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REPORT FROM LONDON

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July 4, 2007 – 2,000 days of Guantánamo

On July 4, 1776, the founding generation of Americans declared themselves free and independent from what they considered to be the despotic rule of the British crown. The absolute power of the monarch was detested for its capricious and arbitrary nature, and above all, for the lack of accountability to elected representatives that it was hoped a democratic system could provide. In the centuries since that July 4th, the Declaration of Independence served as the inspiration for the liberation of peoples of all different races, religions, and cultural affiliations. Its bold proclamation that “*We hold these truths to be self-evident, that all men are created equal, that they are endowed, by their Creator, with certain Inalienable rights, that among these are Life, Liberty, and the pursuit of Happiness,*” did not announce previously unconsidered ideas or arguments, but, as Thomas Jefferson wrote, it did “place before mankind the common sense of the subject, in terms so plain and firm as to command their assent, and to justify ourselves in the independent stand we are compelled to take.”

It seems that this common sense has been forgotten as this July 4, over 200 years later, marks a different occasion. It marks the 2,000th day of the operation of the United States’ military prison in Guantánamo Bay Cuba, where hundreds of men, including some who entered as children, have languished without charge or a trial for over five years. This stark contrast between the ideals upon which my country established itself and its current practice of arbitrary detention and torture of many likely innocent individuals, prompted me to volunteer this summer at Reprieve, an organization in London that serves as counsel for 40 Guantánamo prisoners from sixteen different countries. (Reprieve refers to the men not as detainees but as prisoners, since this more accurately reflects their situation.)

I decided to volunteer at Reprieve after reading an email from one of its lawyers, Zachary Katznelson, about his recent investigatory trip to Jordan, where he interviewed one of his client’s families to gather background information. The client in question had married his wife and then headed off to Pakistan and Afghanistan to study. Shortly after the U.S. invasion of Afghanistan, he was handed over by the Northern Alliance, the U.S.’s allies against the Taliban, and then sent off to Guantánamo, probably after stops in secret detention centers scattered throughout the world. Like many detainees, this man tried to flee Afghanistan once the U.S. invasion started, but he got caught in the Northern Alliance’s snares (the U.S. had offered a \$5,000 bounty for all individuals captured and handed over, a practice that obviously created incentives for the Northern Alliance to be sloppy and overzealous in rounding up individuals).

When I was reading the email, Zachary’s client had been in Guantánamo for over four years, during which time his son was born. Somehow the child had imagined that Zachary’s visit was not simply *about* his father, but was actually his father’s return home. So during the visit, the child walked into the living room where Zachary was interviewing the family, looked back and

forth between Zachary and his interpreter and asked, “which one is my father?” Since the media has reported so little about Guantánamo beyond what the military and administration tell them, this anecdote was one of the first times I was able to connect with the plight of the detainees on a personal level, to appreciate their situation as human beings with families that worry about them. As a new lawyer with a background in human rights, I had the basic skills to do something about their situation, so I volunteered.

I could have not have chosen a more exciting time to volunteer here. As a result, my first month at Reprieve has presented me with a comprehensive human rights lawyering experience, which has entailed legal research and writing; corresponding with clients; political and media advocacy at the national, international, and supranational levels; and collaborating with human rights groups all over the world. Already in four short weeks I have been exposed to the challenges of being a human rights lawyer working on complex global issues, as well as the roller coaster of emotions—moments of hope and encouragement sliding into moments of discouragement and despair—that arises from working towards social justice.

The first week of my internship saw several developments in the global fight against Guantánamo and the abuses committed there. The day I arrived in London, the Council of Europe (an international organization of several dozen countries, founded after World War II to maintain and promote the common ideals of democracy and freedom shared by European societies) released a much anticipated report on several European countries’ involvement in the illegal practice of “extraordinary renditions.” “Extraordinary rendition” is essentially a kidnapping; the CIA or another intelligence agency grabs a person anywhere in the world and moves them to a remote location outside that country, without following any form of procedural due process.

