

Empty Promises?

Obama's Hesitant Embrace of Human Rights

By Kenneth Roth, Executive Director of Human Rights Watch

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After eight years of the Bush administration, with its torture of suspected terrorists and disregard for international law, Barack Obama's victory in the November 2008 U.S. presidential election seemed a breath of fresh air to human rights activists. Obama took office at a moment when the world desperately needed renewed U.S. leadership. In his inaugural address, Obama immediately signaled that, unlike Bush, he would reject as false "the choice between our safety and our ideals."

Obama faces the challenge of restoring the United States' credibility at a time when repressive governments -- emboldened by the increasing influence of authoritarian powers such as China and Russia -- seek to undermine the enforcement of international human rights standards. As he put it when accepting the Nobel Peace Prize, the United States cannot "insist that others follow the rules of the road if we refuse to follow them ourselves." His Nobel speech in Oslo also affirmed the U.S. government's respect for the Geneva Conventions. "Even as we confront a vicious adversary that abides by no rules," Obama argued, "I believe the United States of America must remain a standard bearer in the conduct of war. That is what makes us different from those whom we fight. That is a source of our strength."

When it comes to promoting human rights at home and abroad, there has undoubtedly been a marked improvement in presidential rhetoric. However, the translation of those words into deeds remains incomplete.

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Kenneth Roth

AN INCOMPLETE REVERSAL

Obama moved rapidly to reverse the most abusive aspects of the Bush administration's approach to fighting terrorism. Two days after taking office, he insisted that all U.S. interrogators, including those from the CIA, abide by the stringent standards adopted by the U.S. military in the wake of the Abu Ghraib debacle. He also ordered the shuttering of all secret CIA detention facilities, where many suspects "disappeared" and were tortured between 2001 and 2008. Finally, he promised to close the detention center at Guantánamo Bay, Cuba, within a year.

But it is not enough for the government to stop using torture; perpetrators must also be punished. The Obama administration has so far refused to investigate and prosecute those who ordered or committed torture -- a necessary step to prevent future administrations from committing the crime. While in office, as he did during the campaign, Obama has repeatedly spoken of wanting to "look forward, not back." And although Attorney General Eric Holder has launched a "preliminary review" of interrogators who exceeded orders, he has until now refrained from prosecuting those who ordered torture or wrote the legal memos justifying it. This lets senior officials -- arguably those who are most culpable -- off the hook.

Meanwhile, Obama's one-year deadline for closing Guantánamo has slipped because of congressional opposition and the complexity of deciding how to handle the cases of more than 200 detainees. The real issue, however, is less when Guantánamo will close than how. Human Rights Watch and other nongovernmental organizations (NGOs) have urged the administration to prosecute detainees in regular federal courts, repatriate them, or resettle them in safe countries willing to accept them. However, the White House has insisted on maintaining two other options: prosecuting suspects before military commissions or continuing to hold them indefinitely without charge or trial.

The Obama administration's military commissions would avoid the most problematic aspect of the Bush administration's commissions -- the power to introduce at trial statements obtained through coercion and abuse. But the Obama commissions, as approved by Congress, continue to suffer from a lack of independence (their judges are military officers, who must report to superiors in the chain of command), controversy about the offenses they cover (some are not clearly war crimes or were not clearly criminal at the time they were committed), and untested rules of procedure (unlike regular courts or even courts-martial, which have well-established procedures, the rules for military commissions are being constructed largely from scratch). These due process shortcomings are likely to keep the public and the press focused on the fairness of the trials accorded suspects, rather than the gravity of their alleged crimes.

Obama has also tried to distinguish himself from Bush in his approach to detaining suspects without charge or trial. The new administration has abandoned Bush's claim of inherent executive authority and relied instead on an interpretation of Congress' 2001 authorization to use military force against al Qaeda, the Taliban, and associated groups. But both approaches still permit the detention of suspects not captured on a traditional battlefield, such as in Afghanistan. That is a controversial approach because it permits U.S. soldiers or law enforcement officials to indefinitely detain suspected terrorists anywhere in the world without regard to the due process standards of the United States or any other country.

