

CIA involved in illegal deportation of Iraqi prisoners

Joseph Kay

1 November 2004

Use this version to print | Send this link by email | Email the author

The *Post* cited a leaked memo drafted by the Office of Legal Counsel at the Justice Department and dated March 19, 2004. The memo, written at the behest of the CIA, sought to create a pseudo-legal justification for the intelligence agency's practice of deporting Iraqi detainees. According to the *Post*, "One intelligence official familiar with the operation said the CIA has used the March draft memo as legal support for secretly transporting as many as a dozen detainees out of Iraq in the last six months. The agency has concealed the detainees from the International Committee of the Red Cross and other authorities, the official said."

According to the *Post*, the memo authorizes the agency to remove Iraqis from the country for a "brief but not indefinite period" to be interrogated. Anyone deemed to be an "illegal alien" under "local immigration law" can be removed permanently. Thus the memo seeks to provide a rationale for the CIA to transfer both Iraqis and non-Iraqis from occupied Iraq.

Article 49 of the Fourth Geneva Convention of 1949 states explicitly: "Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive."

The only exception involves the temporary movement of civilians for "military reasons," such as the emergence of a battle area in a civilian-populated region, and even this displacement must occur within the occupied territory unless this is "impossible." The deportation of detainees for interrogation purposes is clearly prohibited by the Convention.

According to Article 147, the "unlawful deportation or transfer or unlawful confinement of a protected person" is among the "grave breeches" of the Convention, which are classified as war crimes under international and US domestic law. The individuals who ordered these actions can therefore be prosecuted under international and domestic law.

Clearly aware of the illegality of what it was proposing, the Justice Department draft memo stated in a footnote, "We recommend that any contemplated relocations of 'protected persons' from Iraq to facilitate interrogation be carefully evaluated for compliance with Article 49 on a case by case basis."

The *Post* quotes Scott Silliman, executive director of Duke University's Center on Law, Ethics and National Security, as noting, "The overall thrust of the Convention is to keep from moving people out of the country and out of the protection of the Convention. The memorandum seeks to create a legal regime justifying conduct that the international community clearly considers in violation of international

law and the Convention."

The CIA's practice of illegally deporting detainees is closely related to its policy of holding detainees in Iraq without reporting their detention to the International Committee of the Red Cross. This practice of holding so-called "ghost detainees" at prisons such as Abu Ghraib is another violation of international law.

Earlier this year, Defense Secretary Donald Rumsfeld publicly acknowledged the existence of one such ghost detainee, an Iraqi who had been deported from Iraq for interrogation before being sent back. Estimates of the total number of ghost detainees in Iraq run as high as 100. According to Lt. Col. Steven Jordan, who served at Abu Ghraib, many of these detainees have been held in secret by the CIA in order to facilitate their transfer abroad.

It is unclear where the individuals who have been deported from Iraq have been sent. It is known that since at least 2001 the CIA has operated a network of secret detention facilities at undisclosed locations around the world, where it no doubt employs torture to extract information from prisoners. In a practice known as rendering, some prisoners have been sent to US allies such as Egypt and Saudi Arabia that are notorious for employing torture.

Confronted by the leaked memo, the Bush administration has been forced to acknowledge the deportation of some prisoners from Iraq, but has argued that all those deported have been non-Iraqis who traveled to Iraq after the invasion in order to join the insurgency. According to the administration, these individuals are not covered by the Geneva Conventions and therefore may be transferred by American authorities.

The idea that a legal distinction can be made between Iraqis and non-Iraqis in relation to the Geneva Conventions is a fraud. The Geneva Conventions make no distinction regarding the nationality of those captured by occupation forces.

Moreover, the latest statements of the government contradict previous statements by Bush administration officials, including Rumsfeld. In May of this year—after the Justice Department memo had been drafted and after the CIA had been deporting Iraqi prisoners for some time—Rumsfeld declared in public testimony before Congress that "everyone in Iraq who was a military person" as well as "the civilians or criminal elements" detained by the US will be "treated subjected to the Geneva Conventions."

It is likely that the CIA has deported for interrogation both Iraqis and non-Iraqis involved in resistance operations against the American occupation. The March 2004 memo was drafted to provide the CIA with a legal cover for previous deportations of Iraqi prisoners, as well as future ones.

According to the *New York Times* article of October 25, deportations

began in April 2003. An October 2003 legal opinion said Iraqis could not be transferred, though non-Iraqis could. Apparently, the CIA was not satisfied with this ruling. The March 2004 memo was drafted at the request of the CIA and this memo held that Iraqis also could be transferred for a short duration. All of these legal opinions were released as a *post factum* justification for what the CIA was already doing.

The administration is refusing to give the nationality or number of those who have been deported, why they were deported, or the location where they currently are being held.