The Council of Europe report revealed that the Central Intelligence Agency had operated “black site” prisons in both Romania and Poland with the assistance of those countries’ governments. The report also detailed the existence of a similar detention center on Diego Garcia, a British territorial island, on which the United States maintains a military base (decades before, the islands’ indigenous population was forcibly removed from there and the other islands of the Chagos archipelago of which it is a part). The report also mentioned that other countries, including Austria, Belgium, Cyprus, Denmark, Germany, Greece, Ireland, Italy, Poland, Portugal, Romania, Spain, Sweden and the United Kingdom, had given the United States permission to fly the detainees over their airspace. Two weeks later, in the last week of June 2007, the Council of Europe formally voted to adopt the findings of the report. Following the vote, the Romanian delegation withdrew indefinitely from the Assembly in protest of the vote.

Reprieve has tried to use the Council of Europe report in its advocacy. First, we convened a meeting of all relevant human rights organizations in London to talk about the legal issues around Diego Garcia and what kind of accountability we could demand from the British government for its role in the operation of the detention center there. Legal theories and political considerations shot back and forth across the room from activists and international law professors. The gathering concluded that although circumstantial evidence pointed to British complicity, there was little hard evidence of involvement, and the legal theories on which to hold the British accountable would depend heavily on the extent of involvement. This launched the

search for more concrete information about Diego Garcia, suggesting that this is only the beginning of the fight for accountability.

Second, coordinating with the Parliamentary Working Group on Extraordinary Renditions (PWGER)—a group of British members of Parliament concerned about British involvement and complicity in the U.S. program—Reprieve tried to bring the matter of British involvement, particularly regarding Diego Garcia, before the House of Commons during an “adjournment hearing,” essentially a committee meeting outside of the normal assembly sessions. During this meeting, members of the PWGER pushed the representative from the majority Labour party to condemn the U.S. practice of extraordinary rendition and to renounce British involvement in it. The Minister stepped around the issue and essentially ridiculed the Working Group’s proposals. It was discouraging to see the British Parliamentary member, like his allies across the Atlantic, deploy the same kind of attenuated legalistic discourse to avoid accepting responsibility for a practice that was clearly morally and legally wrong. As I sat in Westminster Hall in British Parliament listening to these debates, it reinforced the fact that so much of what has happened in the “war on terrorism”—from the Afghanistan and Iraq invasions to the extraordinary rendition program—would not have been possible without concerted British efforts.

This parliamentary debate happened the same week as the lowest point of my experience so far. On June 19 we learned that one of our clients, a Tunisian man (husband and father of eight) named Abdullah bin Omar, had been secretly returned to Tunisia along with one other Tunisian detainee named Lotfi Lagha. We knew that Mr. bin Omar would eventually be released because the U.S. put him on the “cleared list” a few weeks before, which meant they had determined he neither constituted a continuing security threat to the U.S. nor offered any intelligence useful to the “war on terrorism.” We had implored the U.S. government, however, to not return him to Tunisia, because he would face a 23-year sentence that he had been convicted of *in absentia* in the early 1990s for membership in a non-violent Islamist political party. Though he was likely sent back on a Saturday, we were not informed of his release until Tuesday, thus preventing us from doing anything to intervene. We have since learned that Abdullah is in fact in a Tunisian prison, where he is being tortured, has been forced to confess to things he has not done, and has received threats by Tunisian authorities that they will rape his wife and daughters.

To help Abdullah, my colleagues and I have been working the phones, faxes, and email, reaching out to anyone who will listen and take up his case. My colleagues contacted members of the European Parliament, particularly its Human Rights Committee, which convened to discuss the issue last week. I sent submissions to the Office of the United Nations High Commissioner for Human Rights, including to the Special Rapporteur for the Prevention of Torture (which helps monitor the Torture Convention), the Working Group on Arbitrary Detention, the Working Group on Judicial Independence, and the newly created Special Rapporteur for the Promotion and Protection of Human Rights While Countering Terrorism. We also got in touch with all of the countries that have significant diplomatic and economic relations with Tunisia to try to create diplomatic pressure on the government to ensure for Abdullah’s proper treatment and, hopefully, his release.

