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America's Disappeared

by Andy Worthington

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Injustices do not become any less unjust the longer they are unaddressed; and when it comes to the “war on terror” launched by George W. Bush following the terrorist attacks of September 11, 2001, those injustices continue to fester and to poison America’s soul.

One of those injustices is Guantánamo, where 166 men are still imprisoned, even though 86 of them were cleared for release by a task force established by the president four years ago. Another is Bagram in Afghanistan (renamed and rebranded the Parwan Detention Facility), where the Geneva Conventions were torn up by Bush and have not been reinstated and where foreign prisoners seized elsewhere and rendered to U.S. custody in Afghanistan remain imprisoned. Some of those men have been held for as long as the men in Guantánamo, but without being allowed the rights to be visited by civilian lawyers: the men in Cuba were twice granted visitation rights by the Supreme Court — in 2004 and 2008 — even though those rights have since been taken away by judges in the Court of Appeals in Washington, D.C., demonstrating a susceptibility to the general hysteria regarding the “war on terror” rather than a desire to bring justice to the men in Guantánamo.

Another profound injustice — involving the kidnapping of prisoners anywhere in the world, and their rendition to “black sites” run by the CIA or to torture dungeons in other countries — also remains unaddressed.

Some of “America’s Disappeared” eventually turned up at Guantánamo, and the foreign prisoners held at Bagram also fit into that category. What happened to others, however, is as

unknown now as it was six years ago, when six NGOs — including Amnesty International, Human Rights Watch, and Reprieve — issued a report (PDF), “Off the Record: U.S. Responsibility for Enforced Disappearances in the ‘War on Terror,’” identifying 39 prisoners whose whereabouts were unknown

At the time — June 2007 — there was some interest in the story because Bush had run into a credibility problem in his second term, but interest had already waned by 2010, Barack Obama’s second year in office. That was the year a follow-up report (PDF), the “Joint Study on Global Practices in Relation to Secret Detention in the Context of Counter-Terrorism,” was published by the United Nations.

I was the lead author of the sections dealing with U.S. disappearances in the “war on terror,” which was prepared for the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, for the Special Rapporteur on torture and other cruel, inhuman, or degrading treatment or punishment, and for the Working Groups on arbitrary detention and enforced or involuntary disappearances.

In the report, I noted, “Based on figures disclosed in one of the Office of Legal Counsel’s notorious ‘torture memos’ (PDF), written in May 2005 by Assistant Attorney General Stephen Bradbury” and made available by Obama as part of a court case in April 2009, “the CIA had, by May 2005, ‘taken custody of 94 prisoners [redacted] and [had] employed enhanced techniques to varying degrees in the interrogations of 28 of these detainees.’”

Those 94 men were part of the “high-value detainee” program and were held in secret prisons run by the CIA in Thailand, Poland, Lithuania, Romania, and Morocco, although most also passed through the network of secret prisons in Afghanistan en route.

An unspecified number of other prisoners, however, were also rendered to other countries for torture, including Egypt, Jordan, and Syria. The only estimate of numbers came in September 2007, when CIA director Michael Hayden told Charlie Rose that the number was “mid-range, two figures since September 11, 2001,” without elaborating. As Rose stated in response, “Two figures. So 50, 60. Whatever. Doesn’t matter. Have been renditioned to somewhere.”

Two weeks ago, the latest update in this sordid and neglected story arrived through the Open Society Justice Initiative, which issued a new report, “Globalizing Torture: CIA Secret Detention and Extraordinary Rendition.” As the press release explained, the report “identifies for the first time a total of 136 named victims and describes the complicity of 54 foreign governments in these operations.” The governments, “ranging from Iceland and Australia to Morocco and Thailand,” are revealed to have “enabled secret detention and extraordinary rendition operations in various ways, such as hosting CIA prisons, assisting in the capture and transport of detainees, and permitting the use of domestic airspace for secret flights.”

The press release also noted that “the report underscores the U.S. government’s failure to confront the legacy of abuses committed in the name of counterterrorism.” It was not lost on the Open Society Justice Initiative that the report was being published while the Senate Select Committee on Intelligence sits on a 6,000-page report that took three years to complete, which

provides a comprehensive analysis of the CIA's torture program under the Bush administration. At the same time, Kathryn Bigelow's movie *Zero Dark Thirty* continues to pump out the irresponsible false message that torture played a key role in identifying the location of Osama bin Laden, and John Brennan was about to be confirmed the director of the CIA, even though, under George W. Bush, he had explicitly supported torture and renditions.

Amrit Singh, the author of the report and a senior legal officer at the Open Society Justice Initiative, said, "The time has come for the U.S. and its partner governments to own up to the truth and secure accountability for the abuses committed around the world as part of these CIA programs. The taint of torture and other abuses associated with these programs will continue to cling to the US and its collaborators as long as they hide behind a veil of secrecy and refuse to hold their officials accountable."

That is true, of course, but it remains to be seen whether anything can awaken the American media or the public to sufficient outrage that any action will be taken to hold anyone accountable. Singh notes that the best hopes for accountability still lie elsewhere — in Europe, where, in December 2012, the European Court of Human Rights held that the Macedonian government had violated the rights of Khaled El-Masri, a German citizen, during an operation with the CIA that led, in a case of mistaken identity, to El-Masri's being kidnapped and rendered to a "black site" in Afghanistan, where his treatment "amounted to torture."

In addition, in 2009, an Italian court convicted in absentia 23 Americans — almost all CIA officials and operatives — for the brazen daylight kidnapping in Milan, in February 2003, of a cleric, Abu Omar, who was subsequently rendered to torture in Egypt. And, just last week, an Italian appellate court sentenced the country's former intelligence chief, Niccolò Pollari, to ten years in prison "for complicity" in that kidnapping.

As the Open Society Justice Initiative notes, "Other legal challenges to secret detention and extraordinary rendition are pending before the European Court of Human Rights against Poland, Lithuania, Romania, and Italy; against Djibouti before the African Commission on Human and Peoples' Rights; and against domestic authorities or officials in Egypt, Hong Kong, Italy, and the U.K."

Those undertakings remain the best hope that one day someone at the highest levels of the U.S. government will be held accountable for his crimes. In the meantime, the senior Bush officials — up to and including the former president — walk free, and Obama has his own "kill list" and drone program, which, one day, will be seen to have been as monstrous and illegal as Bush's program of rendition and torture.

Moreover, as the Open Society Justice Initiative also notes, "The Obama administration has not definitively repudiated extraordinary rendition. In 2009, President Obama issued an executive order disavowing torture and closing secret CIA detention sites, but the order was reportedly crafted to allow short-term, transitory detention prior to transferring detainees to countries for interrogation or trial. Current policies and practices with respect to extraordinary rendition remain secret."

As with so much else in the “war on terror,” secrecy is never a good sign. It is too much to hope that Obama will willingly address the legacy of “America’s Disappeared,” inherited from his predecessor, but one day someone must be held accountable for this global program of torture.