



USA: TORTURE, ENFORCED DISAPPEARANCE AND IMPUNITY

The US government has been responsible for a serious assault on the absolute prohibition of torture and other ill-treatment since the attacks in the USA of 11 September 2001.

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CONDONES TORTURE**

In clear breach of international law, the US administration has authorized interrogation methods and detention conditions which have in themselves or in combination violated the international prohibition of torture and other cruel, inhuman or degrading treatment. At the same time, the USA has subjected detainees to secret detention, inter-state transfers without due process, enforced disappearance, and indefinite detention without charge or trial. Sanctioned at the highest levels, such human rights violations have been labelled “lawful” by the President and members of his administration.

The USA has now effectively admitted to being a state that condones torture – one that has used torture and reserves the right to do so again. Its response to revelations of torture and other ill-treatment has been at best inadequate. At worst the government is facilitating impunity for crimes under international law.

AUTHORIZING TORTURE AND ENFORCED DISAPPEARANCE

In February 2008, US Vice President Dick Cheney said, “[w]e do not torture – it’s against our laws and against our values.” President George W. Bush had used the same words a year and a half earlier when he admitted publicly for the first time that the Central Intelligence Agency (CIA) had been operating a programme of secret detention in various places around the world.

However, the administration recently confirmed that among other “enhanced” interrogation techniques it has refused to reveal, “waterboarding” – a form of torture which simulates drowning – had been used against several detainees held in the CIA programme. These detainees included Khalid Sheikh Mohammed, accused by the US government of masterminding the 11 September 2001 attacks. Waterboarding

has been explicitly recognized as torture: most recently by the UN High Commissioner for Human Rights and, among others, the UK Foreign Secretary. Indeed, US war crimes trials after World War II convicted Japanese soldiers of “torture” for having employed such a technique.

The USA’s admission that it has resorted to this form of water torture – and its refusal to rule out its future use – is yet another illustration that its notion of what constitutes “lawful” detainee treatment is clearly at odds with international law. Asked in a media interview in April 2008 about the approval of CIA interrogation methods – reportedly discussed at various meetings of high-level administration officials – President Bush said, “we had legal opinions that enabled us to do it. And, no, I didn’t have any problem at all trying to find out what Khalid Sheikh Mohammed knew.”

Further, in reauthorizing the CIA detention programme in an executive order issued on 20 July 2007, President Bush was authorizing prolonged incommunicado detention in secret locations, a practice that violates international law and itself amounts to torture or other ill-treatment. The practice has involved governments around the world to varying degrees. People who have been held in the CIA programme have effectively been placed outside the protection of the law. Their fate and whereabouts have been concealed with the result that they have become victims of enforced disappearance. The numbers, identities, fate and whereabouts of numerous detainees held in secret detention by the CIA, both now and in the past, remain unknown.

The CIA programme is just one part of this assault on the rule of law. The detention facility at Guantánamo Bay is another. Chosen as a location where detentions could be conducted away from independent scrutiny by ordinary courts, detainees held in the naval base have also been subjected to violations of the absolute prohibition of torture and other ill-treatment, again with high-level approval and authorization.

Some of the detainees subjected to officially sanctioned torture and other ill-treatment and enforced disappearance are now facing the possibility of execution after unfair trial by specially created military commissions. In February 2008 the government announced that it was seeking the death penalty for six Guantánamo detainees, including Khalid Sheikh Mohammed and Mohamed al-Qahtani, for their alleged involvement in the attacks of 11 September 2001 and against a seventh for crimes relating to the 1998 bombing of the US Embassy in Tanzania. The military commissions can admit information coerced from detainees. The administration has refused to rule out the use in evidence of information extracted under waterboarding or other techniques that violate international law. In May 2008, the Pentagon announced that the convening authority for military commissions had dismissed without prejudice the charges against Mohamed al-Qahtani, returning him to indefinite detention. He could be recharged at a later date.

Guantánamo detainee **Mohamed al Qahtani** was the subject of a “special interrogation plan” approved in late 2002 by then US Secretary of Defense Donald Rumsfeld. According to military investigations and leaked documents, Mohamed al-Qahtani was interrogated for 18 to 20 hours per day for 48 out of 54 consecutive days. He was subjected to intimidation by the use of a dog, to sexual and other humiliation, stripping, hooding, loud music, white noise, sleep deprivation and to extremes of heat and cold through manipulation of air conditioning. The sort of techniques used against Mohamed al-Qahtani and others were also used against detainees held in Afghanistan and Iraq.

NARROWING THE DEFINITION OF TORTURE

The US Congress passed legislation in December 2005 purporting to ban cruel, inhuman and degrading treatment of detainees held in US custody abroad. It was already prohibited from engaging in such conduct under international law. However, the US administration continues to rely on gaps in, and its own distorted interpretations of, its domestic law to seek to evade its international obligations.