In the best-case scenario, a third country would offer to grant Abdullah (or other soon-to-be-released detainees) asylum in their countries. It seems, however, that few countries will likely do

much in this situation, since no one is eager to help the United States out of the mess that is Guantánamo. This is why the most effective interventions will likely be multilateral ones conducted at the supranational level. In addition to initiating processes at the United Nations, I have also been preparing a communication to submit on Abdullah's behalf to the African Commission on Human and Peoples Rights, which monitors the implementation of the African (Banjul) Charter on Human and Peoples' Rights. We also reached out to the media, trying to pitch Abdullah's story to Arab media and U.S. media. Several journalists did take an interest, which led to articles in a few U.S. and North African papers.

We are trying to develop ongoing coverage of the issue of returned detainees because it is the next stage of the Guantánamo saga. Approximately 80 detainees have been cleared for release, but if returned to their countries of origin, many will find themselves in Mr. bin Omar's exact situation, either facing old sentences (often handed down in absentia) or fresh convictions under new anti-terrorism laws passed since 2001. These returns ostensibly mean that these innocent men's existences as detainees—and all of the mistreatment and hopelessness that has gone along with it—will continue. Apparently, the U.S. government does not consider it sufficient to have ruined these men's lives without cause, but also feels that it is perfectly acceptable to ensure that they will never be free of the stigma of their orange jumpsuits.

Back in the U.S., there had been some interesting legal developments related to detainees as I was preparing to leave the country. Just a few days before I left, military commissions at Guantánamo Bay ruled that they did not have jurisdiction to hear cases against Saleem Hamdan and Omar Khadr. In both cases, the military commission judges noted that the Military Commissions Act which established them, provided for jurisdiction over "unlawful enemy combatants," whereas Hamdan and Khadr had both been held all this time as "enemy combatants." Accordingly, the cases were dismissed for lack of jurisdiction.

The dismissals were a heartening development. Not only did it suggest that military judges themselves were unwilling to participate in anything less than a proper judicial process, but it also exposed the ludicrousness of the entire legal apparatus supporting Guantánamo. Under the laws of war, there are two types of enemy combatants—lawful and unlawful. Lawful ones are determined to be POWs and gain certain privileges from that status, while unlawful ones are determined by military courts to be unlawful, and are denied the POW status and privileges. The pervasive legalism that has pervaded the Bush administration's "war on terrorism,"—the redefinition of the very meaning of torture (to be understood now as pain equivalent to that experienced with organ failure or death), attempts to claim that Guantánamo is not technically a U.S. territory, and other such obfuscations—has come back to haunt it.

These decisions preceded what has thus far been the best news of my experience, though it is only a minor victory in the grand scheme. In a nearly unprecedented decision, the United States Supreme Court decided to reconsider its previous rejection of two sets of detainees' petitions for review of the D.C. Court of Appeals' decisions that upheld the constitutionality of the Military Commissions Act of 2006. Such a reversal of a prior decision not to grant *certiorari* (review of a lower court's decision) has likely not occurred since a 1968 case, and so it was a very dramatic moment when the Court changed its mind on the last day of its 2007 term.

But the struggle is far from over. The Court still needs to be persuaded that the administration's system is unconstitutional, which will take a lot of work. But more pressingly, on the same day of the decision, new Al-Qaeda-linked bomb attacks and attempts hit London and Scotland. Two car bombs were found outside a club in London and two men drove a fiery jeep into Terminal 1 of the John Lennon Airport in Glasgow. Since then, Britain has been on high security alert, which has put a certain sense of energy in the air not unlike what I experienced while living in Jerusalem during the Second Intifada in 2001.

But more than the sense of urgency and the renewed fear in which people must carry out their lives, the attacks are upsetting to me because they reinforce the arguments of those who wish to keep Guantánamo (and the whole network of secret prisons) running indefinitely, until the "war on terrorism" is over. The attacks thus represent the continuing misunderstandings (or indifference) that lie at the center of this global conflict. U.S. and British and other societies continue to fail to understand what impact their abusive practices have on Muslims all over the world, and the perpetrators of the attacks, Al Qaeda or their copycats, seem to have no sense or regard for the effect that their acts of senseless violence have on the struggles of the detainees to one day be free.