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Human Rights Violations by Intelligence Agencies: A Detailed Case Study on Human Rights Violations Post 9/11 Attacks

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ABSTRACT

This research paper delves into the significant and contentious issue of human rights violations by intelligence agencies, with a particular focus on the post-9/11 era. The study conducts a comprehensive examination of specific cases, honing in on the Central Intelligence Agency's (CIA) Enhanced Interrogation Program as a detailed case study. The paper meticulously analyzes the legal and ethical implications of the program, shedding light on the infringement of individual rights through practices such as torture, arbitrary detention, and the erosion of privacy. It explores the tension between national security imperatives and the protection of fundamental human rights, questioning the efficacy of such intelligence practices in safeguarding societies while emphasizing the necessity for accountability, transparency, and adherence to international legal standards. Through this detailed case study, the research aims to contribute to a nuanced understanding of the challenges posed by intelligence activities in the context of post-9/11 counterterrorism efforts.

Keywords: Intelligence Agencies, Human Rights Violations, 9/11 attack, CIA, Enhanced Interrogation Program, Secrecy, Accountability

I. INTRODUCTION

Human rights are a collection of principles that regulate how states and non-state entities treat individuals and groups on the foundation of moral guidelines according to what society views as essential to a respectable existence. These standards are included in legal systems at the national and international levels, which outline the processes and mechanisms for individuals who claim to have been victims of human rights violations and to make the responsible parties accountable.²

With grave human rights violations and the loss of millions of lives in the Second World War, human rights became increasingly important on an international level. Members of the United

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² Stephan P. Marks "Human Rights: A Brief Introduction" Harvard University, 2016

Nations (UN), horrified by the Second World War's destruction of life, on December 10, 1948 adopted the Universal Declaration of Human Rights (UDHR) as a sign of hope for improved human rights protection, promotion, and enforcement.

Since then, despite having numerous treaties and conventions there still has reportedly been no decline in violations of human rights in the 50 years after the Universal Declaration of Human Rights was ratified. Examples of basic rights being violated around the world include poverty, extrajudicial murders, arbitrary arrests and killings, censorship, discrimination, political imprisonment, torture, and slavery, as well as disappearances and genocide.³

II. HUMAN RIGHTS VIOLATIONS BY INTELLIGENCE AGENCIES

The protection of human rights is cornerstone of a democratic society, where individuals are entitled to certain fundamental freedoms and protections. However, in the pursuit of national security, intelligence agencies often wield significant power, leading to the potential for human rights violations.

Human rights violations are grave crimes. The details are hard to discover and almost impossible to verify. Because State Intelligence Organizations only carry out such operations in accordance with directives from their government, they frequently overlook and put up with the breach and violation of international humanitarian law.⁴

Following are the instances where significant human rights violations have been seen by State Intelligence Agencies.

- **Surveillance and Privacy:**

One of the most prevalent human rights violations by intelligence agencies is the unwarranted surveillance of citizens. In the digital age, technological advancements have given these agencies unprecedented access to personal information, often without proper oversight. Mass surveillance programs, as exposed by whistleblowers like Edward Snowden, reveal the extent to which governments infringe upon the right to privacy. The indiscriminate collection of data not only erodes individual freedoms but also creates an environment of self-censorship, stifling free expression.

³ Dr. Sadhna Chaturvedi "Chapter 1- Introduction- Concept of Human Rights", Nas College, 20-04-2010 [https://www.nascollege.org/e%20cotent%2010-4-20/dr%20sadhna%20chaturvedi/08_chapter%201.pdf last visited on 3rd December, 2023]

⁴ Carlos M. Salinas, Amnesty International "Human Rights and Intelligence Reform", Institute for Policy Studies [https://ips-dc.org/human_rights_and_intelligence_reform/. Last Visited on 4th December, 2023]

- **Torture and Extraordinary Rendition:**

In the name of counterterrorism, intelligence agencies have been implicated in the use of torture and extraordinary rendition. The torture of detainees, as seen in cases like Abu Ghraib and Guantanamo Bay, violates international human rights conventions and undermines the very values democracies claim to uphold. Furthermore, the practice of extraordinary rendition, involving the transfer of individuals to countries where torture is common, demonstrates a blatant disregard for the principles of justice and the prohibition of cruel, inhuman, or degrading treatment.