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STREET CRED

The Bush administration had difficulty encouraging foreign leaders to respect human rights because of its perceived arrogance, hypocrisy, and unilateralism. Since taking office, Obama has worked hard to restore U.S. credibility.

Obama's speeches in Accra, Cairo, Moscow, Oslo, and Shanghai have been a key vehicle for promoting a renewed U.S. human rights agenda. Rather than merely preaching abstract principles, Obama has drawn examples from the United States' checkered history and his own life story to encourage other nations to respect human rights. The humility in this approach avoids Bush's hectoring tone and places the United States squarely within the community of nations as a country that, like others, struggles to respect human rights and benefits when it does so.

In Accra, in a rebuke to President Bill Clinton's embrace of authoritarian African leaders in the 1990s, Obama observed, "Africa doesn't need strongmen, it needs strong institutions," such as "strong parliaments; honest police forces; independent judges; an independent press; a vibrant private sector; a civil society." However, Obama has not put sustained pressure on such U.S. allies as Paul Kagame of Rwanda or Meles Zenawi of Ethiopia to reform their increasingly authoritarian rule. Forceful U.S. condemnations have been largely limited to such pariahs as Robert Mugabe of Zimbabwe, Omar al-Bashir of Sudan, and the military junta in Guinea.

In Cairo, Obama rejected Bush's attempt to justify the invasion of Iraq as an exercise in democracy promotion, declaring that "no system of government can or should be imposed by one nation on any other." But he insisted nonetheless that the United States remains committed "to governments that reflect the will of the people." He stressed the importance of principled conduct even when it works against short-term U.S. interests, suggesting that, unlike Bush, he would accept an electoral victory by Egypt's Islamist opposition group, the Muslim Brotherhood.

Frustrating as that comment might have been to the government of Egyptian President Hosni Mubarak, Obama has generally shown too much deference to his hosts. He has not publicly criticized U.S. allies in the Middle East that violate democratic principles, nor is there any evidence that he has privately encouraged these authoritarian governments to move in a more democratic direction. For example, Washington has promised Cairo that there will be no human rights conditions placed on U.S. economic assistance to Egypt and has acquiesced in the Egyptian government's demand that all funds from the U.S. Agency for International Development earmarked for NGOs go only to those groups that comply with the Mubarak government's onerous restrictions. Obama's desire to maintain close relations with Mubarak, especially in the hope that he might assist in resolving the Israeli-Palestinian conflict, seems to have taken precedence over the human rights principles Obama articulated in his Cairo speech.

In Moscow, Obama met with civil-society representatives and praised the vital role they play in Russian society. He explained that criticisms and tough questions from U.S. civil-society organizations help him make better decisions and strengthen the United States -- a bold statement in a country where NGOs monitoring human rights or promoting government accountability are routinely harassed. Yet his administration has not applied sustained pressure on the Russian government to stop trying to silence leaders of NGOs. Nor has Obama warned Russian leaders that

serious abuses, such as the brazen murders of activists and journalists fighting human rights abuses in the North Caucasus, could damage the bilateral relationship.

Similarly, in China, Obama followed in the footsteps of successive U.S. presidents by downplaying the importance of human rights in favor of promoting trade, economic ties, and diplomatic cooperation. Before a handpicked audience of "future Chinese leaders" in Shanghai, he spoke of the United States' journey up from slavery and the struggles for women's and workers' rights, making clear that the United States, too, has a far-from-perfect human rights record. He affirmed the United States' bedrock belief "that all men and women are created equal, and possess certain fundamental rights." However, in a question-and-answer session, he seemed to suggest that China's draconian "great firewall" on the Internet was a reflection of different "traditions," rather than demanding that it be torn down. That remark led to a storm of criticism from Chinese bloggers, and Obama left the country appearing to be in thrall to Chinese economic power and barely interested in risking anything to protect the rights of the 1.3 billion Chinese still living under a dictatorship.

