

CRUEL. INHUMAN. DEGRADES US ALL.

Questions and Answers

1. What is torture? What is ill-treatment? What's the difference?

Torture is defined in the UN Convention against Torture as the intentional infliction of severe physical or mental pain or suffering for purposes such as obtaining information or a confession, or punishing, intimidating or coercing someone. The term is applied to those forms of ill-treatment that are particularly severe and are deliberate.

It is not possible to make a sharp distinction between those forms of treatment which amount to torture and those which amount to other cruel, inhuman or degrading treatment (ill-treatment). But from a practical standpoint, any such distinction is not significant because all forms of torture and ill-treatment are absolutely prohibited under international law – and it is not simply a matter of law. The universal legal prohibition is based on a universal philosophical consensus that torture and ill-treatment are repugnant, abhorrent, and immoral.

2. But aren't there extreme circumstances where those international legal prohibitions no longer apply?

The prohibition of torture and ill-treatment is a rule of customary international law. It applies to all states irrespective of whether they are party to international treaties setting out the prohibition. It applies in all circumstances, with no exceptions of any kind, and cannot be suspended in any circumstances, even in times of war or public emergency. The prohibition is explicit throughout international human rights law. Torture and ill-treatment are also prohibited in all circumstances under international humanitarian law, the body of law applicable in armed conflict. This means that states have recognised that even in time of war such practices must be prohibited even if some military advantage may be gained. The Rome Statute of the International Criminal Court, which covers the most serious crimes under international law, prohibits torture and ill-treatment as a crime against humanity and as a war crime.

Because torture and ill-treatment are wrong, always and everywhere, all governments should publicly denounce them in the strongest possible terms, and take practical steps never to allow torture and ill-treatment to happen at home or abroad. They should also bring to justice, in a fair trial, those who commit or participate in acts of torture or ill-treatment, just as they should bring to justice those who commit crimes against humanity and attacks on civilians.

3. Isn't a bit of sleep deprivation or other forms of discomfort which do not cause lasting physical harm acceptable when interrogating suspected terrorists?

Sleep deprivation, "stress and duress" and other so-called "lesser" means of coercing detainees into disclosing information are prohibited by the international legal ban on cruel, inhuman or degrading treatment. Holding a prisoner under water until they think they are drowning is cruel and inhuman. Photographing a person naked and subjecting them to sexual humiliation, denying them the most basic forms of decency and privacy, is degrading. Other cruel measures include those which break a person's resistance by causing confusion and disorientation -- such as sleep deprivation; sensory deprivation, including holding people in dark cells; hooding; sensory overload such as sustained and excessive noise; subjecting people to extremes of heat or cold, and stress positions.

These types of measures, even if they do not leave physical scars, have been shown to cause mental harm which can persist for years afterwards and may never heal completely. Sleep deprivation leads to cognitive impairment, including attention deficits and impaired memory, reasoning, verbal communication, and decision-making. The effects of prolonged isolation can be especially devastating and can include an inability to think or concentrate, disorientation, hallucinations, depression, and other severe mental health problems, including self-harm and attempted suicide.

The effect of such measures is often cumulative. For instance, depriving a person of 15 minutes' sleep would not be more than annoying, but long-term deprivation of sleep has been shown to cause serious and long lasting psychological damage. The same is true of stress positions and sensory deprivation. Where such measures are used in combination and over a sustained period, there is a double accumulation, of methods and duration.

Any policy or legal system which permits the use of torture or ill-treatment, even if limited to only extreme circumstances, undermines the principled opposition to the use of inhumane methods and, as a practical matter, it is impossible to identify a clear stopping point. Amnesty International is not aware of states which, in order to obtain information, "only" ill-treat detainees but never use torture. From a moral and practical standpoint, if we accept that it is permissible to apply physical and psychological pressure in interrogation, at what point do we stop increasing the pressure if the person refuses to talk? Once the rule absolutely prohibiting inhumane treatment is breached, the tendency is always to escalate, and before long there is a deterioration to the use of methods which amount to torture.

Despite this, the US authorities, like those of other states which have practised torture and ill-treatment, have sought to evade the international prohibition. They have suggested very narrow definitions of torture, described certain forms of ill-treatment as "stress and duress" techniques, and claimed that certain forms of treatment are not necessarily illegal but can be justified on grounds such as military necessity or self-defence, even though neither legal principle would ever justify the use of torture or ill-treatment. Moreover, torture and ill-treatment do not become permissible by being called something else, and euphemisms cannot be used to evade legal and moral obligations.

