

Human Rights Watch

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

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During his State of the Union address, President Bush spoke about the horrifying torture techniques Saddam Hussein has inflicted on prisoners in Iraq. He described the use of electric shock, burning with hot irons, acid, and rape. He said that the Iraqi government tortured children to get their parents to confess to crimes. President Bush concluded: "If this isn't evil, then evil has no meaning."

There is now strong evidence that the United States itself has engaged in torture and condoned its use by others as part of its war against terrorism. Photographs of Iraqi prisoners at Abu Ghraib prison in Baghdad, hooded, naked, attached to wires, attacked by dogs, forced to simulate sex acts and assume humiliating and painful positions, and presided over by smiling U.S. military personnel have shocked the world. Other incidents of abuse and even murder have come to light and received new attention.

Although President Bush apologized for the Abu Ghraib incident and military investigations are proceeding against the individuals involved in these incidents and others, there as yet has been no commitment by the United States to prosecute those found responsible for torture or inhuman and degrading treatment for war crimes. The number of such incidents reported in the media since 2002, confidential and internal reports of abuse to superior officers with responsibility for prison policies, and statements that guards were instructed to soften up prisoners for interrogation, all suggest that these incidents are indicative of a policy condoning or tolerant of torture, official denials notwithstanding.

Long before the Abu Ghraib scandal, newspapers such as the *New York Times* and the *Washington Post* published credible reports, based on interviews with former detainees and unnamed U.S. officials, alleging that U.S. agents abused terrorist suspects or handed them over to foreign governments with documented records of torture. None of the reported allegations suggest the United States has utilized such horrific techniques as electric shock or burning. They do, however, suggest that the United States has been willing to inflict other forms of physical or mental pain in an effort to obtain intelligence from captured terrorist suspects.

According to a December 26, 2002 story in the *Washington Post*, "[U.S. Decries Abuse but Defends Interrogations](#)" captured al-Qaeda operatives and Taliban commanders held at the U.S.-occupied Bagram air base in Afghanistan are subjected to physical and psychological "stress and duress" techniques, including being held blindfolded or hooded, bound in awkward painful positions, and deprived of sleep for prolonged periods. Prior to interrogation, some captives have been beaten. One unnamed U.S. official quoted in the *Washington Post* stated, "If you don't violate someone's human rights some of the time, you probably aren't doing your job."

U.S. papers have also reported that the United States handed over some suspects to countries with documented histories of torture. One U.S. official directly involved in the rendition of suspects to third countries told *Washington Post* reporters that he knew they were likely to be tortured. The story suggested that CIA officials are willing to use the fruits of intelligence foreign countries obtained using torture. On March 4, 2003, the *Wall Street Journal*, in an article entitled "How do U.S. Interrogators make a Captured Terrorist Talk?," quoted a senior federal law-enforcer as saying that Khalid Sheikh Mohammed, al-Qaeda's alleged leader of terrorist operations against the United States, would be interrogated "in some other country that'll let us pistol whip this guy."

Men who had been held under American custody at Bagram have described standing naked, their faces hooded, their arms raised, and chained to the ceiling, their feet shackled for days on end (thirteen days in the case of one of them) without being allowed to sleep. The U.S. military has begun a criminal investigation into the deaths two Afghan men held at Bagram, both of whom died as a result of blunt force injuries. An U.S. Army pathologist reportedly classified the deaths as homicides. (See, *New York Times*, "Threats and Responses: Prisoners; U.S. Military Investigating Death of Afghan in Custody," March 4, 2003, and *Washington Post*, "Army Probing Deaths of 2 Afghan Prisoners," March 5, 2003.)

On March 6, 2003, President Bush told visiting U.N. High Commissioner for Human Rights Sergio Vieira de Mello that the United States is not using torture on al-Qaeda detainees. To date, however, no senior administration official has refuted the specific allegations of abusive interrogations presented in the media. No senior administration official has unequivocally stated that it is against U.S. policy

to engage in the techniques described in media accounts or to send detainees to countries where they are likely to be tortured. No official has said that U.S. agents who use torture, who are complicit in its use, or who send suspects to countries where they are tortured, will be held accountable.

