

# **amnesty international**

## **UNITED STATES OF AMERICA**

### **Open letter to US Senators as they prepare to vote on the nomination of Alberto Gonzales for Attorney General**

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Dear Senator,

The nomination of Alberto Gonzales to the post of Attorney General has once again thrown the spotlight on the USA's position on torture and other cruel, inhuman or degrading treatment. As such it has provided an opportunity for much-needed scrutiny and for the United States government to show that it will meet its international obligations on this fundamental human rights issue. As detailed below, Amnesty International urges the US Senate to refrain from voting at this time on the nomination of Alberto Gonzales pending his full and unambiguous responses to outstanding questions.

Having seen the Abu Ghraib photographs, read the words of previously secret administration documents, and heard the persistent allegations of abuse against detainees in US custody in Afghanistan, Guantánamo, Iraq, and secret locations elsewhere, the world is watching to see how the USA will act to ensure redress, accountability, and non-recurrence. Such action is crucial, as is the commitment to it of the individual nominated to become the country's chief law enforcement officer. Respect for human rights and the rule of law must be put at the heart of a government's legitimate pursuit of law enforcement and public security – as both the National Security Strategy and the Strategy for Combating Terrorism state. Failure to do so can only deepen the damage already done.

Amnesty International welcomes the emphasis that members of the Senate Judiciary Committee gave to the issue of torture and ill-treatment during their questioning of Alberto Gonzales. The organization applauds the openness of this process, including the publication of the nominee's written responses. The global struggle against torture and other human rights abuses would surely benefit if this example were to be more widely followed and government officials around the world were subjected to similar scrutiny.

While the Judiciary Committee's vote to pass the nomination of Alberto Gonzales to the full Senate was split along partisan lines, Amnesty International maintains that fundamental human rights must transcend party politics. The organization views the closeness of the vote as an indicator of the depth of concern that remains in Congress on the question of torture and ill-treatment and the nominee's record and position on it.

Amnesty International believes that such concern is justified by ambiguities and evasions in Alberto Gonzales's responses to Senators. His unwillingness, for example, even to describe as torture interrogation techniques as severe as "water-boarding" is disturbing – water submersion to the point of perceived drowning clearly constitutes torture. Troubling also was the degree to which he relied upon presidential assertions rather than on his own

position on the unequivocal international prohibition against torture and other cruel, inhuman or degrading treatment. An Attorney General must be prepared to assert this unconditional prohibition, even if this were to conflict with domestic law interpretations or other views within government. There is no room for equivocation. Torture and ill-treatment are prohibited at all times and in all places; in wartime and in peacetime; against one's own nationals, and against the nationals of another country; on one's own sovereign territory or on the sovereign territory of another nation. Any exception to this rule, let alone one formulated by a country as powerful as the United States of America, would lead to an unravelling of a global compact that recognizes torture and ill-treatment to always be wrong. Such an unravelling would be dangerous to us all. As well as opening themselves to criminal liability, its instigators would be left morally discredited.

On 26 June 2003, President George W. Bush proclaimed to the world that "the United States is committed to the worldwide elimination of torture and we are leading this fight by example". At the time he made this proclamation, the now notorious 1 August 2002 Justice Department memorandum to Alberto Gonzales had been the US administration's position, albeit in secret, for almost a year and would be so for another year. This memorandum advised on how US interrogators could escape criminal liability for torture, on how to narrow the definition of torture, on how officials could get away with using cruel, inhuman or degrading treatment that purportedly fell short of torture, and on how the President could override international or national prohibitions on torture. Alberto Gonzales's relationship to the production of this August 2002 memorandum remains a matter of concern despite its recent repudiation by the Department of Justice and because of his evasive responses to Senators' questions relating to it.