- **Targeted Killings and Lack of Due Process:**

State intelligence agencies have been implicated in targeted killings of individuals deemed threats to national security. While there may be instances where the use of force is necessary, the lack of due process and judicial oversight raises serious human rights concerns. Extrajudicial executions and the absence of transparent legal proceedings undermine the right to life and the principles of justice, leaving individuals vulnerable to arbitrary decisions by those in power.

- **Political Interference and Suppression:**

Intelligence agencies have also been known to engage in political interference, manipulating democratic processes for the benefit of those in power. Covert operations, election meddling, and the suppression of dissenting voices threaten the very essence of democracy. Citizens must be free to participate in political processes without fear of reprisal, ensuring that their rights to expression and association are respected.

The CIA and a few other intelligence agencies have a long history of supporting (or otherwise interacting with) those who violate the laws of war. Other instances include violations committed by Venezuelan military counterintelligence organization in 2014 wherein most of these violations qualified as crimes against humanity. The state report contained records of 122 victims out of which 77 suffered from sexual assault, torture, or other cruel, inhuman, or degrading treatment. Torture was practiced both at its covert detention centers spread around the nation and at its Boleíta headquarters in Caracas.⁵ Other examples include successful Assassination Operations by MOSSAD, Israel, enforced disappearances and arbitrary detentions by ISI, Pakistan and Enhanced Interrogation Techniques on detainees by CIA,

⁵ Press Releases by OHCHR “Venezuela: new UN report details responsibilities for crimes against humanity to repress dissent and highlights situation in remotes mining areas” 20 September 2022 [https://www.ohchr.org/en/press-releases/2022/09/venezuela-new-un-report-details-responsibilities-crimes-against-humanity Last Visited on 4th December, 2023]

United States.

III. HUMAN RIGHTS VIOLATIONS POST 9/11- A CASE STUDY

(A) BACKGROUND

The 9/11 attacks, which occurred on September 11, 2001, were a series of coordinated terrorist acts carried out by the extremist group al-Qaeda on American soil. The attackers hijacked four commercial airplanes, crashing two into the Twin Towers of the World Trade Center in New York City, one into the Pentagon near Washington, D.C., and the fourth into a field in Pennsylvania.⁶

The attacks resulted in the deaths of nearly 3,000 people and caused significant economic and psychological trauma. In response to the unprecedented act of terrorism, the United States, under President George W. Bush, initiated what became known as the "War on Terror."

The War on Terror was a multifaceted global campaign aimed at combating terrorism, particularly targeting al-Qaeda and its affiliates. The U.S. led a coalition of nations in military interventions in Afghanistan to dismantle the Taliban regime, which had harbored and supported al-Qaeda. The invasion, known as Operation Enduring Freedom, sought to eliminate terrorist safe havens and bring those responsible for the 9/11 attacks to justice.

The conflict in Afghanistan marked the beginning of a broader, ongoing effort to counter global terrorism. The United States, along with its allies, engaged in military operations, intelligence efforts, and diplomatic initiatives to address the threat posed by terrorist organizations worldwide.

The War on Terror has had profound and far-reaching consequences, influencing international relations, shaping domestic security policies, and prompting debates about civil liberties, human rights, and the efficacy of military interventions.

(B) CIA'S 'ENHANCED INTERROGATION PROGRAM'

The CIA's Enhanced Interrogation Program, initiated in the aftermath of the 9/11 attacks, was a controversial set of interrogation techniques employed by the Central Intelligence Agency (CIA) against suspected terrorists. The program was implemented as part of the broader War on Terror under the administration of President George W. Bush who signed an executive order on July 20, 2007, outlining how the CIA's programme of detention and interrogation would be bound by Common Article 3 of the Geneva Conventions. However, the order failed to specify

⁶ Manooher Mofidi and Amy E. Eckert "Unlawful Combatants or Prisoner of War: The Law and Politics of Labels", Cornell International Law Journal, Volume 36 Issue 1, Spring 2003, Article 3

the methods that the CIA is permitted to use.

The program operated secretly, with limited oversight and disclosure to Congress. The existence of the Enhanced Interrogation Program became widely known through a series of revelations, including investigations by journalists and the release of classified documents.

Key features of the Enhanced Interrogation Program included harsh and coercive interrogation techniques, some of which were criticized as constituting torture. Following findings are deduced from the various Senate Reports, Articles and classified documents.