The recent capture of high-ranking al-Qaeda suspects has rekindled a debate in the United States about whether torture is or should be used during their interrogation. Many Americans including, apparently, U.S. officials are unaware of the absolute, unequivocal prohibition against torture or other cruel, inhuman or degrading treatment of any person, including terrorist suspects. The right to be free from such mistreatment is one of the most fundamental and unequivocal human rights. As the United States confronts terrorism, legitimate national security needs, public anxiety, and the desire for retribution may give rise to the temptation to sacrifice certain fundamental rights. But that temptation must be vigorously resisted. The right not to be tortured or mistreated is not a luxury to be dispensed with in difficult times, but the very essence of a society worth defending.

President Bush has said that the war on terrorism is about values; he has pledged that as it fights, the United States will always stand for "the non-negotiable demands of human dignity." Standing for human dignity means rejecting torture and other forms of ill treatment.

Rejecting torture does not mean forgoing effective interrogations of terrorist suspects. Patient, skillful, professional interrogations obtain critical information without relying on cruelty or inhuman or degrading treatment. Indeed, most seasoned interrogators recognize that torture is not only immoral and illegal, but ineffective and unnecessary as well. Given that people being tortured will say anything to stop the pain, the information yielded from torture is often false or of dubious reliability.

The prohibition against torture is firmly embedded in customary international law, international treaties signed by the United States, and in U.S. law. As the U.S. Department of State has noted, the "United States has long been a vigorous supporter of the international fight against torture. Every unit of government at every level within the United States is committed, by law as well as by policy, to the protection of the individual's life, liberty and physical integrity" [U.S. Department of State, "Initial Report of the United States of America to the UN Committee Against Torture." Oct 15, 1999. (15 Nov. 2001)]. That commitment should not be abandoned. Indeed, it must be deepened as the world watches how the U.S. responds to the challenges before it. If the U.S. were to condone torture by government officials or foreign governments in its fight against terrorism, it would betray its own principles, laws, and international treaty obligations. It would irreparably weaken its standing to oppose torture elsewhere in the world. And it would provide a handy excuse to other governments to use torture to pursue their own national security objectives.

In this paper, Human Rights Watch provides an overview of the international and national prohibitions against torture and other cruel, inhuman or degrading treatment, with a focus on the prohibition as it applies to the interrogation of detainees. What is torture? What laws prohibit torture? Do non-citizens in the U.S. have the same right not to be tortured as U.S. citizens? Can a person be compelled to provide evidence? Can limited physical force be used during interrogations? Is the use of "truth serums" permitted? Are there any situations in which torture is permitted? Shouldn't torture be permitted if its use will save lives? Does the U.S. lose valuable information if torture is prohibited? May the U.S. send detainees to other countries to be questioned? What are the remedies against torture?

Q: What is torture?

The Convention against Torture defines torture as "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession." (Art. 1). It may be "inflicted by or at the instigation of or acquiescence of a public official or other person acting in an official capacity."

The prohibition against torture under international law applies to many measures, e.g. beating on the soles of the feet; electric shock applied to genitals and nipples; rape; near drowning through submersion in water; near suffocation by plastic bags tied around the head; burning; whipping; needles inserted under fingernails; mutilation; hanging by feet or hands for prolonged periods.

International law also prohibits mistreatment that does not meet the definition of torture, either because less severe physical or mental pain is inflicted, or because the necessary purpose of the ill-treatment is not present. It affirms the right of every person not to be subjected to cruel, inhuman or degrading treatment. Examples of such prohibited mistreatment include being forced to stand spread eagled against the wall; being subjected to bright lights or blindfolding; being subjected to continuous loud noise; being deprived of sleep, food or drink; being subjected to forced constant standing or crouching; or violent shaking. In essence, any form of physical treatment used to intimidate, coerce or "break" a person during an interrogation constitutes prohibited ill-treatment. If these practices are intense enough, prolonged in duration, or combined with other measures that result in severe pain or suffering, they can qualify as torture.

The prohibition against torture as well as cruel, inhuman or degrading treatment is not limited to acts causing physical pain or injury. It includes acts that cause mental suffering, e.g. through threats against family or loved ones. As the U.S. Supreme Court has recognized, "coercion can be mental as well as physical; the blood of the accused is not the only hallmark of an unconstitutional inquisition" *Miranda v. Arizona*, 384 U.S. 436, 448, (1966) citing *Blackburn v. State of Alabama*, 361 U.S. 199 (1960). As discussed below, the use of mind-altering drugs to compel a person to provide information would at least amount to inhuman or degrading treatment under the Convention against Torture.