In a speech at Georgetown University a few weeks later, Secretary of State Hillary Clinton justified this approach as "principled pragmatism," and administration officials have spoken privately of building up political capital to press China on human rights in the future. But there is no such pressure today. From Clinton's February 2009 statement that human rights "can't interfere" with other U.S. interests in China to Obama's refusal to meet with the Dalai Lama in October, Washington has consistently failed to confront China's authoritarian rulers on questions of religious and political freedom.

MULTILATERALISM LITE

During the 2008 election campaign, Obama promised to replace Bush's notorious unilateralism with a greater commitment to cooperation, alliance building, and engagement with adversaries. One early symbol of this new approach was the decision to reverse Bush's policy and authorize U.S. participation in the UN Human Rights Council -- an important step toward trying to salvage that troubled institution. The 47-member council has been dominated by authoritarian governments since its inception in June 2007. Its members have incessantly criticized Israel and have generally seemed more concerned with protecting abusive leaders than condemning them for human rights violations.

But the positive step of joining the council was significantly offset in September, when Washington distanced itself from a council-sponsored report -- written by the respected South African jurist Richard Goldstone -- that accused Israel (as well as Hamas) of war crimes during its December 2008-January 2009 invasion of the Gaza Strip and called for the perpetrators to be brought to justice. Washington's strong criticism of the report called into question Obama's commitment to the impartial application of human rights principles to friends and foes alike. The move was particularly unfortunate because the report broke new ground for the council by criticizing an Israeli adversary, Hamas. Obama had it right in Oslo, when he said that "only a just peace based on the inherent rights and dignity of every individual can truly be lasting." Unfortunately, he has not yet applied that insight to Israel.

The Obama administration has also taken a more positive approach to international law than the wary and often hostile Bush administration did. Accelerating a trend that began in the late Bush years, Obama has actively supported the work of the International Criminal Court, especially in Darfur and the Democratic Republic of the Congo, as well as, more recently, in Kenya. For the first time, U.S. officials have participated as observers in deliberations about the tribunal's future.

The United States is also embracing certain UN human rights treaties, after an eight-year hiatus. It signed the new Convention on the Rights of People with Disabilities. In October, when Israeli Prime Minister Benjamin Netanyahu suggested that the laws of war should be amended to make it easier for states to fight irregular armed groups, Susan Rice, the U.S. ambassador to the United Nations, pushed back by reaffirming Washington's commitment to the Geneva Conventions -- a position that Obama himself reiterated in Oslo.

Yet there have been limits to Obama's commitment to international law. His administration has sent mixed signals about a 1997 treaty banning antipersonnel land mines, first announcing that it would not sign the treaty and then saying that a policy review was still ongoing, even though the United States has not used, produced, or exported these weapons in the 12 years since the treaty was established. The administration has so far failed to seize this easy opportunity to embrace an important multilateral treaty. Similarly, the administration has not yet joined many of its NATO allies in endorsing the 2008 Convention on Cluster Munitions, which bans the use of these indiscriminate weapons, even though the U.S. military has not used them since 2003 and recognizes the danger they pose to civilians. And although the Obama administration has declared that it plans to ratify the UN Convention on the Elimination of All Forms of Discrimination Against Women, it has not pressed for Senate ratification of it, nor has it pressed for Senate ratification of the UN Convention on the Rights of the Child. The United States has the dubious distinction of being the only country other than Somalia not to have ratified the children's rights treaty and finds itself in the unenviable company of only Iran, Nauru, Somalia, Sudan, and Tonga when it comes to the treaty on women's rights.

DESTRUCTIVE ENGAGEMENT

Obama has rightfully rejected Bush's policy of dealing with repressive governments mainly by refusing to talk to them. His new approach has been most visible in Myanmar (also called Burma) and Sudan, where U.S. envoys have increased communication with senior officials without abandoning pressure on their governments to curb repression. In the case of Sudan, despite some mixed signals, the administration has managed to engage the government on the importance of curbing violence in Darfur and southern Sudan without speaking directly with President Bashir, who has been indicted as a war criminal.