4. Isn't torture or ill-treatment, if used only in the most compelling circumstances, sometimes the lesser of two evils? Wouldn't it be acceptable to ill-treat one person if that could save thousands of lives?

Throughout history, attempts have been made to justify torture and other ill-treatment in the name of some superior goal -- the common good, freedom, or religious or other ideals. But we cannot defend principles and ideals by actions which undermine them. The right to be free from torture and any other form of cruelty, degradation or inhuman treatment is perhaps the most universally accepted of human rights. If the ban on torture and ill-treatment is flouted, what hope is there for the protection of other human rights?

The absolute and unconditional prohibition of torture and ill-treatment leaves no room for any balancing act between the rights of different individuals, or between the rights of individuals and the common good. Inhumane acts of all kinds, whoever commits them, are unconditionally prohibited in international law and accepted moral standards and are absolutely banned by the international community.

The only way that human rights can be effectively protected is by respecting the principle that every individual possesses certain inherent fundamental rights that cannot be taken away – not even in the name of “the common good”, states of emergency, national security, or religious or other ideals. Otherwise no one is really safe.

5. If a nuclear bomb were about to be detonated, wouldn't ill-treatment or even torture, even though repugnant, be justifiable if it would extract crucial information that might save thousands of lives?

Torture and ill-treatment are illegal and immoral and are never justified. To suggest that they might be justified in some circumstances is based on a premise that the end justifies the means. This is a rationale similar to that often used in an attempt to justify acts of terrorism.

It has been suggested that the use of torture could be controlled and limited to the most extreme and urgent circumstances. It has even been argued that, because torture is bound to happen, it is better that it be legalised and regulated than that it be denied or done clandestinely and that, when there is an absolute need to obtain immediate information in order to save lives, coupled with probable cause (reasonable probability) that an individual has such information but is unwilling to reveal it, non-lethal torture by controlled means such as a sterilised needle under the finger nail to cause excruciating pain could be authorised by judicial warrant.

However, this and similar proposals that torture is permissible in extreme cases to prevent the imminent loss of hundreds or thousands of lives -- the “ticking time-bomb” argument -- is based on an extremely improbable and hypothetical scenario. Any would-be torturer would need to know for sure that a bomb really exists (despite the fact that no one except the terrorists have seen it), that it will explode unless it is defused, that the person being held does indeed know where the bomb is (and that it was not moved, or plans changed, when the terrorists learned he had been captured), that if he is tortured he would provide the necessary information and that it will be accurate and will enable the bomb to be defused in time, and that there is no other way to discover the bomb, and so on. Such an improbable situation cannot justify giving governments powers to license their officials to use torture or other ill-treatment. It is essential to maintain the absolute prohibition on such methods if law enforcement officials are not to be tempted to reach for them whenever other methods fail.

The evidence is overwhelming. States that use torture and ill-treatment use it broadly. They supplement it with other repressive measures. Amnesty International has researched torture and other cruel, inhuman and degrading treatment all over the world for decades. We have not found a single state which tortures “only once”, or only in a few extreme cases. Whenever and wherever torture and cruelty are accepted as legitimate tools of government “in extreme circumstances” they become widespread -- the means used become increasingly extreme and the circumstances in which they are used increasingly less so. Moreover, those states which use torture and ill-treatment against political opponents do not stop at these acts, but resort also to other violent and repressive measures, such as “disappearances” and extrajudicial executions, not only against detainees, but also against a wider population associated with the “enemy”. Amnesty International’s experience shows that if torture is no longer absolutely prohibited, law enforcement attitudes change. Over time, the attitude that torture and ill-treatment can be acceptable gains ground and spreads throughout the entire system, and even criminal suspects receive the same treatment as suspected terrorists.

Most of us would agree that in critical situations we would allow our government to take measures and assume powers which we would normally be reluctant to grant it – for example to conduct searches, cordon off an area, prohibit gatherings, impose curfews, or increase surveillance. But justifying torture in essence means that we authorise our government to take one of us and do absolutely anything with him or her – all moral boundaries are removed. Do we really want to grant our governments absolute powers of cruelty?

The only way to ensure security and confront terrorism is to establish and comply with a clear standard forbidding all forms of cruelty or inhumane treatment. We cannot defend what we stand for by subverting our own moral values. And we cannot counter acts of terror by armed groups with acts of terror by the state.

6. What if your child's life were at stake? Wouldn't you want the authorities to do everything possible to save them?

What we would do in a moment of panic or desperation when our loved ones are in danger is difficult to guess, but it is a measure of the extent of our despair rather than a guide for moral behaviour. In such circumstances, some of us may never torture, others may. And if a child is kidnapped by terrorists, some parents may, as the only way to save their child, give in to the terrorists' demands even if it meant planting a bomb for them.