Q: What laws prohibit torture?

Torture is universally condemned, and whatever its actual practice, no country publicly supports torture or opposes its eradication. The prohibition against torture is well established under customary international law as *jus cogens*; that is, it has the highest standing in customary law and is so fundamental as to supercede all other treaties and customary laws (except laws that are also *jus cogens*). Criminal acts that are *jus cogens* are subject to universal jurisdiction, meaning that any state can exercise its jurisdiction, regardless of where the crime took place, the nationality of the perpetrator or the nationality of the victim.

In 1948, following the horrific abuses of World War II, the General Assembly of the United Nations inserted the prohibition against torture in the landmark Universal Declaration of Human Rights. Article 5 states: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." This ban on torture and other ill-treatment has subsequently been incorporated into the

extensive network of international and regional human rights treaties. It is contained in Article 7 of the International Covenant on Civil and Political Rights (ICCPR), ratified by 153 countries, including the United States in 1992, and in the Convention against Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention against Torture), ratified by 136 countries, including the United States in 1994. It is also codified in the European Convention for the Protection of Human Rights and Fundamental Freedoms, the African Charter on Human and Peoples' Rights, and the American Convention on Human Rights.

The prohibition against torture is also fundamental to humanitarian law (also known as the laws of war), which governs the [conduct of parties during armed conflict](#). An important element of international humanitarian law is the duty to protect the life, health and safety of civilians and other noncombatants, including soldiers who are captured or who have laid down their arms. Torture of such protected persons is absolutely forbidden. Common Article 3 to the Geneva Conventions, for example, bans "violence of life and person, in particular murder of all kinds, mutilation, cruel treatment and torture" as well as "outrages upon personal dignity, in particular humiliating and degrading treatment." The use of force to obtain information is specifically prohibited in Article 31 of the Fourth Geneva Convention: "No physical or moral coercion shall be exercised against protected persons, in particular to obtain information from them or from third parties."

According to the [1999 Initial Report of the United States to the U.N. Committee against Torture](#), in the United States, the use of torture "is categorically denounced as a matter of policy and as a tool of state authority. No official of the government, federal, state or local, civilian or military, is authorized to commit or to instruct anyone else to commit torture. Nor may any official condone or tolerate torture in any form. Every act of torture within the meaning of the [Convention against Torture] is illegal under existing federal and state law, and any individual who commits such an act is subject to penal sanctions as specified in criminal statutes."

Although no single provision of the U.S. Constitution expressly prohibits torture as a means to extract information, secure a confession, punish for an act committed, intimidate or coerce, or for any reason based on discrimination, there is no question that torture violates rights established by the Bill of Rights. The U.S. courts have located constitutional protections against interrogations under torture in the Fourth Amendment's right to be free of unreasonable search or seizure (which encompasses the right not be abused by the police), the Fifth Amendment's right against self-incrimination (which encompasses the right to remain silent during interrogations), the Fifth and the Fourteenth Amendments' guarantees of due process (ensuring fundamental fairness in criminal justice system), and the Eighth Amendment's right to be free of cruel or unusual punishment. In numerous cases, the U.S. Supreme Court has condemned the use of force amounting to torture or other forms of ill treatment during interrogations, including such practices as whipping, slapping, depriving a victim of food, water, or sleep, keeping him naked or in a small cell for prolonged periods, holding a gun to his head, or threatening him with mob violence. Torture would also violate state constitutions, whose provisions generally parallel the protections set forth in the federal Bill of Rights.

Article 4 of the Convention against Torture obligates state parties to ensure that all acts of torture are criminal offenses under domestic legislation. Although there is no single federal law specifically criminalizing torture, the United States has insisted that existing federal and state laws render illegal any act falling with the Convention against Torture's definition of torture. In the United States, most criminal laws are state rather than federal. Although a few states have laws addressing torture as such, each state has laws that criminalize violence against persons (e.g. assault, rape), regardless of whether committed by public officials or private individuals. In addition, states typically have specific laws that criminalize acts by public officials that constitute abuses of authority, "official oppression," or the unlawful infliction of bodily injury. The principal federal law that would apply to torture against detainees is 18 U.S.C. 242, which makes it a criminal offense for any public official to willfully to deprive a person of any right protected by the Constitution or laws of the United States.