In his responses, Alberto Gonzales relies upon the fact that the leaked copy of a memorandum dated 25 January 2002, in which he advised the President that rejection of Geneva Convention protections for detainees would make future prosecution of US agents for war crimes less likely, was a draft and did not represent the advice he eventually gave to the President. Amnesty International believes that as part of his full disclosure, he should release the full content of the final version of that memorandum. Indeed, the organization believes that Alberto Gonzales should disclose all documentary evidence relating to his actions as White House Counsel on the question of detention and interrogation policy and practice.

Amnesty International urges the US Senate to refrain from voting on the nomination of Alberto Gonzales as Attorney General pending such disclosure and clarification. Specifically, we urge that Alberto Gonzales be asked to provide clear and unequivocal responses to the following questions:

- Does he accept the absolute prohibition under customary and conventional international law not only of torture, but also of *all* forms of cruel, inhuman or degrading treatment and punishment, binding on all countries, in all circumstances?
- Does he accept the absolute prohibition of torture and other cruel, inhuman or degrading treatment, regardless of the nationality of the detainee, the location in which they are held, or which agency is involved in the detention?
- Does he recognize the absolute prohibition of *refoulement* of persons to places where they risk torture or other cruel, inhuman or degrading treatment or punishment?
- Does he recognize that the International Covenant on Civil and Political Rights (ICCPR), to which the USA is a state party, prohibits torture and other cruel, inhuman or degrading treatment under all circumstances, including "in times of public emergency which threatens the life of the nation"?

- Does he recognize that this ICCPR prohibition is complemented by that treaty's positive obligation on states to treat all detainees "with humanity and with respect for the inherent dignity of the human person", and that this requirement has been recognized by the Human Rights Committee as a "fundamental and universally applicable rule" and a "norm of general international law not subject to derogation"?
- Does he agree that common Article 3 to the Geneva Conventions – prohibiting "violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture... Outrages upon personal dignity, in particular humiliating and degrading treatment" – is "generally accepted throughout the world as customary international law", as noted by the 9/11 National Commission on Terrorist Attacks Upon the United States, and constitutes "a minimum yardstick", as the International Court of Justice has determined?
- Does he acknowledge that the "fundamental guarantees" of Article 75 of Additional Protocol 1 to the Geneva Conventions, prohibiting torture, indecent assault, and humiliating or degrading treatment of any kind, as previously declared by the US reflect customary international law?
- Does he now recognize that no leader of any country, including a President or Commander-in-Chief of the Armed Forces, can override the prohibition on torture and other cruel, inhuman or degrading treatment?
- Does he agree that any one who authorizes or condones torture or other cruel, inhuman or degrading treatment is accountable, and will he support investigation of anyone suspected of such violations and, where there is sufficient admissible evidence, their prosecution, regardless of their position in government?

In a 200-page report issued last October, *USA: Human dignity denied: Torture and accountability in the 'war on terror'*, Amnesty International submitted that there is a connection between the administration's secret discussions and documents and abuses that have occurred on the ground. How high criminal responsibility for such abuses goes remains to be revealed, and should, we believe, be the subject of a full commission of inquiry. Alberto Gonzales's written response to Senator Leahy indicates that he has not ruled out such a commission. Amnesty International urges Senators to take this proposal forward and to encourage Alberto Gonzales's support for it now and in the future.

Amnesty International also urges the Senate to work with the administration to ensure withdrawal of all reservations and other limiting conditions attached to the USA's ratification of the ICCPR and the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as called for by the Human Rights Committee and the Committee against Torture.

Meanwhile, without unambiguous answers to the above questions, Amnesty International does not believe that Senators can take a fully informed and responsible decision on whether Alberto Gonzales should be appointed to the post of Attorney General.

There is little doubt that, under the current circumstances, the confirmation of Alberto Gonzales as Attorney General would send a message out to the world that the US government is unapologetic and unconcerned about a growing perception that the USA is a state that is prepared to use torture and other cruel, inhuman or degrading treatment. Tolerance for torture and ill-treatment should have no place at the helm of the US justice system.

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