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# UNITED STATES OF AMERICA
## Response to the proposed "Interrogations Procedures Act"

The Honorable Jane Harman
Select Committee on Intelligence
US House of Representatives
Washington D.C. 20515
USA

15 February 2005

Dear Congresswoman,

Amnesty International is concerned at your announcement of 7 February 2005 that, "in the coming days, members of Congress plan to introduce new bipartisan legislation, 'The Interrogations Procedures Act'", asserting that the proposal would fill an existing gap in US law, largely by limiting and regulating the practice of "highly coercive interrogation". We recognize the security challenges faced by the United States, and appreciate your intent to set clear limitations on interrogation practices. However, Amnesty International considers that the measures you propose would serve to legalize the kinds of abuses carried out by US forces at Abu Ghraib and elsewhere, not prevent them, and could involve the President in the commission of war crimes. For these reasons, Amnesty International strongly opposes the proposed Interrogations Procedures Act.

Although the proposed law would restate the principle that torture is banned in any circumstances, other provisions would inevitably serve to undermine that prohibition. The proposal would permit the use of "highly coercive" techniques and allow the President to authorize the severe mistreatment of detainees. These "highly coercive techniques" would be deemed acceptable by the Administration and Congress and classified as methods that do not "shock the public conscience". We are concerned that the Bush Administration already has sought to redefine as less than torture the techniques that traditionally have been understood to constitute torture, and that the preparation of a new list of permissible "highly coercive techniques" would legalize and permit clearly abhorrent practices. The proposed legislation would make these techniques available for use when, for instance, there is "probable cause to believe that the prisoner is in possession of significant information", leaving the specific circumstances open to broad interpretation and abuse.

More alarmingly, the proposal would grant the President the power to authorize the use of severe and highly coercive techniques that "shock the conscience" (although still claimed to be "short of torture"). The appropriate congressional committees would receive notification of the President's authorization through a confidential communication up to 10 days later. Although victims of "highly coercive interrogation" used in violation of the rules would be given a right to sue for damages, it appears that their interrogators would be protected by what amounts to a version of the Nuremberg Defence – the

defendant claims to have been "just following orders". Such a policy would prevent full accountability and be in sharp violation of longstanding US law and international agreements.

Amnesty International is deeply concerned by the abuses that have already occurred within detention facilities controlled by US forces and their allies. In addition, there have been many deaths in custody of detainees with indications that torture or ill-treatment may have been a contributory factor. There are continued obstacles for independent monitoring of the conditions of those in custody.

Administration officials have responded with statements acknowledging that torture is prohibited, but have failed to state clearly their opposition to cruel, inhuman and degrading treatment while also appearing to have reclassified methods of torture to claim they are less than torture and permissible. The Administration has pointedly refused to characterize what happened at Abu Ghraib as "torture". At their recent confirmation hearings, Attorney General Alberto Gonzales and Secretary of State Condoleezza Rice refused, for example, to describe practices such as submerging detainees underwater to the point of making them believe they will drown – "waterboarding" – as torture. Would these then find their way onto the list of coercive techniques regulated by Congress, or would the President himself have to authorize a "waterboarding"?

In your recent statement, you claim that new measures are needed to address a "gap" in current US law, a gap that allows the Administration "to use cruel, inhuman, and degrading interrogation techniques against foreigners abroad with few restrictions and virtually no oversight". Such a "gap" in legal protection simply does not exist: international law is crystal clear, it explicitly prohibits torture and cruel, inhuman and degrading treatment under any circumstances. The effect of the current proposal would be to legitimize the use of torture and ill-treatment rather than to curb it.

The proposed bill would violate the non-derogable treaty obligations of the United States, including those in the Geneva Conventions and the International Covenant on Civil and Political Rights. If the President were to personally authorize the mistreatment of prisoners captured in the context of armed conflicts, as foreseen in the proposal, he would be committing a war crime.

Amnesty International deplores the US practice of insisting on its own definitions of torture and cruel, inhuman or degrading treatment, by attaching limiting conditions to its ratification of international treaties. Such an approach is not one of a government that is committed to the "non-negotiable demands of human dignity" espoused by President Bush. It is the conduct of a government engaged in undermining not only the protections afforded to all individuals in US custody, but also the whole enterprise of creating a viable international system to ensure respect for human rights.

We urge you to consider that any technique that can be used for "highly coercive interrogation" can be, or become, a form of torture or cruel, inhuman or degrading treatment. It is practically impossible to ensure that people are brutalized "so far but no further". Once abuse is permitted, it cannot be limited or regulated; the continuum from "coercive techniques" to full-blown torture cannot be neatly demarcated, and the pressure will always be upwards. What if the detainee under "coercive interrogation" seems to be on the verge of providing some useful information? Should his head be kept under the water just that little bit longer? Should a few slaps become a beating? Should he stand naked in the rain just a few more hours? Should the dogs be allowed to get that bit closer to his genitals? Such methods rely on terrorizing the victim, and inevitably will involve treatment that "shocks the conscience".

Moreover, such measures are unnecessary. There is nothing in current international law to prevent vigorous interrogations of terrorist suspects, and professional interrogators successfully use established techniques aimed at yielding reliable intelligence information without resorting to cruelty or degrading treatment.

Other countries have unsuccessfully attempted to regulate coercive interrogation methods. In 1987, the Israeli government approved a classified list of abusive physical methods of interrogation, described as "moderate physical pressure," as well as psychological forms of "pressure." In 1995, the then Prime Minister admitted that one of the methods, violent "shaking" of the detainee, had been used against 8,000 Palestinian detainees. His announcement followed the public acknowledgement of the death of a detainee as a result of being "shaken." Despite the Israeli government's insistence that this and other "moderate" interrogation methods were merely "unpleasant," legal experts and UN bodies have determined that they amounted to torture.

We understand that your proposed legislation would also contain provisions on "renditions", ostensibly aimed at preventing a detainee from being returned to a country where he is likely to be tortured, although the "rendition" could still take place if the US Secretary of State receives diplomatic assurances against torture from the country in question. This provision likewise reduces existing legal protections; in Amnesty International's experience, states that torture systematically also systematically deny their torture practices, and most diplomats would be only too happy to assure the State Department that their government is not contemplating a criminal offence. How much can such assurances be worth? Article 3 of the Convention against Torture flatly prohibits the return or transfer of any person to a country where there are substantial grounds for believing he or she would be at risk of being subjected to torture.

As you noted in your remarks at Georgetown University on 7 February, "to engage in torture erodes our moral authority as a nation - as painfully demonstrated by some of the actions at Abu Ghraib prison and elsewhere in Iraq and Afghanistan. Engaging in torture also severely jeopardizes our own troops who could be subject to similar treatment if captured by others. And, the weight of academic and field research indicates that torturing a prisoner does not often elicit useful intelligence." These are powerful arguments against the very bill you propose.

What should matter even more is that the absolute duty to treat all prisoners with dignity without exception is a moral value reflecting fundament principles of humanity, as well as part of the bedrock of international law. The proposed legislation threatens to destroy all that and replace it by a legalized, regularized, supervised, and officially approved form of cruelty. The act of one individual terrorizing another serves only to destroy the values it claims to be protecting.

Amnesty International urges you not to introduce the bill. The organization thanks you for your attention to our concerns.