

46th ASSEMBLY, DECEMBER 2007

HUMAN RIGHTS AND THE GUANTANAMO BAY DETENTION CAMP

Justice, Justice shall you pursue. (Deut. 16:20) If I am not for myself, who will be for me? If I am only for myself, what am I? If not now, when?

Hillel.

Issue

The use of torture and other forms of extreme physical or mental cruelty, the suspension of *Habeas Corpus*, the continued imprisonment of hundreds of men at Guantanamo without charges and without trials, and the use of military commissions violate fundamental principles of human rights.

Background

For almost sixty years, Women of Reform Judaism has been a strong proponent of human rights in the United States, Canada, and throughout the world. In 1948, at its 17th biennial assembly, WRJ noted that “human rights and fundamental freedoms are basic to the maintenance of peace...vigilance is necessary ‘to secure these rights’ both within the nation and in international society.” This position was reiterated in a 1949 resolution on human rights by the executive board. In 1954 it stated, “The whole field of human rights is of deepest concern to the National Federation of Temple Sisterhood [now Women of Reform Judaism].” Further, in 1979 a WRJ 32nd biennial assembly resolution on human rights urged all governments to “Protest and work toward the cessation of harassment and disappearance of individuals, imprisonment without explanation, the denial of the right to a fair trial . . . in whatever country such violations of human rights occur.” Finally, in 2002, the WRJ executive committee issued a statement of concern about the system of military tribunals then being created.

Since 2002, it has become evident that the United States is using torture and other extremely cruel and coercive methods of interrogation to extract information from people it is holding around the world who are suspected of having a relationship with terrorists. We are mindful that all people are created in the image of God, *betzelem Elohim*, even our enemies. Torture and extreme physical and mental cruelty are outlawed under international law through the Torture Convention and the Geneva Conventions, which have been ratified by the United States, as well as under the law of the United States. Even Israel, which has faced far more terrorism than the United States has outlawed use of these means to obtain information.

In its last session, the United States Congress approved the Military Commissions Act which deprives the right of Habeas Corpus to prisoners at Guantanamo and any other non-citizen held by agents of the United States government who is declared an enemy combatant. The principle of Habeas Corpus provides the right to judicial review of incarceration and is thus protection from unlawful and indefinite imprisonment. This ancient writ, available since the Magna Carta, is embedded in Article I Section 9 of the United States Constitution, which states, “The privilege of

Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public safety may require it.” This provision does not permit the suspension of *Habeas Corpus* for only one group of people. Moreover, the United States is not facing an invasion or a rebellion at this time. Congress’s act is dangerous in that any noncitizen could be arrested and held without trial or any court review for life solely on a declaration from the executive branch that he or she is an enemy combatant. Moreover, enemy combatant is not clearly defined in the legislation. Without access to a fair trial and to the courts, a person could languish in prison for life without justification.

Hundreds of people are now being held at Guantanamo and have been for more than five years without any court review in conditions that amount to torture or extreme mental and or physical cruelty with no charges against them and with no hope of ever being released. The removal of *Habeas Corpus* prevents any independent assessment of the fact of their imprisonment and of the conditions in which they are being held. The limited-review by the District of Columbia Circuit Court of Appeals permitted by the statute provides no useful remedy. It also does not permit this court to prevent cruel and inhuman conditions from being inflicted on prisoners.

A system of military tribunals has been created outside the normal processes of the law in the United States and in violation of the Geneva Conventions. This system allows the use of secret evidence, the admission of statements gained through torture or extreme cruelty, limits the right to counsel and to confront one’s accusers, allows charges to be brought for crimes that were not crimes when the act was committed (*ex post facto* laws barred by the Bill of Rights), and violates other standards of decency required to obtain a fair trial. American criminal law and the Uniform Code of Military Justice are more than adequate to provide a fair and safe trial of people actually accused of crimes, including those being held at Guantanamo. Their use would also comport with the requirements of the Geneva Conventions and the United States Constitution.

The use of torture and other forms of extreme physical or mental cruelty, the suspension of *Habeas Corpus*, the continued imprisonment of hundreds of men at Guantanamo without charge and without trial, and the use of military commissions have all served to weaken the efforts of the United States to urge other governments to respect human rights. They have also put our soldiers and the civilians working with them at greater risk of receiving similar treatment.

Resolution

In consideration of all of the above Women of Reform Judaism urges its United States sisterhoods to call upon Congress and the president to move with all deliberate speed to:

1. Reinstate the right of *Habeas Corpus*,
2. Close the Guantanamo Bay Detention Camp and move prisoners to facilities in the United States,
3. Observe the Geneva Conventions and the Convention on Torture in the interrogations of prisoners, and

4. Use criminal courts of the United States or, where appropriate, proper military courts convened under the Uniform Code of Military Justice for the prosecution of those suspected of crimes with the same rights of any other defendants in either system.

In addition Women of Reform Judaism urges its Canadian sisterhoods to call upon their government to encourage the United States to make these changes.