The new revelations are further evidence that the United States is operating what amounts to an international “disappearance” operation, employing on an international scale the methods employed by Latin American dictatorships during the 1970s and 1980s. American intelligence has arrogated to itself the right to seize people from Afghanistan, Iraq or any region of the globe, hold them incommunicado without providing any evidence to justify their detention, transfer them to secret facilities situated around the world, and employ unknown methods to extract information.

American intelligence agencies and the White House operate according to the principles of secrecy and conspiracy, behind the backs of the American people. Any information that has surfaced on the US policy of deporting Iraqi prisoners has emerged as a result of leaked memos. No doubt the true extent of such American operations remains undisclosed.

The March 2004 draft memo is part of a secret and systematic effort to use the attacks of September 11, 2001 as a pretext for scrapping all legal restraints on the operation of the United States government internationally and domestically.

The conspiratorial character of this push was made clear in a two-part series by Tim Golden of the *New York Times* published on October 24 and 25. In these articles, Golden noted that Vice President Dick Cheney and Defense Secretary Donald Rumsfeld spearheaded the initial drive to circumvent international and domestic law in late 2001, with the help of a coterie of right-wing lawyers in the White House and the Defense Department.

At the center of this group of lawyers was Timothy Flanigan, then the deputy White House counsel. Flanigan had previously played a critical role for the Republican Party in the Clinton impeachment drive and the theft of the 2000 election.

The first major step these individuals took was to develop a policy of indefinitely detaining prisoners at Guantanamo Bay and setting up military tribunals. According to the first article in Golden’s series (“After Terror, a Secret Rewriting of Military Law”), “The administration’s claim of authority to set up military commissions...was guided by a desire to strengthen executive power, officials said. Its legal approach, including the decision not to apply the Geneva Conventions [to prisoners at Guantanamo Bay], reflected the determination of some influential officials to halt what they viewed as the United States’ reflexive submission to international law.”

Lawyers in the White House and the Office of Legal Counsel argued that neither the Geneva Conventions nor any other body of international law should be applied to the war in Afghanistan. The actions of this group took on such a conspiratorial character that it excluded from its deliberations not only long-time government experts on military law, but even National Security Advisor Condoleezza Rice, Secretary of State Colin Powell and Attorney General John Ashcroft.

The drive to undermine legal constraints on American actions has continued over the course of the three years since September 11. The March 2004 draft memo was published by the same office that wrote the infamous August 1, 2002 memo seeking to create a legal basis for the use of torture. [see, “*Washington Post* publishes memo implicating White House in torture of prisoners,” <http://www.wsws.org/articles/2004/jun2004/tort-j17.shtml>]. That document concocted a narrow definition of torture—at odds with the definition laid down by international law—in order to allow American military and intelligence agencies the widest latitude possible for abusing prisoners. It also declared that the president as commander-in-chief had the right to order torture for military purposes.

These attempts to undermine international law are not dictated by the requirements of a so-called “war on terrorism.” That is merely a pretext. The measures are part of a previously existing agenda propounded by the most right-wing sections of the American ruling elite, who have long advocated discarding all restrictions on the use of state violence. They are the logical outcome of policy of global empire and neo-colonial conquest.

The methods of state violence, including the use of torture, will ultimately be directed against opposition that emerges within the United States as well. In addition to sanctioning torture and indefinite detention by the American military and intelligence apparatus abroad, the legal memos produced over the past three years have sought to lay the legal foundation for military dictatorship within the United States.

Golden cites a September 21, 2001 memo by John Yoo, then head of the Office of Legal Counsel. According to the *Times*, ““Mr. Yoo listed an inventory of possible operations [that might be carried out in the US]: shooting down a civilian airliner hijacked by terrorists; setting up military checkpoints inside an American city; employing surveillance methods more sophisticated than those available to law enforcement; or using military forces ‘to raid or attack dwellings where terrorists were thought to be, despite risks that third parties could be killed or injured by exchanges of fire.’”

These measures are in flagrant violation of the Fourth Amendment prohibition on unreasonable search and seizure, but the memo states, “the government may be justified in taking measures which in less troubled conditions could be seen as infringements on individual liberties.”

The new revelations on CIA operations highlight once again that the torture carried out at Abu Ghraib was no aberration. It was one component of a much broader and systematic policy, the origins of which lie at the heights of the American government.

None of these issues have been raised in the course of the election campaigns of either of the major parties. Democrat John Kerry has deliberately avoided bringing up the torture of prisoners at Abu Ghraib and has said nothing about the entire framework of American policy that lies behind this torture. This conspiracy of silence can be explained only by the fact that Kerry and the Democratic Party support the basic aim of this policy: the vast expansion of American militarism into Afghanistan, Iraq and beyond.



To contact the WSWS and the Socialist Equality Party visit:

wsws.org/contact