

Human Rights Watch

Torture, Former Combatants, Political Prisoners, Terror Suspects, & Terrorists

<https://www.hrw.org/news/2002/12/27/united-states-reports-torture-al-qaeda-suspects>

Campaign and Advocacy

Help us continue to fight human rights abuses. Please give now to support our work

[Share this via Facebook](#)

[Share this via Twitter](#)

[Share this via WhatsApp](#)

[Share this via Email](#)

[Other ways to share](#)

[Share this via LinkedIn](#)

[Share this via Reddit](#)



[Share this via Telegram](#)



[Share this via Printer](#)

(New York) The Bush administration must promptly investigate and address allegations of torture of suspected al-Qaeda detainees or risk criminal prosecution, Human Rights Watch said today. In a letter to President George W. Bush, Human Rights Watch said it was deeply concerned by allegations made in the Washington Post that detainees had been subjected to torture or other forms of mistreatment while in U.S. custody in Afghanistan or while held by U.S. allies.

Torture is always prohibited under any circumstances, said Kenneth Roth, executive director of Human Rights Watch. U.S. officials who take part in torture, authorize it, or even close their eyes to it, can be prosecuted by courts anywhere in the world.

The *Post* article, [U.S. Decries Abuse but Defends Interrogations](#), describes how persons held in the CIA interrogation center at Bagram air base in Afghanistan are being subject to stress and duress techniques, including standing or kneeling for hours and being held in awkward, painful positions. Such acts, if true, violate international legal prohibitions against torture and other ill-treatment under treaties that the United States has ratified. These prohibitions apply in times of war as well as peace and protect all captured combatants, whether privileged or not, as well as civilians, whether criminal suspects or not.

The *Post* article states that thousands of persons have been arrested and detained with U.S. assistance in countries known for the brutal treatment of prisoners. The Convention against Torture, which the United States has ratified, specifically prohibits torture and mistreatment, as well as sending detainees to countries where such practices are likely to occur. That would include, according to the U.S. State Department's own annual human rights report, Uzbekistan, Pakistan, Jordan and Morocco, where detainees have reportedly been sent.

Direct involvement or complicity in torture, as well as the failure to prevent torture by subordinates, may subject U.S. officials to prosecution under international law. Such acts are grave breaches, or war crimes, under the 1949 Geneva Conventions. In addition, the Convention against Torture obligates all countries to prosecute persons within their jurisdiction who are implicated or complicit in acts of torture. Any competent court anywhere in the world is required to prosecute violations of the prohibition against torture. Moreover, should senior U.S. officials become aware of acts of torture by their subordinates and fail to take immediate and effective steps to end such practices, they would be criminally liable under international law for command responsibility.

The allegations made by the Washington Post put the United States on notice that acts of torture may be taking place with U.S. participation or complicity, said Roth. That places a heightened duty on senior Bush administration officials to take preventive steps immediately.

Human Rights Watch urged President Bush to issue a presidential statement that it is contrary to U.S. policy to use or facilitate torture in any circumstances. It also urged the president to promptly launch an investigation into the *Post*'s allegations and to make the findings public. Should there be evidence of U.S. civilian or military officials' involvement or complicity in torture, or in the rendition of persons to places where they are likely to be tortured, the administration should take immediate steps to stop these actions and to prosecute those who have ordered, organized, condoned, or carried them out. The United States has a duty not to send persons to countries with a history of torture without explicit, verifiable guarantees that they will not be tortured or otherwise mistreated.

Please see below to read the Human Rights Watch letter to President Bush:

December 26, 2002

President George W. Bush
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Dear President Bush:

Human Rights Watch is deeply concerned by allegations of torture and other mistreatment of suspected al-Qaeda detainees described in the Washington Post (U.S. Decries Abuse but Defends Interrogations) on December 26. The allegations, if true, would place the United States in violation of some of the most fundamental prohibitions of international human rights law. Any U.S. government official who is directly involved or complicit in the torture or mistreatment of detainees, including any official who knowingly acquiesces in the commission of such acts, would be subject to prosecution worldwide.

Human Rights Watch urges you to take immediate steps to clarify that the use of torture is not U.S. policy, investigate the Washington Post's allegations, adopt all necessary measures to end any ongoing violations of international law, stop the rendition of detainees to countries where they are likely to be tortured, and prosecute those implicated in such abuse.

I. Prohibitions Against Torture

The Washington Post reports that persons held in the CIA interrogation centers at Bagram air base in Afghanistan are subject to stress and duress techniques, including standing or kneeling for hours and being held in awkward, painful positions. The Post notes that the detention facilities at Bagram and elsewhere, such as at Diego Garcia, are not monitored by the International Committee of the Red Cross, which has monitored the U.S. treatment of detainees at Guantanamo Bay, Cuba.

The absolute prohibition against torture is a fundamental and well-established precept of customary and conventional international law. Torture is never permissible against anyone, whether in times of peace or of war.

The prohibition against torture is firmly established under international human rights law. It is prohibited by various treaties to which the United States is a party, including the International Covenant on Civil and Political Rights (ICCPR), which the United States ratified in 1992, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which the United States ratified in 1994. Article 7 of the ICCPR states that No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. The right to be protected from torture is non-derogable, meaning that it applies at all times, including during public emergencies or wartime.