- i. Failure to sufficiently assess the effectiveness of the Enhanced Interrogation Program: The CIA's use of enhanced interrogation methods failed to produce effective intelligence. According to CIA records seven of the 39 CIA detainees known to have been subjected to the agency's enhanced interrogation techniques, , did not provide any intelligence while in CIA custody. Several CIA detainees faked information both during and after being subjected to the agency's enhanced interrogation tactics, which produced inaccurate and faulty intelligence many a times.⁷
- ii. False Justifications to prove the Efficacy of the tactics used: The CIA used false assertions about the efficacy of its enhanced interrogation techniques as justification for their use. The CIA inaccurately claimed and cited prominent examples and gave well-known instances of alleged counterterrorism gains claiming that they were attributable to the application of its enhanced interrogation methods.⁸
- iii. Keeping the Higher Authorities in Shade: The CIA misled lawmakers and other parties about how harsh and brutal the interrogations of CIA detainees were.⁹
- iv. Use of Interrogation methods that had not been approved by the Department of Justice or CIA Headquarters: Day after day, for weeks at a time, the CIA repeatedly used its enhanced interrogation tactics on Abu Zubaydah, the agency's first detainee, and on countless others. Interrogation methods including "wallings"—slapping captives against a wall were commonly combined with sleep deprivation and nudity.

Physically harmful, the waterboarding method caused vomiting and convulsions.

Detainees were kept awake for up to 180 hours during sleep deprivation, typically

⁷ Report of the Senate Select Committee on Intelligence Committee Study of the CIA's Detention and Interrogation Program, 113th Congress 2d Session, S. Report 113-288 [https://www.intelligence.senate.gov/sites/default/files/publications/CRPT-113srpt288.pdf Last Visited on 5th December, 2023]

⁸ *Ibid*

⁹ *Supra* 6

standing or in stress positions where they suffered from unsettling hallucinations. CIA medical staff frequently warned against giving "precedence" over their medical care, but the agency nonetheless frequently employed its enhanced interrogation tactics. Beyond that, CIA captives were subject to ice water baths, "rectal rehydration," or rectal feeding, and continual threats to their life as well as assault on other family members.¹⁰

- v. Detention Camps cited Abroad: The CIA meticulously investigated the potential of setting up covert detention centers across multiple nations to evade the intervention of the International Committee of the Red Cross, which would have been necessary if he was being held at a U.S. military base.¹¹
- vi. Poor Management: The CIA purposefully hired untrained junior agents with anger issues to routinely question detainees without any authorization or supervision. These interrogation methods, which involved harsh physical techniques, were never included in the CIA's official "enhanced" interrogation program".¹²
- vii. Arbitrary and Illegal Detention: The CIA imprisoned those people who did not even fit the legal criteria for detention and failed to keep a thorough and accurate tally of the number of people it detained, leading to numerous illegal and arbitrary detentions.¹³

(C) GUANTANAMO BAY DETENTION CAMP: 'THE FOREVER PRISON'

The Guantanamo Bay Detention Camp gained notoriety as a key facility for holding individuals suspected of terrorism in the aftermath of the 9/11 attacks. Established in 2002, it became a symbol of the U.S. government's response to the threat of global terrorism. The detainees at Guantanamo, initially labeled as enemy combatants, faced legal controversies as they were denied traditional legal protections and habeas corpus rights. The treatment of these detainees, including reports of harsh interrogation methods and instances of abuse, raised international concerns about potential human rights violations.¹⁴ Over the years, legal challenges and Supreme Court decisions affirmed detainees' rights to habeas corpus review. Efforts were made to review and release some detainees, but the camp remained operational for years, prompting ongoing debates about the balance between national security imperatives and respect for

¹⁰ *Supra* 6

¹¹ *Supra* 6

¹² *Supra* 6

¹³ *Supra* 6

¹⁴ Letta Taylor and Elisa Eptein, "Legacy of the "Dark Side" The Costs of Unlawful US Detentions and Interrogations Post-9/11" January 9, 2022[<https://www.hrw.org/news/2022/01/09/legacy-dark-side> Last Visited on 5th December, 2023]

individual rights. The Guantanamo Bay Detention Camp continues to be a symbol of the complexities and challenges inherent in the post-9/11 response to terrorism.

At Guantánamo, the US government sought to hold detainees in a place where neither US nor international law applied. The facilities at Guantánamo have become emblematic of the gross human rights abuses and torture perpetrated by the US government in the name of counterterrorism. This has also denied victims of the 9/11 attacks their right to justice.¹⁵

IV. LEGAL STATUS OF CAPTURED DETAINEES POST 9/11 ATTACK

The legal status of detainees held by the CIA in the post-9/11 era was a highly contentious and complex issue. Many detainees were held in secret prisons, commonly referred to as "black sites," where they were subjected to the CIA's Enhanced Interrogation Program.

