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USA: Torture in black and white, but impunity continues

Department of Justice releases interrogation memorandums

17 April 2009

AI Index: AMR 51/055/2009

International law is clear. Torture and other cruel, inhuman or degrading treatment can never be justified. They are never legal. Even in a state of emergency which threatens the life of the nation, there can be no exemption from this obligation.

International law is also clear about the state's duties when this prohibition is violated. States must ensure that independent and impartial investigations are carried out into allegations of torture or other ill-treatment and that anyone found responsible is brought to justice. Victims of violations must be provided with remedies that are not only available in law, but are accessible and effective in practice.

On 16 April 2009, the US Department of Justice released, largely un-redacted, four memorandums written in the Department's Office of Legal Counsel (OLC) in 2002 and 2005. The documents, which the previous US administration had classified as Top Secret, give an insight into how that administration lost its legal and moral compass in turning to torture and other ill-treatment in the name of counter-terrorism.

The release of the memorandums by the new administration is welcome. Amnesty International has long called for all such documents to be published. However, accompanying statements issued by President Barack Obama and Attorney General Eric Holder, effectively conferring impunity for acts of torture, crimes under international law, are incompatible with the USA's international legal obligation to bring perpetrators to justice.

All four OLC memorandums were directed to the Central Intelligence Agency (CIA) and provided legal approval for various interrogation techniques that the CIA had used or wished to use in the USA's secret detention program operated on foreign soil following the attacks of 11 September 2001.

The techniques variously approved by the OLC, for use singly or in combination, included:

- abdominal and facial slapping.
- confinement in small dark spaces, such as a box. If the space was large enough to stand in, confinement could last for up to 18 hours. For a space in which the detainee could not stand, confinement was restricted to two hours. This technique could be combined with exploitation of phobias, such as putting an insect in the box with a detainee who had a fear of insects.
- forced nudity. One of the 2005 memorandums notes that "this technique is used to cause psychological discomfort, particularly if a detainee, for cultural or other reasons, is especially modest... [I]nterrogators can exploit the detainee's fear of being seen naked... For the purposes of our analysis, we will assume that detainees subjected to nudity as an interrogation technique are aware that they may be seen naked by a female".
- stress positions such as forcing the detainee to kneel while leaning back at a 45 degree angle.
- sleep deprivation for up to 11 days. One of the 2005 memorandums notes that "the primary method of sleep deprivation involves the use of shackling to keep the detainee awake. In this method, the detainee is standing and is handcuffed, and the handcuffs are attached to a length of chain to the ceiling.... The detainee's feet are shackled to a bolt in the floor.... Should the

detainee begin to fall asleep, he will lose his balance and awaken, either because of the sensation of losing his balance or because of the restraining tension of the shackles". Another method of sleep deprivation, the memorandum noted, is to shackle the detainee to a small stool: "The stool supports the detainee's weight, but is too small to permit the subject to balance himself sufficiently to be able to go to sleep".

- 'dietary manipulation', or the denial of solid food and its substitution by liquid nutrients.
- dousing with cold water; one of the 2005 memorandums notes that "cold water is poured on the detainee either from a container or from a hose without a nozzle. This technique is intended to weaken the detainee's resistance and persuade him to cooperate with interrogators".
- 'water-boarding', commonly known as simulated drowning. The 2002 memorandum found that the technique "constitutes a threat of imminent death", but approved it on the grounds that it would not cause "prolonged mental harm" and therefore did not amount to torture under US law.

The cold detail of these memorandums written by Justice Department lawyers to provide "legal cover" for CIA operatives interrogating detainees held in secret detention should be read alongside the allegations of how these techniques were put into practice, as reported by the International Committee of the Red Cross (ICRC). The ICRC's confidential February 2007 report to the US government based on the organization's interviews in Guantánamo in late 2006 with 14 detainees who had been held for up to four and a half years incommunicado in solitary confinement in the secret program before being transferred to the US Naval Base in Cuba has recently been leaked into the public domain. The ICRC concluded that:

"The allegations of ill-treatment of the detainees indicate that, in many cases, the ill-treatment to which they were subjected while held in the CIA program, either singly or in combination, constituted torture. In addition, many other elements of the ill-treatment, either singly or in combination, constituted cruel, inhuman or degrading treatment."

The ICRC also concluded that the 14 detainees had been subjected by the USA to enforced disappearance, like torture a crime under international law.

However, both President Obama and Attorney General Holder said that anyone who had relied "in good faith" upon the legal advice in the OLC opinions would not be prosecuted. The Director of the CIA, Leon Panetta, said that he would "strongly oppose any effort to investigate or punish those who followed the guidance of the Department of Justice". The Director of National Intelligence, Dennis Blair, said that "it is important to remember the context of these past events...The CIA was struggling to obtain critical information". The interrogation methods, he said, "read on a bright, sunny, safe day in April 2009, appear graphic and disturbing... We will absolutely defend those who relied on these memos and those guidelines". Again, under international law there can be no justification for torture and other ill-treatment.

In a letter to CIA officers, President Obama said: "In releasing these memos, the men and women of the CIA have assurances from both myself, and from Attorney General Holder, that we will protect all who acted reasonably and relied upon legal advice from the Department of Justice that their actions were lawful. The Attorney General has assured me that these individuals will not be prosecuted and that the Government will stand by them". But there is no such thing as torture perpetrated in "good faith" or "reasonable" circumstances.

President Obama's letter to the CIA continued: "This is a time for reflection, not retribution... Nothing will be gained by spending our time and energy laying blame for the past". There is justice and respect for human rights to be gained, however, and this is what drives demands for an end to impunity. Impunity breeds abuse. It is time for truth and accountability. It is time for the USA to meet its international obligations. This should include establishing an independent commission of inquiry into all aspects of US detention and interrogation practices since 11 September 2001.