

President Obama's Legacy on Human Rights

“When the United States stands up for human rights, by example at home and by effort abroad, we align ourselves with men and women around the world who struggle for the right to speak their minds, to choose their leaders, and to be treated with dignity and respect. We also strengthen our security and well being, because the abuse of human rights can feed many of the global dangers that we confront—from armed conflict and humanitarian crises, to corruption and the spread of ideologies that promote hatred and violence.”

– Barack Obama, Statement on Human Rights Day 2008

THROUGHOUT HIS EIGHT YEARS in the White House, President Obama has repeatedly spoken about the importance of American leadership in advancing global human rights. During his time in office, key advances were made including the ban on the use of torture and greater protection of the human rights of lesbian, gay, bisexual and transgender (LGBT) people both at home and abroad, while in other areas the president's rhetoric was not backed up by firm action.

As President Obama prepares to deliver his final address to the nation as President, here's a look at his human rights record:

National Security Policy

The Obama Administration clearly denounced the policies of **torture and detainee abuse** and reinforced their absolute prohibition under domestic and international law. On his second day in office President Obama signed an executive order banning all so-called enhanced interrogation techniques, which constitute torture or cruel, inhuman, or degrading treatment. The president strengthened this ban by signing into law the McCain-Feinstein amendment to the National Defense Authorization Act for the fiscal year 2016. This measure codifies his executive order, requiring all U.S. departments and agencies to conduct interrogations in

accordance with the Army Field Manual, which explicitly prohibits torture and other cruel treatment, including waterboarding.

President Obama also established a High Value Interrogation Group, to ensure effective interrogation of detainees using lawful interrogation methods and ordered the Senate's report on CIA torture to be preserved, protecting it from destruction and allowing it to be declassified in the future. However, pursuant to President Obama's preservation order, declassification cannot take place of at least 12 years and there are reports that not all the executive branch agencies that have received the report have read it.

The Obama Administration has also failed to reform Appendix M of the Army Field Manual, which includes several interrogation techniques that are inconsistent with the requirement of humane treatment under the laws of war and human rights law. President Obama also failed to hold accountable those who authorized, designed, and perpetrated the CIA's torture program. His decision to “look forward as opposed to looking backwards” arguably left the door open to inflammatory pro-torture campaign rhetoric and concerns that the subsequent administration may seek to reintroduce torture and other cruel treatment as part of detainee interrogation policy.

On the issue of **the detention center at Guantanamo Bay Cuba**, President Obama has made significant progress towards closing the prison but it is unlikely he will shutter the facility before leaving office. When the president came to office there were 242 detainees being held at the Guantanamo Bay detention facility, and today there are 55 detainees remaining. The administration conducted a thorough review of all Guantanamo detainees in 2009, clearing 126 for transfer and in 2011 President Obama implemented the periodic review board (PRB) process to re-assess uncleared detainees.

However the PRB did not conduct its first hearing until November 2013 and only nine hearings were held in its first year, despite 105 detainees being eligible for review. The administration significantly expedited the pace of PRB hearings as well as the pace of transfers in its last two years. There are currently 19 detainees approved for transfer from Guantanamo, 26 being held in indefinite detention, and 10 in the Guantanamo military commissions system (three serving sentences and seven facing war crimes charges). The military commissions have resulted in eight convictions, three of which have been overturned because the crimes they committed were not internationally recognized war crimes and should not have been tried in military commissions. Since President Obama came to power, no new military commission cases have gone to trial. Seven detainees have been in pretrial hearings for many years, including the accused plotters of the 9/11 attacks and the alleged mastermind of the USS *Cole* bombing.

Despite the effectiveness of U.S. federal courts for trying terrorism cases, with over five hundred individuals being convicted of terrorism related offenses since 9/11—including Osama bin Laden's son-in-law—the Obama Administration has failed to transfer the Guantanamo military commission cases to federal court. Experts predict the 9/11 trial at Guantanamo may not begin until 2025.

The Obama Administration has taken some steps to improve transparency and accountability with respect to its **targeted killing program**. Last year the administration issued an executive order formalizing procedures for limiting civilian casualties when the United States uses force and released a redacted version of the Presidential Policy Guidance (PPG) on the procedures for approving capture and lethal force operations outside areas of active hostilities and a summary of its assessment of civilians and combatants killed in such lethal operations.

While these disclosures are important, greater transparency is needed to enable Americans to understand the nature and scope of the targeted killing program, how targeting decisions are made, the legal justifications for those decisions, and whether the program is making the country safer in the long run. Even with the release of the PPG, the administration did not disclose how it interprets key legal and policy constraints in the guidance, with many terms remaining undefined, including “areas of active hostilities,” “continuing, imminent threat,” and when “capture is not feasible.” Despite releasing estimates of civilians and combatants killed in strikes outside areas of active hostilities from January 20, 2009 to December 31, 2015, these estimates are aggregate figures and are insufficient for assessing the significant discrepancies between the administration's numbers and those from independent organizations.

The Obama Administration has also failed to fully transfer authority for the U.S. drone program from the CIA to the Department of Defense, despite expressing its intent to do so. With an institutionalized culture of compliance with the law of armed conflict, a record of studying lessons learned, and a clear chain of command, the military should be carrying out strikes as part of a single, integrated approach to targeting, with the CIA providing supplemental intelligence and analysis.