Q: Do non-citizens in the U.S. have the same right not to be tortured as U.S. citizens?

Yes. Neither international nor domestic law conditions the right not to be subjected to torture on citizenship or nationality. No detainee held by U.S. authorities regardless of nationality, regardless of whether held in the U.S. or in another country, and regardless of whether the person is deemed a combatant or civilian may be tortured. All applicable international law applies to U.S. officials operating abroad, including the Convention against Torture and the Geneva Conventions. The prohibition against torture is universal and covers all countries both regarding U.S. citizens and persons of other nationalities.

Q: Can a person be compelled to provide evidence?

Using force or the infliction of pain to overcome an individual's desire to maintain silent during interrogations not only violates the victim's right to be free from torture but also his or her right not to speak during an interrogation. The right against being compelled to testify against oneself is contained in Article 14 of the ICCPR. The Fifth Amendment of the U.S. Constitution also affirms the right against self-incrimination. This right has been interpreted to include the right to remain silent during custodial interrogations, regardless of whether the information sought would be incriminating. There are only extremely limited exceptions to the right to remain silent. For example, the threat of imprisonment can be used to lawfully compel a witness to speak in grand jury proceedings provided the witness has been granted some form of immunity, i.e. protection against having the testimony used against him in subsequent criminal proceedings. But these exceptions to the right against self-incrimination do not in any sense permit violations of the separate right to be free of torture. Torture is never permitted to overcome a witness's desire to remain silent.

Recognizing the potential for abuse during interrogations, U.S. courts have constructed special rules to diminish the likelihood of coerced testimony. They have, for example, ruled that coerced statements are not admissible at trial whether they are deemed compelled in violation of the Fifth Amendment's privilege against self-incrimination or "involuntary" in violation of the right to due process. The U.S. Supreme Court in 1966 also established a rule requiring the police who seek to question detainees to inform them of their "Miranda" rights to remain silent and to have an attorney present during the questioning [*Miranda v. Arizona*, 384 U.S. 436 (1966)]. In explaining the need for this rule, the Court noted the continuing police practice of using physical force to extract confessions, citing, as an example, a case in which police beat, kicked and burned with lighted cigarette butts a potential witness under interrogation.

The Convention against Torture provides that any statement that has been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.

Q: Can limited physical force be used during interrogations?

Force can never be used to pressure a detainee to speak, even if it seems only slight or moderate.

The absolute injunction against force has practical as well as moral underpinnings. Historical practice shows there is no such thing as a "little bit" of physical pressure to compel someone to speak during an interrogation. Once a degree of force is permitted, interrogators face an overwhelming temptation to continue applying as much force as is necessary to acquire the sought-for information.

Q: Is the use of "truth serums" permitted?

While the forcible administration of so-called "truth serums" drugs such as sodium pentothal, sodium amytal, and scopolamine does not involve the infliction of severe pain, its use to secure information from a person would nonetheless be prohibited under international law. Human Rights Watch believes that at a minimum it would violate the person's right to be free from "inhuman or degrading" treatment. We note that Article 2 of the Inter-American Convention to Prevent and Punish Torture expressly defines torture as including "the use of methods upon a person intended to obliterate the personality of the victim or to diminish his physical or mental capacities, even if they do not cause physical pain or mental anguish."

The prohibition against the ill-treatment of persons under interrogation is rooted in respect for human dignity and the inviolability of the human body and mind. To force a person to talk through the application of drugs is as much a denial of human dignity as to coerce talk through the use of physical force. Securing testimony through the involuntary administration of drugs would also violate the right against self-incrimination if it were not done under a grant of use immunity. But even if such immunity were given thus solving the problem of self-incrimination drugging would still be prohibited because of its inhuman and degrading nature. Because of its profound compromise of the human personality, the use of drugs is quite different from the forcible taking of physical evidence hair, blood, DNA, etc. which is permitted under U.S. and international law.

The administration of any of the drugs identified as having the potential for causing a person to talk is an involved medical procedure requiring delivery of the drug intravenously over a period that can range from two to twelve hours. The international Principles of Medical Ethics Relevant to the Role of Health Personnel provide that the participation of doctors or other medical practitioners in the administration of such drugs for interrogation purposes would violate medical ethics.