Anyone would sympathise with the depth of the horror and despair that would drive a desperate parent to such actions, but we can't use this as justification either for torturing or for planting bombs. Whatever the understandable human response at the personal level, law and state policy should not be determined by personal emotions. The state's role is to apply the rule of law, and to protect the human rights of all individuals within its jurisdiction.

7. Why should terrorists have the same rights as us when they don't respect our rights?

Amnesty International condemns any deliberate attacks on civilians, whether through planting bombs in restaurants or railway stations or bringing down buildings killing thousands. The deliberate targeting of civilians constitutes a serious abuse of fundamental human rights and runs counter to basic principles of humanity. Amnesty International condemns such atrocities and it calls for those who commit them to be brought to justice – to face investigation and prosecution for such crimes and if found guilty to be punished. Governments have an obligation to ensure that those who plan and commit such atrocities are brought to justice in fair proceedings.

The human rights framework provides flexibility for states to respond to exceptional circumstances and for certain important human rights, such as the right to freedom of movement and the right to liberty, to be limited or taken away from those who unlawfully endanger or harm others, or who are caught preparing to do so. But certain fundamental human rights, including the right not to be ill-treated or tortured, can never in any circumstances be taken away, regardless of a person's conduct – you can't torture, murder, enslave, rape or humiliate a human being no matter how horrible the things he or she did or is suspected of doing. Attacks on civilians, on the one hand, and torture and ill-treatment, on the other, violate fundamental human rights. The infliction of one cannot excuse or justify the infliction of the other in return.

8. Are you saying all the detainees are innocent?

No – we do not know. Guilt is a matter of proof – it is a fundamental rule of law that everyone is innocent until proved guilty beyond a reasonable doubt. Where there is reason to believe that people have participated in committing or planning acts of terrorism they should be investigated, charged and promptly and fairly tried and, if found guilty, punished. But in the context of the so-called “war on terror” senior members of the US administration have shown contempt for this presumption of innocence by collectively labelling detainees as “terrorists” and “killers”.

If governments presume guilt, and accordingly in effect punish by means of torture and ill-treatment before any trial takes place, it potentially endangers the freedom and bodily integrity of all of us. Any of us could be detained by mistake, or “exposed” as a high-value terrorist by a spiteful neighbour, as has actually happened to some who were then tortured or ill-treated for information they did not possess. Do we really want a government to have so much power over us?

9. Today’s threats need new responses -- doesn’t the new threat of international terrorism require new techniques?

The threat of international terrorism is not new but it does indeed require law enforcement agencies to develop special skills and techniques in policing, investigation and intelligence, including international cooperation, in order to avert acts of terrorism, to protect populations, and to bring to justice those who commit or plan to commit such atrocities. Such techniques need to address the new characteristics of international terrorism as it has developed in the 21st century, such as its use of computers and other new technology. That may require the use of new forensic methods and other law enforcement techniques, but it cannot justify the use of old methods such as torture and ill-treatment.

Governments have a duty to protect the safety of the public, to take all reasonable steps to prevent acts of terrorism, and to bring to justice those responsible for committing or planning such acts. But they also have a duty to do this in a framework of protecting the human rights of all. The use of torture and ill-treatment can undermine the prospects of bringing to justice those who have committed acts of terrorism, since international human rights law prohibits information obtained as a result of torture being used as evidence in any legal proceedings, and in many countries this prohibition is reflected in the domestic law.

Whatever the powers of the state, it is not possible to ensure total security and safety, with absolute certainty that no terrorist would ever have the opportunity to commit atrocities against civilians. If states are granted extreme powers in an attempt to attain such security, no

one would be free – and in fact, in the face of such state power, no one would be secure either. In order to preserve the fundamental human rights of all, human rights and respect for international law must be at the centre of the search for justice and security.

Absolute and clear rules, based on human rights principles, are especially important in times of conflict, emergency or crisis because at such times some perceived necessity can always be used in an attempt to justify any action, however heinous. And military or other discipline, which in such circumstances can be rapidly lost, cannot be restored so rapidly, and may be almost impossible to restore. Respect for human rights is the route to security, not the obstacle to it. The route to security is respect for human rights, not violations.

10. If international cooperation is an important element of the techniques needed to combat international terrorism, what is wrong with sending terrorists to other countries for questioning by the authorities there?