The administration has asserted broad authority for the President to override congressional legislation and international law when acting as Commander in Chief

of the armed forces. In practice this has meant that, in the context of what the USA defines as a global “war” against terrorism, it has engaged in conduct that clearly violates the international prohibition of torture and other ill-treatment and other protections owed to all detainees.

In addition, the administration has attempted to narrow the definition of torture. In an apparent attempt to avoid criminal liability under US laws, it has suggested that the harsh interrogation techniques it asserts the right to use constitute, at most, cruel, inhuman and degrading treatment. However, even this position ignores the fact that under international law all torture and other cruel, inhuman or degrading treatment are prohibited at all times and in all places, no matter who the victim is.

IMPUNITY

Every act of torture is an international crime. Under international law, no exceptional circumstances whatsoever, and no superior orders, may be invoked as a justification of torture.

Not only have US officials resorted to such justifications – emphasizing among other things the need for “actionable” intelligence to counter the threat of terrorism – they have also exploited secrecy, blocked accountability and responded inadequately to allegations of violations. For instance, in February 2008 the Director of the CIA, General Michael Hayden, claimed that the CIA’s use of waterboarding in 2002 and 2003 “was not only lawful, it reflected the circumstances of the time.” In March 2008, President Bush vetoed legislation aimed at explicitly prohibiting use by the CIA of waterboarding and other “enhanced” interrogation techniques – the same prohibition to which the US military is already subject – and the administration has refused to rule out future use of such methods should “circumstances” require.

The failure to properly investigate complaints of torture and other ill-treatment in Guantánamo Bay, Iraq, Afghanistan and elsewhere has been noted with concern by the UN Human Rights Committee and the UN Committee against Torture. The limited investigation and prosecution of cases of torture and other cruel, inhuman or degrading treatment or punishment in Afghanistan and Iraq, including some resulting in the deaths of detainees, has resulted in lenient sentences, mostly for low-ranking soldiers. Furthermore, despite the mounting evidence of possible criminal responsibility in the authorization of enforced disappearances, torture and other ill-treatment, no effective and independent investigation, with the required powers and scope to investigate anyone potentially responsible regardless of his or her rank or status, has been established.

In the case of Mohamed al-Qahtani, subjected in late 2002 and early 2003 to treatment during interrogation that violated the international prohibition on torture and other ill-treatment, a military investigation concluded that his treatment “did not rise to the level of prohibited inhumane treatment”. The Pentagon described Mohamed al-Qahtani’s interrogation as having been guided by the “strict” standard of “humane treatment for all detainees”. Secretary Rumsfeld’s authorization of techniques used in this interrogation, far from being properly investigated, was relied upon by the investigators in reaching their flawed conclusions. Similarly, no one has been brought to account for the international crimes of torture and enforced disappearance, or the many other human rights violations, committed as part of the CIA’s programme of rendition and secret detention.

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Instead, senior officials are hiding behind a façade of legality built by administration lawyers. The US Attorney General, Michael Mukasey, has refused to open a criminal investigation into the use of waterboarding, on the grounds that the technique and the programme had been authorized as lawful by the Justice Department. Most of what has taken place in the CIA programme remains classified and uninvestigated. The refusal even to open an effective, independent and impartial criminal investigation into these admitted acts violates the USA's international legal obligations.

The obligation to ensure prompt, effective, independent and impartial investigations obviously applies not only to admitted violations but to complaints of violations, complaints the US authorities have tried to suppress on grounds of national security. Allegations of torture made by detainees held in the CIA programme and since transferred to Guantánamo have been censored from the public record of administrative proceedings held at the base.

Even if a torturer believes they can escape justice at home, they should not presume such sanctuary exists for them abroad. Under international law, any state may exercise universal jurisdiction over anyone suspected of torture who enters its territory, no matter when or where the torture occurred. Indeed, the UN Convention against Torture requires each of its 145 State Parties to establish and exercise criminal jurisdiction over anyone alleged to have committed torture, attempted torture, complicity or participation in torture, found on their territory, who is not extradited to another state for prosecution. Where warranted, the Convention requires that the alleged perpetrator be taken into custody or otherwise prevented from absconding, pending any prosecution or extradition proceedings.

ACT NOW

Call on your government to:

- condemn publicly and unequivocally the US programme of interrogations involving torture or other cruel, inhuman or degrading treatment, secret detention and enforced disappearance,
- ensure prompt, effective, independent and impartial investigations of any allegations that the state's agents or territory have been involved in this programme,
- exercise criminal jurisdiction over persons alleged to have committed torture or enforced disappearance who enter the territory or are otherwise subject to the state's jurisdiction.

Write to the US Attorney General Michael Mukasey calling on him to:

- initiate a full investigation into the CIA detention programme and all other instances of enforced disappearance, and waterboarding or any other form of torture and other cruel, inhuman or degrading treatment under international law.
- ensure that anyone against whom there is evidence of involvement in such international crimes and human rights violations is brought to justice.

COUNTER TERROR
WITH JUSTICE

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