In Central Asia, however, this emphasis on engaging authoritarian regimes has yielded disappointing results. In the highly repressive nations of Turkmenistan and Uzbekistan, where the dominant U.S. concern is sustaining military supply lines into neighboring Afghanistan, the Obama administration has refrained from publicly articulating specific human rights concerns. It has limited itself instead to general statements about U.S. support for democracy and the rule of law while stressing U.S.

respect for the sovereign prerogatives of these countries' autocratic leaders. The administration has also largely squandered the opportunity to push for reform in Kazakhstan, despite the fact that its repressive government was particularly susceptible to pressure in the months before it assumed the rotating chairmanship of the Organization for Security and Cooperation in Europe.

In Afghanistan, Obama administration officials recognized from the outset that abusive and corrupt warlords linked to President Hamid Karzai's government were fueling the Taliban's popularity throughout the country. After Karzai's tainted electoral victory in August, the administration pushed his government to distance itself from some officials with blood on their hands or ill-gotten gains in their pockets. However, it is not yet clear whether Washington is prepared to sever its own ties with some of these tainted officials, such as the president's younger brother, Ahmed Wali Karzai, a powerful figure in Kandahar who is reportedly on the CIA payroll despite being connected to drug traffickers. Nor is there any indication that U.S. Special Forces will abandon the abusive militia they have hired in provinces such as Herat and Uruzgan.

Across the border in Pakistan, the Obama administration has been providing conditional military aid to the elected government -- a more principled approach than its predecessor's, which unconditionally supported the autocratic rule of General Pervez Musharraf. Washington also accepted the reinstatement of ousted Supreme Court Chief Justice Iftikhar Chaudhry, even though his constitutional rulings and his revival of corruption charges could imperil President Asif Ali Zardari, a U.S. partner. Still, Obama has not taken up the cases of thousands of people who disappeared during Musharraf's rule. Nor has he pushed for human rights abusers from the Pakistani military, including Musharraf himself, to be held accountable.

Closer to home, in Latin America, Obama has cooperated with regional allies far more than his predecessor did. Unlike Bush, who tacitly accepted the 2002 coup attempt against Venezuela's Hugo Chávez, Obama was quick to join regional allies in condemning the ouster of Honduran President Manuel Zelaya last June and calling for his reinstatement -- even if the administration did not adequately pressure the de facto government to accept Zelaya's return.

The White House has rightly deferred consideration of a much-sought-after free-trade agreement with Colombia, whose government has failed to dismantle the highly abusive paramilitary forces responsible for the murder of hundreds of trade unionists and others. Genuinely dismantling those paramilitary forces, and holding their leaders and accomplices accountable, should be a prerequisite to any free-trade agreement. At the same time, however, Obama has continued the misguided Bush-era policy of certifying the Colombian military's compliance with the human rights standards necessary to receive U.S. military aid -- despite an ongoing atmosphere of impunity for the soldiers and officers responsible for widespread extrajudicial executions.

Obama has similarly fallen short in Mexico, where the U.S. government promised to contribute \$1.35 billion over several years to the government for equipment and training to combat drug trafficking. Roughly 15 percent of these funds are dependent on Mexico's compliance with certain human rights requirements, including bringing military abuses under the jurisdiction of civilian courts. Mexico has utterly failed to

meet that requirement, but the State Department has nevertheless allowed a portion of these funds to be delivered. All of this calls into question Obama's commitment to curbing military abuses and ending official impunity south of the border.

WALKING THE WALK

From a human rights perspective, there is no doubt that the Obama White House has done better than the Bush administration. As one would expect from so eloquent a president, Obama has gotten the rhetoric largely right. The challenge remains to translate poetic speeches into prosaic policy -- and live up to the principles he has so impressively articulated. Making that shift will not be easy, but the consistent application of human rights principles is essential if Washington is to redeem its reputation and succeed in promoting the global values that Obama rightly believes are the key to prosperity and stability throughout the world.