Attacks on civilians such as the attacks in the USA on 11 September 2001, the October 2002 Bali nightclub bombing and the March 2004 Madrid train bombings are, like torture, crimes under any legal system. States should either investigate and, if there is sufficient admissible evidence, prosecute those suspected of such acts, or extradite them to another country able and willing to do so in proceedings fully consistent with the right to a fair trial, without the death penalty. The emerging international legal framework is beginning to provide for cooperation between the criminal justice authorities of the states concerned in order to ensure that such people are brought to justice, although the current state of this system is inefficient and often unfair and, as noted below, frequently bypassed.

But the absolute prohibition on torture and ill-treatment includes an absolute prohibition on transferring a person to any state where there is a risk that they will be tortured or subjected to cruel, inhuman or degrading treatment. Accordingly, the court which supervises extradition should not allow transfer to take place if there is any such risk.

However, in the guise of international security cooperation, the USA has, under the practice known as “rendition”, transferred numerous terrorism suspects without any judicial oversight or control, and often in secret, to countries known to employ torture in interrogation where in some cases the individuals concerned have made credible allegations that they were tortured. It is alleged that countries which are known to practise torture have been specifically selected to receive certain “war on terror” detainees for interrogation and that numerous detainees have been threatened by US interrogators that they will be sent to such countries. This amounts to turning the international legal prohibition on torture on its head and “outsourcing” torture.

Outsourcing torture can also be done without even physically transferring a person to another country. In August 2004 the Court of Appeal in the UK ruled that UK anti-terrorism

legislation permitted – indeed required – that information procured by means of torture could be admitted as evidence in UK courts, so long as the torture was not committed or connived at by UK officials. This practice violates the principle explicitly recognised in the UN Convention against Torture, to which the UK is a state party, that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any legal proceedings.

11. But what if the other state guarantees to treat the person properly, just as a state may give assurances in extradition cases that the death penalty will not be imposed? Can't the same rule be followed with regard to torture and ill-treatment?

Diplomatic assurances in such cases cannot be relied on and are not comparable with such assurances in death penalty cases. Although Amnesty International absolutely opposes the death penalty, it is not yet expressly prohibited under international law in all cases, so states which practise it do not deny it, and in those states the law makes provision for it. By contrast, states which violate international law and systematically torture or ill-treat detainees also systematically deny it and take steps to hide it, so any assurances made by those states that a person will not be tortured or ill-treated cannot be treated as reliable.

Amnesty International believes that the struggle against torture and ill-treatment should be global. And in fact all states, including the USA, which have ratified the UN Convention against Torture and other treaties have declared that they believe so too. Closing the front door to torture and ill-treatment but letting it in through the back door, or professing to condemn it yet turning a blind eye when others do it on our behalf, is unacceptable. If we are against torture we should never condone it, never practise it, never outsource it and never cooperate with torturers in any way.

12. What happened in Abu Ghraib is not the norm. Why does Amnesty International make out it is US policy?

Amnesty International's research has led it to conclude that the abuses which took place in Abu Ghraib are not an aberration. They are part of a pattern where versions of interrogation techniques developed for use in Afghanistan and Guantánamo later emerged in Iraq. Such techniques include hooding, sensory deprivation, isolation and stress positions as well as techniques of humiliation, degradation and fear such as forced shaving, forced nakedness and the use of dogs for intimidation. The range of individuals and locations where torture and ill-treatment have been reported show that these allegations are not a few instances of an isolated problem.

This is not surprising because, for around two years, the administration's position was based on advice set out in secret legal memorandums from the Justice Department, restricting the definition of torture, and arguing that the President could authorise torture for reasons such as military necessity. The USA continues to take the position that detainees at Guantánamo and in Afghanistan are not entitled to protection under the Geneva Conventions. These policies, adopted at the highest levels of government, have undermined the USA's compliance with the international prohibition on torture and ill-treatment. Moreover, torture and ill-treatment have been facilitated by the policy of detaining thousands in prolonged incommunicado or virtually incommunicado detention, some in secret detention facilities, without access to the outside world.

13. Why is Amnesty International attacking the USA? What about other countries that have much worse torture records?

Amnesty International does not rank states in terms of the extent or severity of the human rights violations committed by their officials and agents, nor does it make comparisons between states. It assesses states' human rights records in terms of the same universally applicable international human rights standards which states themselves have established and committed to. Its 2005 report on the state of the world's human rights covers 149 countries and documents human rights violations, including torture and ill-treatment in the context of the so-called "war on terror", throughout the world.¹

The USA was one of the principal movers behind the adoption in 1948 of the Universal Declaration of Human Rights, the basis of today's body of international human rights law. But many of its actions in the course of the so-called "war on terror" show a marked tendency to apply double standards in rejecting for itself the standards it so often says it expects of others. The human rights violations which the US government has been so reluctant to call torture when committed by its own agents are routinely described as such by the US State Department when they occur in other countries.

