

Obama task force backs indefinite detention without trial

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On Monday, an Obama administration task force announced it would delay for six months release of a report that was to outline plans for the prosecution of inmates at its Guantánamo Bay prison camp and future prisoners seized in the “war on terror.” In its stead came an interim report and a White House press briefing that together indicate President Barack Obama is likely to rely on military tribunals or indefinite detention without trial in cases where evidences against “terror suspects” is scant or tainted by torture.

The interim report and the accompanying press briefing—where four high-ranking White House officials spoke under the proviso that the media would not reveal their names—point to the formation of a threefold approach to dealing with the 229 remaining Guantánamo detainees as well as future captives. Of those who cannot be shifted to other nations or detention facilities, some may face criminal trial under US law, some would face military commissions, and some would be placed in indefinite detention without any sort of trial.

Criminal trials will be the least likely route for prisoners, the preliminary report and the press briefing seem to suggest. The report declares that criminal courts will be used “where feasible,” but leaves no doubt that what it means by “feasible” is the a priori certainty of a guilty verdict.

“Federal courts have on many occasions proven they can meet the challenges of international terrorism prosecutions and the legitimacy of their verdicts is unquestioned,” according to the report. The passage boasts of the criminal code’s “extraterritorial reach” through anti-terrorism legislation, and says that “experienced prosecutors often find ways to overcome any challenges” to the introduction of legally-dubious evidence.

Much of the report is a defense of military commissions, which it claims are “no less legitimate” than civilian courts. Unlike criminal courts, “[m]ilitary commission can allow for the protection of sensitive sources and methods of intelligence-gathering...and take into account the realities of

the battlefield and the particular challenges of gathering evidence during military operations overseas,” the report explains. This is a remarkable passage. “Methods of intelligence-gathering” and the battlefield “challenges of gathering evidence,” refer, of course, to evidence extracted through torture. And the “protection of sensitive sources” no less obviously refers to the US agents who carried out this torture.

Then there is the third option, indefinite detention without trial. When prosecution is “not feasible in any forum,” an accompanying document states, “the cases may be referred for other appropriate disposition”—i.e., indefinite detention. The administration finds some prisoners “too difficult to prosecute in federal court or before a military commission,” according to a reporter present at the White House briefing. An official explained that these prisoners would be “placed in some system of prolonged detention,” but that Congressional approval would first be sought to grant an air of legitimacy to the practice.

The media has presented the Detention Policy Task Force as primarily concerned with resolving the fate of the remaining Guantánamo prisoners. This is not the case. As the interim report states, what is involved are “policies in the future regarding apprehension, detention, and treatment of suspected terrorists,” and “rules and boundaries...for any future detentions....”

At the press briefing, an Obama official explained the administration is seeking a “framework for dealing with the detainees at Guantánamo and future detainees captured in the fight against terrorists.”

The interim report makes explicit the policy indicated in previous speeches by Obama and other administration officials. The new Democratic administration intends to institutionalize what was one of the most reactionary and anti-democratic claims made by the Bush White House: that the US president has the right to condemn those allegedly suspected of terrorism to indefinite imprisonment without charges or trials.

Significantly, not only does the interim report make clear

that the use of military commissions and indefinite detention will not end with the current detainees, it also makes no distinction between alleged terrorists captured abroad and US citizens, meaning that these same methods could be used against those deemed domestic “enemies” of the state.

Whatever its final contents, the six-month delay in the Detention Policy Task Force report’s issuance throws into further doubt President Barack Obama’s professed intention to close “Gitmo.” Shortly after taking office, Obama issued an executive order declaring that by January 1, 2010, he would shut down the prison camp on the US military base in Cuba. At the time, this was considered essential in order to effect the appearance of “change” with the Bush administration’s despised policies in the “war on terror.”

However, this quickly raised two questions: what would be done with the hundreds of inmates who remained at Guantánamo, and what would be the legal implications for future prisoners taken in the “war on terror.”

Of the 229 remaining prisoners, Washington has been able to link only a few names with terrorist activities, and even in these cases major doubts and tainted evidence remain. The majority of the prisoners have nothing to do with al Qaeda; they were abducted by the US military or its accomplices from Afghanistan, Pakistan, and many other nations, and spirited away through a network of secret flights, prison “black sites,” and torture chambers en route to Guantánamo. At Guantánamo, they have been subjected to various forms of torture and abusive conditions for years.

There have been no formal charges made against the vast majority of the prisoners, and none have been allowed to see or contest whatever evidence the US might have against them. For years the Bush administration claimed that, as “enemy combatants,” the prisoners had no legal recourse to either the US judicial system or to the international laws of war governing the treatment of prisoners. Their fate was entirely at the mercy of the US president.

While formally dropping the term “enemy combatant,” the Obama administration has carried on, in all its essentials, this unspeakably antidemocratic and inhumane policy. The Obama administration refuses to grant the prisoners their day in court, not because the inmates are “dangerous” or because of technical difficulties, as has been repeated ad nauseam in the US media.

Rather, the problem for the Obama administration is that Guantánamo is filled with innocent men and boys. Any fair court proceeding would not only reveal this, but would also likely expose, in graphic detail, the countless war crimes committed against their bodies and minds by the Central Intelligence Agency (CIA) and the US military.

The Obama administration opposes such a development every bit as much as former Bush administration officials,

such as Vice President Dick Cheney. Obama’s interim report tacitly confessed as much, stressing the need to protect US agents and noting the “evidentiary problems that might attend prosecution” in civilian courts. “Evidentiary problems” is, of course, a euphemism for hearsay evidence and evidence extracted through torture.

Yet Obama still wishes to present a changed face of US imperialism to the world. Hence his dilemma over Guantánamo. Third-party countries have been reluctant to receive the prisoners, and after a right-wing scare campaign led by Republican politicians and figures close to the military-intelligence apparatus, it has become politically unpalatable for Obama and leading Democrats to try them in the US or place them in prisons on US soil.

Reaction to the preliminary report from civil rights groups has been muted. The executive director of the American Civil Liberties Union (ACLU), Anthony Romero, warned Obama against continuing Bush administration policies. “The Obama administration must not slip into the same legal swamp that engulfed the Bush administration with its failed Guantánamo policies,” he said. “Any effort to revamp the failed Guantánamo military commissions or enact a law to give any president the power to hold individuals indefinitely and without charge or trial is sure to be challenged in court and it will take years before justice is served.”

A separate White House committee, the Special Task Force on Interrogation and Transfer Policies, tasked with making recommendations on US “interrogation policy,” has also been given a two-month reprieve to issue its report.

There was little explanation accompanying this delay. The postponement is rather ominous. The Special Task Force on Interrogation and Transfer Policies was formed as the result of another early Obama executive order that the media claimed ended torture. It did no such thing. It ordered the task force “to study and evaluate whether the interrogation practices and techniques in Army Field Manual...provide an appropriate means of acquiring the intelligence necessary to protect the Nation, and, if warranted...propose new interrogation techniques beyond what is allowed in Army Field Manual.”



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