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Human Rights Lawyer on Bagram Prison

'The Obama Administration Has Completely Failed'

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Human rights lawyer Tina Foster talks to SPIEGEL about detainee abuses in the US military prison in Bagram, Afghanistan and her disappointment with the Obama administration.

SPIEGEL: Right after taking office, US President Barack Obama announced his plan to close Guantanamo. It looked like he would reverse the human rights policies of the Bush administration. Will the detainees the **US military prison in Bagram, Afghanistan** now be given legal rights?

Foster: Unfortunately, the US government did not change its position on Bagram when Obama took office. The government still claims that our clients are not entitled to any legal protections under US law. It maintains that even those individuals who they brought to Bagram from other countries, and have held without charge for more than six years, are still not entitled to speak with their attorney, and they are arguing now that they are not entitled to have their cases heard in US courts.

SPIEGEL: But there has been an important legal decision stating that detainees in Bagram have the right to legal representation.

Foster: The April 2 decision of Judge John D. Bates, a George Bush appointee, was that our clients were entitled to have their cases reviewed by the court. That was a huge success.

SPIEGEL: Is the Obama administration complying with the Bates decision in providing each detainee a representative?

Foster: Before we could present any evidence or proceed in their cases, the Obama administration appealed the decision to the court of appeals, and is now arguing that it should be overturned. The announcement was intended to generate a positive media spin on the "new" procedures at Bagram, which were announced at this time because the government's filing in the court of appeals was due the following day. If you look at the actual procedures, you will see that the detainees will not be given any legal representation. Instead, the Department of Defense is saying that it will send non-lawyer "representatives" to question the detainees and look into their cases. Those individuals are not officers of the court, and have no duty of confidentiality or loyalty to the detainee.

SPIEGEL: But what then is the difference between the Bush and Obama administrations?

Foster: There is absolutely no difference between the Bush administration and the Obama administration's position with respect to Bagram detainees' rights. They have made much ado about nothing, in the hope that the courts and the public will not examine the issue more closely.

SPIEGEL: Is it true that the human rights situation has gotten much better at Bagram in the last 18 months?

Foster: Some of our clients have been at Bagram since its early days, and they still are not being told what the charges are against them, or given the ability to challenge those allegations in any fair legal proceeding. Moreover, several of our clients were brought to Bagram from outside of Afghanistan. For example, Amin Al Bakri -- a Yemeni gem trader who was kidnapped while on a business trip in Thailand, rendered to secret prisons, tortured and finally ended up at Bagram -- is still being held incommunicado and without access to his attorneys. We believe he was tortured in CIA secret prisons before being transferred to Bagram, which is why I believe the government does not want to allow us to speak with him. It's a cover up. Amin has been at Bagram for more than six years. It's hard to imagine any other reason why the government would not allow him a simple hearing in a US court.

SPIEGEL: What about the case of Jawed Ahmad, which received a certain amount of media coverage?

Foster: Our client Jawed "Jojo" Ahmad was a young journalist working for the Canadian television network CTV. He was also taken into custody by the military and held without charge for more than a year before the US government finally released him. This all happened in 2007-2008 -- in other words, fairly recently. That "mistake" by the US government cost Jojo his life. We were eventually able to convince the US government that he was innocent, and happily he was released. Jojo committed his time after he got out of prison to exposing other injustices at Bagram and beyond in Afghanistan. He helped us with the cases of other innocent people who are currently being held at Bagram, and was essentially our star witness in this litigation. This was all cut short earlier this year, when Jojo

was shot and killed in broad daylight. His assassins have never been identified. It was one of the most terrible moments of my life. He was a great person and a friend.

SPIEGEL: Can you compare the human rights situation in Bagram with that in Guantanamo?

Foster: What most people don't realize is that Bagram has always been far worse than Guantanamo. One thing that has not been stressed enough in media accounts regarding Guantanamo is that much of the abuse that the Guantanamo prisoners suffered actually happened at Bagram. Many of our former clients were subjected to sexual humiliation and assault akin to Abu Ghraib-style torture. In terms of torture and abuse, Bagram has a far worse history than Guantanamo. There are at least two detainees who died there after being tortured by US interrogators. One of them was strung up by interrogators by his wrists, and then beaten until his legs were "pulpified," according to the military's own autopsy report. Our clients who have been released more recently report exposure to extreme temperatures, sleep deprivation, prolonged isolation and other torture that is still ongoing. Bagram has always been a torture chamber -- there is no way that the United States will ever be able to rid it of that reputation unless it discontinues the practice of holding detainees incommunicado and in secret.

SPIEGEL: Major General Douglas M. Stone, who was charged to investigate Bagram, has been quoting as saying that many of the detainees in Bagram are innocent.

Foster: I think General Stone's report confirms what we have learned over the years from our clients -- most of the people at Bagram are being imprisoned unjustly. General Stone reviewed the military's own records and determined that, of the 600 current detainees at Bagram, there are 400 innocent people that the US government should not be detaining. It's obvious that the procedures that the military is using to determine who to imprison and who to release are completely flawed. What is completely baffling is why these 400 innocent individuals have not been released. It doesn't make sense to hold innocent people in our custody -- it's completely counterproductive and undermines the entire war effort.

SPIEGEL: You worked on the Obama campaign last year. Do you regret that now?

Foster: I voted and campaigned for Obama, like all the other folks here in the US who wanted to see this country recover from the illegal and unjust policies of the Bush administration. When I heard Obama's announcement to close Guantanamo, I breathed a sigh of relief that perhaps this extremely ugly chapter of American history was finally being put to an end. Unfortunately, since then, the Obama administration has completely failed in delivering the change that was promised. For a time, we believed that perhaps it would just take the new administration time to shift its policies. The reality is that the Bush and the Obama administrations have the same position on the rights of detainees in Bagram.