The direct and indirect reach of US counter-terrorism operations is worldwide, and the USA has more political, military and economic power than does any other country. Its selective disregard for international law undermines the whole system of international monitoring and protection of human rights and sends a signal to abusive governments and others around the world that such practices are permissible.

¹ *Amnesty International Report 2005* (AI Index: POL 10/001/2005)

14. Hasn't the US government explicitly rejected torture? So what's the problem?

It is important that states and leaders denounce torture and ill-treatment. However, words alone are not sufficient – it is actions that count. While President Bush has consistently condemned torture, legal officers of the US government have issued memorandums seeking to adjust the definition of torture by interpreting it in the narrowest way possible. For example, President Bush proclaimed to the world in June 2003 that the USA was committed to the worldwide elimination of torture and was leading that fight by example. But at that time the US administration's policy was based on a secret August 2002 Justice Department legal memorandum, albeit repudiated by the administration almost two years later following the Abu Ghraib revelations, which 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.

In the struggle against torture and ill-treatment we do need words. But words not accompanied by resolute action, or condemnation by governments which are at the same time seeking to find ways to circumvent the international legal ban on torture and ill-treatment, amount to little more than ritual denunciations.

15. But doesn't torture often work?

If people are tortured or ill-treated to get information out of them, some will talk. Some won't. Of those who talk, many will say anything to stop their suffering – truth, lies, half-truths. Throughout history, people have been tortured into denouncing their religion, or confessing to witchcraft or to crimes they did not commit. Others have refused to talk and some have died still refusing. Can we nevertheless get useful intelligence out of people by torturing and ill-treating them? Torturers and torturing governments say they can.

Can we defeat insurrections, rebels and terrorism by resorting to torture and ill-treatment? The lesson of history is that we can't. Irrespective of whatever information we may obtain, we can be sure to create pain, suffering, humiliation, fear, and anger, and ultimately hatred, in the tortured person and the community they come from.

16. Why does Amnesty International care more about the terrorists than their victims?

Amnesty International stands with the victims of torture and terrorism and demands that they receive justice and reparation. It calls for those who commit crimes against humanity and other attacks on civilians, as well as those who commit acts of torture and ill-treatment, to be brought to justice in compliance with international human rights law and humanitarian law.

The establishment of the International Criminal Court opens a number of new avenues for pursuing international criminal prosecutions, including for crimes against humanity committed by armed groups. The continued opposition of the US administration to the Court is therefore counter-productive to its own stated aim of countering terrorism.

States are obliged to protect the right to life of those within their jurisdiction, including by putting in place effective preventive and deterrent measures against acts of terrorism. But this does not give licence to governments to ignore other human rights and the rule of law, which in fact improve effective law enforcement and human security by lessening the likelihood of social upheaval and instability. To flout the rule of law and to torture, humiliate, abuse and ill-treat detainees alleged to be terrorists undermines long-term security, even if there are perceived short-term gains along the way.

17. How can torture and ill-treatment be eliminated?

Amnesty International recommends a programme of practical measures which it calls on all governments to implement in order to bring an end to torture and ill-treatment.²

The highest authorities of every country should unreservedly condemn torture and ill-treatment, which should be prohibited by law. Incommunicado detention and detention in secret locations should not be permitted. There should be regular, independent, unannounced and unrestricted visits of inspection to all places of detention, and a lawyer should be present during interrogation. All prisoners should immediately be informed of their rights which should include the right to have a judge rule without delay on the lawfulness of their detention, and the right to lodge complaints about their treatment. All complaints of torture or ill-treatment should be promptly, impartially and effectively investigated by an independent body, those responsible for torture or ill-treatment should be brought to justice, and victims of torture or ill-treatment should be entitled to reparation. It should be made clear to officials during their training that torture and ill-treatment will never be tolerated and are criminal acts, and that they have the right and the duty to refuse to obey any order to torture or carry out ill-treatment. An order from a superior officer should never be accepted as a justification for torture or ill-treatment. Statements obtained through torture or ill-treatment should never be invoked as evidence in any proceedings. Governments should ratify and comply with international treaties containing safeguards against torture and ill-treatment, should intercede with governments of countries where torture or ill-treatment are reported, and must not transfer any person to a country where they would be at risk of torture or ill-treatment.

² *Amnesty International's 12-Point Programme for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by Agents of the State* (AI Index: ACT 40/001/2005). See also *Combating Torture: A manual for action* (AI Index: ACT 40/001/2003).