhor torture by any government or person. The existence of torture creates a climate of fear and international insecurity that affects all people.”
 - This is American leadership at its best. This is an American allies can rally around and an America that is a force for good in the world.
 - This a vision of America we can all believe in.
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