International humanitarian law (the laws of war), which applies during armed conflict, prohibits the torture or other mistreatment of captured combatants and others in captivity, regardless of their legal status. Regarding prisoners-of-war, article 17 of the Third Geneva Convention of 1949 states: No physical or mental torture, nor any other form of coercion, may be inflicted on prisoners of war to secure from them information of any kind whatever. Prisoners of war who refuse to answer may not be threatened, insulted, or exposed to any unpleasant or disadvantageous treatment of any kind. Detained civilians are similarly protected by article 32 of the Fourth Geneva Convention. The United States has been a party to the 1949 Geneva Conventions since 1955.

The United States does not recognize captured al-Qaeda members as being protected by the 1949 Geneva Conventions, although Bush administration officials have insisted that detainees will be treated humanely and in a manner consistent with Geneva principles. However, at minimum, all detainees in wartime, regardless of their legal status, are protected by customary international humanitarian law. Article 75 (Fundamental Guarantees) of the First Additional Protocol to the Geneva Conventions, which is recognized as restating customary international law, provides that torture of all kinds, whether physical or mental against persons who are in the power of a Party to the conflict and who do not benefit from more favorable treatment under the [Geneva] Conventions, shall remain prohibited at any time and in any place whatsoever, whether committed by civilian or military agents. [C]ruel treatment and torture of detainees is also prohibited under common article 3 to the 1949 Geneva Conventions, which is considered indicative of customary international law.

II. Possible U.S. Complicity in Torture

It is a violation of international law not only to use torture directly, but also to be complicit in torture committed by other governments. The Post reports being told by U.S. officials that [t]housands have been arrested and held with U.S. assistance in countries known for brutal treatment of prisoners. The Convention against Torture provides in article 4 that all acts of torture, including an act by any person which constitutes complicity or participation in torture, is an offense punishable by appropriate penalties which take into account their grave nature.

The Post article describes the rendition of captured al-Qaeda suspects from U.S. custody to other countries where they are tortured or otherwise mistreated. This might also be a violation of the Convention against Torture, which in article 3 states: No State Party shall expel, return (refouler) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.

The U.S. Department of State annual report on human rights practices has frequently criticized torture in countries where detainees may have been sent. These include Uzbekistan, Pakistan, Egypt, Jordan and Morocco. The United States thus could not plausibly claim that it was unaware of the problem of torture in these countries.

III. International Prosecutions for Torture and Command Responsibility

Direct involvement or complicity in torture, as well as the failure to prevent torture, may subject U.S. officials to prosecution under international law.

The willful torture or inhuman treatment of prisoners-of-war or other detainees, including willfully causing great suffering or serious injury to body or health, are grave breaches of the 1949 Geneva Conventions, commonly known as war crimes. Grave breaches are subject to universal jurisdiction, meaning that they can be prosecuted in any national criminal court and as well as any international tribunal with appropriate jurisdiction.

The Convention against Torture obligates States Parties to prosecute persons within their jurisdiction who are implicated or complicit in acts of torture. This obligation includes the prosecution of persons within their territory who committed acts of torture elsewhere and have not be extradited under procedures provided in the convention.

Should senior U.S. officials become aware of acts of torture by their subordinates and fail to take immediate and effective steps to end such practices, they too could be found criminally liable under international law. The responsibility of superior officers for atrocities by their subordinates is commonly known as command responsibility. Although the concept originated in military law, it now is increasingly accepted to include the responsibility of civil authorities for abuses committed by persons under their direct authority. The doctrine of command responsibility has been upheld in recent decisions by the international criminal tribunals for the former Yugoslavia and for Rwanda.

There are two forms of command responsibility: direct responsibility for orders that are unlawful and imputed responsibility, when a superior knows or should have known of crimes committed by a subordinate acting on his own initiative and fails to prevent or punish them. All states are obliged to bring such people to justice.

The allegations made by the Washington Post are extraordinarily serious. They have put the United States on notice that acts of torture may be taking place with U.S. participation or complicity. That creates a heightened duty to respond preventively. As an immediate step, we urge that you issue a presidential statement clarifying that it is contrary to U.S. policy to use or facilitate torture. The Post's allegations should be investigated and the findings made public. Should there be evidence of U.S. civilian or military officials being directly involved or complicit in torture, or in the rendition of persons to places where they are likely to be tortured, you should take immediate steps to prevent the commission of such acts and to prosecute the individuals who have ordered, organized, condoned, or carried them out. The United States also has a duty to refrain from sending persons to other countries with a history of torture without explicit and verifiable guarantees that no torture or mistreatment will occur.

Thank you for your attention to these concerns.

Sincerely,

Kenneth Roth
Executive Director

Cc: Colin Powell, Secretary of State
Donald Rumsfeld, Secretary of Defense
Condoleezza Rice, National Security Advisor

Stymied Reforms in the Maldives

Sri Lankas Failure to Reform the Prevention of Terrorism Act

[Share this via Facebook](#)

[Share this via Twitter](#)

[Share this via WhatsApp](#)

[Share this via Email](#)

[Other ways to share](#)

[Share this via LinkedIn](#)

[Share this via Reddit](#)



[Share this via Telegram](#)



[Share this via Printer](#)

Human Rights Watch defends the rights of people in 90 countries worldwide, spotlighting abuses and bringing perpetrators to justice

Get updates on human rights issues from around the globe. Join our movement today.

Human Rights Watch is a 501(C)(3)nonprofit registered in the US under EIN: 13-2875808