Are terrorists just "domestic criminals," with their arrest, prosecution, and sentencing determined by international treaties and laws governing extradition? Or do terrorists have the status of "international criminals," which would grant them more jurisdictional rights? Furthermore, under what situations, if any, could terrorists be classified as prisoners of war? There are two categories of terrorist acts: those supported by governments and those supported by private organisations. Terrorists and other private individuals are not entitled to the protections afforded by Geneva Convention III. A detainee under the Bush Administration was considered as an "unqualified enemy combatants" under Geneva Convention III, Article 4.¹⁶

There is still debate over the President's decision to deny the detainees prisoner-of-war (POW) status. Some claim that the decision is based on an incorrect interpretation of the Geneva Convention for the Treatment of Prisoners of War (GPW), which states that all combatants captured on the battlefield have the right to be treated as POWs until an independent tribunal has decided otherwise. This is especially true with regard to Taliban members.

In conclusion, the ruling in *Hamdan v. Rumsfeld*¹⁷ by the Supreme Court established that those apprehended in Afghanistan during the course of the "Global War on Terrorism" are entitled to a basic level of safeguards as stipulated by Common Article 3 of the 1949 Geneva Conventions.¹⁸

¹⁵ Amnesty International UK, "Guantanamo Bay: over 20 years of injustice" [<https://www.amnesty.org.uk/guantanamo-bay-human-rights> Last visited on 5th December, 2023]

¹⁶ *Supra* 5

¹⁷ 548 U.S. 557

¹⁸ "Treatment of "Battlefield Detainees" in the War on Terrorism", (April 11, 2002 – January 23, 2007) [<https://www.everycrsreport.com/reports/RL31367.html> Last Visited on 5th December, 2023]

V. STATE SECRECY: DOES IT IMPEDE ACCOUNTABILITY?

It is believed that judicial and legislative oversight of a government and its representatives is essential to maintaining democracy and the rule of law. This is particularly true for so-called special services, the operations of which are typically kept in secrecy. Even though state security and intelligence agencies are unquestionably necessary, they cannot turn into a "state within the state" and be absolved of responsibility for their deeds. The fundamental basis of democratic institutions are threatened by this deadly culture of impunity brought about by a lack of accountability. Governments are using "state secrecy" or "national security" more frequently in the fight against terrorism to shield their activities from judicial or parliamentary scrutiny.¹⁹

The concept of state secrecy is invoked in many nations, most notably the United States, to prevent victims from filing lawsuits for damages or to protect executive branch officials from punishment for crimes like detention and torture.

While it is necessary for states to provide effective protection for secrets that have an impact on national security, information about the involvement of state agents in major human rights violations—like murder, enforced disappearances, torture, or kidnapping—does not warrant such protection. Under the pretext of "state secrecy," such information shouldn't be exempt from judicial or parliamentary review.²⁰

VI. CONCLUSION AND SUGGESTIONS

While the role of intelligence agencies in safeguarding national security is undeniable, the prevalence of human rights violations by these entities is a cause for great concern. Striking a balance between security imperatives and the protection of individual liberties requires robust oversight, accountability mechanisms, and adherence to international human rights standards. Governments must be held accountable for the actions of their intelligence agencies, ensuring that the pursuit of security does not come at the expense of fundamental human rights. Only through a commitment to transparency, the rule of law, and respect for human dignity can societies truly protect the rights and freedoms that define their democratic character.

Following are few suggestions that I believe should be adopted to curb and prevent Human Right Violations by the State and its Intelligence Agencies:

¹⁹ Parliamentary Assembly debate, 6 October 2011 (34th Sitting), Resolution 1838 (2011) Final version, "Abuse of state secrecy and national security: obstacles to parliamentary and judicial scrutiny of human rights violations" [<https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=18033&lang=en> Last Visited on 5th December, 2023]

²⁰ *Ibid*

- A thorough set of regulations and limitations on all cross-border intelligence operations is required, and those restrictions must be enforced by making them illegal.
- The closing of the US prison at Guantánamo
- Improved transparency as well as accountability for violations committed in the name of countering terrorism, including illegal airstrikes and raids that cause civilian casualties both inside and outside of declared combat zones.
- Declassification of Secret Information if its in Public Interest
- At the very least, covert actions must abide by international human rights and humanitarian standards that forbid gross abuses of human rights.