President Obama rightfully disavowed the “global war on terror” moniker and sought to **define the armed conflicts** the United States is a party to. Last year the administration released a report on the legal and policy framework for U.S. military force and related matters, which for the first time articulated the boundaries of current armed conflicts in a single document. The report also demonstrated the administration’s commitment to the rule of law and to upholding human rights norms, for example, noting that situations of armed conflict do not automatically suspend or displace obligations under international human rights law. However President Obama has also broadly interpreted both his international and domestic authority to wage war and to use law of war standards far from battlefields. He has relied on the 2001 authorization for the use of military force (AUMF), passed to authorize force against al Qaeda and the Taliban, to target members of other groups in various countries, under the theory that they are “associated forces” of al Qaeda. President Obama has also used the more than 15-year-old law to justify targeting ISIS, a group that had nothing to do with 9/11 and that is currently fighting al Qaeda. The administration also asserts that as a legal matter, it may lethally target any member of a group the United States is in armed conflict with as a matter of first resort, even outside of war zones. These overbroad interpretations have led many to argue that the Obama Administration has continued the policies of the global war on terror, despite rejecting the label.

Human Rights of LGBT People

President Obama’s record on the human rights of LGBT people is unparalleled. While some of this may be attributable to the times we are living in—where issues of LGBT equality have rapidly progressed from a side note to a major topic of discussion at all levels of society—there is also no doubt that his leadership has been a remarkable catalyst for moving this larger conversation forward.

Broadly speaking, the LGBT community accomplished three of its four major goals during the Obama Administration: **hate crimes legislation, open military service, and marriage equality**. The final goal that remains unachieved is established employment non-discrimination. Alongside this issue-specific list there has been broad and growing acceptance of transgender people and a myriad of smaller policy changes that will positively impact their lives.

In U.S. foreign policy, the president has worked to **integrate LGBT issues into all aspects of American diplomacy** has been determined and largely comprehensive (with a few blind spots like Saudi Arabia). This effort included the creation of a special envoy in the State Department tasked with promoting the human rights of LGBT people around the world.

Refugee Protection

While the Obama Administration was slow to launch a meaningful effort to **resettle Syrian refugees**, once it committed to a resettlement initiative, it took steps to address some of the bottlenecks and staffing gaps impeding resettlement and met its goal for resettling at least 10,000 Syrian refugees in fiscal year 2016.

On the U.S. southern border however, the Obama Administration fell far short in responding to the **refugee and migration crisis stemming from the Northern Triangle region of Central America**, initiating harsh detention policies and holding families seeking asylum in immigration detention facilities in violation of U.S. human rights and refugee protection treaty commitments.

The Obama Administration also failed to take adequate steps to prevent the growth of **backlogs in the immigration courts and asylum office**, instead exacerbating these delays by failing to hire immigration judges in a timely manner, failing to request sufficient funding from Congress to increase immigration court staffing and expanding its use of

expedited removal which sparked the growth of asylum office backlogs as asylum officers had to be re-deployed to this this summary processing.

Foreign Policy

The development of **countering violent extremism** (CVE) approaches was a welcomed achievement of the Obama Administration. CVE efforts signal a broader approach to combating terrorism and recognize human rights violations as drivers of terrorism. In theory, CVE promotes respect for diversity, tolerance, and religious freedom and bolsters a belief in democracy and human rights as a bulwark against hate and extremist narratives. Protection of human rights and promotion of tolerance is an essential component of long-term security.

Yet, there has been a gap between the rhetoric of CVE and its practice. The implementation of CVE programs has not done enough to promote human rights, religious freedom, tolerance, and democracy and the United States has been hesitant to push back against the repressive, rights-restricting policies of its partners.

The Obama Administration also failed to fully leverage its partnerships with civil society and the private sector. At times, the U.S. government may not be the best messenger to counter extremist narratives. The U.S. government could have been more effective at engaging in partnerships with tech companies and civil society to prevent the spread of misinformation, intolerance, and extremism online.

The Obama Administration's **policies in the Middle East** have contributed to regional insecurity and instability by supporting resurgent authoritarianism in Egypt and Bahrain; allying with authoritarian powers like Saudi Arabia and the United Arab Emirates; enabling Saudi aggression in Yemen; and facilitating the Assad regime's merciless assault on its own people in Syria with support from Russia and Iran. These policies have been profoundly harmful to U.S

interests and to regional and international peace and security.

Leading Russian activist Yuri Dzhibladze, who participated in our 2010 meeting with President Obama, had this to say about the Obama human rights legacy:

"More promise than real change... Many of us, me included, took Obama's strong words for real action but in reality human rights have been relegated by the Obama administration and many parts of the State Department to a secondary role in relation to economic and political interests. This does [not] diminish the dedication and hard work of many US diplomats and folks in the DRL I have encountered in these eight years - but this has not been enough. Alas, the Obama administration has not lived up to many promises it made, be it in domestic or foreign affairs—partially owing to sabotaging by the Republicans but in many ways because of its own inconsistency and lack of resolve. I feel really sad when I say this as our hopes were very high—and now our fears are very strong because of the new era we are entering."

Countering Human Trafficking

On combating human trafficking, the Obama Administration made some important progress, signing two anti-trafficking statutes into law. These laws now prevent U.S. government contractors from using forced labor, and ban the import of any goods made with slave labor. As one of the largest consumers of goods in the world, closing the U.S. markets to products made using child and forced labor is a critical step in reducing the estimated 20.9 million victims of trafficking annually, but the real impact will be realized by robust enforcement going forward. ■

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