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"We don't torture people in America"

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In Australia on 18 October, asked in a television interview whether two Australian nationals held in US custody in Guantánamo Bay were being tortured, President George Bush offered a categorical denial: "No, of course. We don't torture people in America. And people who make that claim just don't know anything about our country".¹

On the same day, it was revealed that eight US soldiers had been charged with acts of brutality against prisoners of war in Iraq.² One of the prisoners had died.

President Bush's denial echoed an earlier statement by a military spokesman at the US Air Base in Bagram, Afghanistan. There have been persistent allegations of ill-treatment and torture of detainees held in Bagram, subjected to so-called "stress and duress" techniques including blindfolding, prolonged forced kneeling, sleep deprivation, and cruel use of shackles.³ Asked about one such case, the spokesman, Colonel Rodney Davis, replied: "I don't know the specific case you're referencing but I think you would have to agree, America, and for the most part the other countries involved in this coalition, don't have a reputation for treating individuals in an inhumane way. It's not part of our culture."⁴

Such responses smack of complacency. After all, the USA is a country where some 3,600 people, including scores of juvenile offenders and mentally ill inmates, await execution, and tens of thousands of others are held in "super-maximum" security facilities in conditions – solitary confinement and reduced sensory stimulation – which the United Nations Committee against Torture, has referred to as "excessively harsh".⁵

Two Afghan men died in US custody in Bagram Air Base in December 2002. The autopsy reports gave the cause of death as "homicide" and "blunt force injuries" were found in both cases. Colonel Davis said that, while this was true, the case was an example of the USA's culture of openness: "We tend to share the good, the bad and the ugly, and we've fessed up, if you will, to a few mishaps we've had here since we've engaged in the war on terrorism."

Deaths in custody as "mishaps"? Is that how the military will explain to the relatives of Dilawar and Mullah Habibullah how the two men died? Ten months on, the US authorities have not announced the results of the investigation into the deaths.

Judge Richard Goldstone, a justice on the Constitutional Court of South Africa, and former chief prosecutor of the International Criminal Tribunals for the former Yugoslavia and

¹ Interview of the President by Laurence Oakes, Channel 9 TV, 18 October 2003.

² AFP, 18 October 2003. See also *Iraq: Memorandum on concerns relating to law and order*. <http://web.amnesty.org/library/Index/ENGMDE141572003>

³ See *USA: The threat of a bad example: Undermining international standards as "war on terror" detentions continue*. August 2003, <http://web.amnesty.org/library/Index/ENGAMR511142003>

⁴ *Inside Guantánamo*. BBC TV, Panorama, 5 October 2003.

⁵ A/55/44, paras. 175-180, May 2000.

Rwanda, has said that in his opinion the “stress and duress” techniques alleged at Bagram would constitute torture under the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.⁶ The Committee against Torture, established to oversee implementation of the treaty, has expressly held that restraining detainees in very painful positions, hooding, threats, and prolonged sleep deprivation are methods of interrogation which violate the prohibition on torture and cruel, inhuman or degrading treatment.

Article 16 of the Convention Against Torture requires governments to “undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture”. When it ratified the Convention in 1994, the USA lodged a reservation agreeing to be bound by the prohibition on cruel, inhuman or degrading treatment only to the extent that this term matched the constitutional ban on “cruel and unusual” punishments. In effect, the reservation can severely limit US obligations under the Convention. In 2000, the Committee against Torture said that the US reservation should be withdrawn. The USA has not done so.

The detainees held in Guantánamo, Bagram and elsewhere are at the mercy of the executive. None has access to any US court to be able to challenge the circumstances of their arrest, the conditions of their detention or their treatment during interrogation. The US Government continues to challenge every attempt to obtain justice in the courts for the detainees.

The one US national who has had access to the courts and alleged ill-treatment by US agents during his capture in and transfer from Afghanistan later withdrew those allegations as part of a plea arrangement made with the government. John Walker Lindh alleged that he was subjected to cruel use of shackling, blindfolding, and that he was bound naked to a stretcher in a shipping container without light or heat for two or three days. He alleged that he was threatened with death and torture. Just before a court was to hold a hearing on the claims, the two sides agreed to a plea bargain by which the defendant “puts to rest his claims of mistreatment by the United States military, and all claims of mistreatment are withdrawn.”

Amnesty International considers that the totality of the conditions in which most of the hundreds of detainees in Guantánamo Bay in Cuba have been held can amount to cruel, inhuman and degrading treatment. In recent months, the International Committee of the Red Cross (ICRC), the only non-governmental organization to have had access to the detainees, has taken the unusual step of making public its concerns on this issue (its findings are generally confidential).

In July, ICRC spokespersons described how the absence of “any clear legal framework” had had “a very adverse impact on their physical and mental well-being”. In August, the ICRC posted on its website that it had “observed a worrying deterioration in the psychological health of a large number of [the detainees]”. On 9 October, an ICRC spokesperson told the *New York Times* that “the open-endedness of the situation and its impact on the mental health of the population has become a major problem.” To date, there have been over 30 suicide attempts among the detainees. Perhaps they are not being subjected to direct physical torture. However, there can be little doubt about the cruelty of Guantánamo’s indefinite and isolating regime.

Judge Richard Goldstone has said: “I do indeed believe that a future American President will have to apologise for Guantánamo.” Amnesty International urges President Bush to act now to end the legal limbo of the detainees, allowing them access to justice and the rule of law.

INTERNATIONAL SECRETARIAT, 1 EASTON STREET, LONDON WC1X 0DW, UNITED KINGDOM

⁶ Id.