The use of truth serums is not an authorized method of interrogation in the United States. Under U.S. law, confessions made under the influence of truth serums are not "voluntary" and are consequently inadmissible as evidence *Townsend v. Sain*, 372 U.S. 293 (1963).

Investigators are not severely handicapped by not being able to use "truth serums." While certain drugs may reduce a person's inhibitions against talking, they do not guarantee that the person will in fact tell the truth. Under the influence of such drugs, people may become highly suggestible, picking up cues from the interrogators and agreeing to information that is not true; they may relate fantasies; and they may still be able to deliberately mislead. According to a study by medical and legal experts:

As another expert noted, "the intravenous injection of a drug by a physician in a hospital may appear more scientific than the drinking of large amounts of bourbon in a tavern, but the end result displayed in the subject's speech may be no more reliable." MacDonald, "Truth Serums," 46 *Crim. L.C. & P.S.* 259 (1955). U.S. courts have generally ruled the use of truth serums is not a "trustworthy truth-extracting procedure" and have held evidence thus acquired is inadmissible, regardless of whether the drugs were administered voluntarily or involuntarily. E.g., *Lindsey v. U.S.*, 237 F.2d 893, 897 (9th Cir. 1956).

Q: Are there any situations in which torture is permitted?

Under customary international law as well as under international human rights treaties, torture or other cruel, inhuman or degrading treatment is prohibited at all times and in all circumstances. It is a non-derogable right, one of those core rights that may never be suspended, even during times of war, when national security is threatened, or during other public emergencies.

According to the U.S. government, "U.S. law contains no [provision permitting otherwise prohibited acts of torture](#) or other cruel, inhuman or degrading treatment or punishment to be employed on grounds of exigent circumstances (for example, during a "state of public emergency") or on orders from a superior officer or public authority."

The European Court of Human Rights has applied the prohibition against torture contained in European Convention on Human Rights in several cases involving alleged terrorists. As it noted in one case, "The Court is well aware of the immense difficulties faced by States in modern times in protecting their communities from terrorist violence. However, even in these circumstances, the Convention prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the victim's conduct." (*Chahal v. United Kingdom*, Nov. 15, 1996)

Similarly, the Committee against Torture, reviewing Israel's use of torture as a method of interrogation against suspected Palestinian terrorists, stated, "The Committee acknowledges the terrible dilemma that Israel confronts in dealing with terrorist threats to its security, but as a State party to the Convention Israel is precluded from raising before this Committee exceptional circumstances as justification for [prohibited] acts" [United Nations Committee against Torture. ["Concluding observations of the Committee against Torture"](#) (1997), A/52/44, paras. 253-260. (15 Nov. 2001).]

Q: Shouldn't torture be permitted if its use will save lives?

Some people argue that the goal of saving innocent lives must override a person's right not to be tortured. This argument is presented in its starkest form in the "ticking bomb" scenario: a bomb has been set to explode that will kill thousands of people and a detained person is known to have information on where the bomb is and how to defuse it. Is torture justified in such a case to force the detainee to talk? Those who say that it is argue that governments should be permitted to choose torture as the lesser of two evils in such a situation.

The international community, however, rejected the use of torture even in the "ticking bomb" case. International human rights law - as

well as U.S. law - do not contain any exceptions to the prohibition against torture.

There are practical as well as moral reasons for not permitting a "ticking bomb" -or terrorist attack -- exception to the ban on torture. Although such an exception might appear to be highly limited, experience shows that the exception readily becomes the standard practice. For example, how imminent must the attack be to trigger the exception and justify torture - an hour, a week, a year? How certain must the government be that the detainee actually has the necessary information? Under the utilitarian logic that the end (saving many innocent lives) justifies the means, torture should be permitted even if the disaster might not occur until some point in the future, and it should be permitted against as many people as is necessary to secure the information that could be used to avert the disaster.

Israel provides a good example of how this logic works in practice. For years Israel justified its use of torture - what it called "moderate physical force" - by citing the "ticking bomb" scenario. But despite a genuine security threat, Israeli security forces rarely if ever were able to identify a particular suspect with knowledge about a particular bomb set to explode imminently. Rather, they ended up applying the scenario metaphorically to justify torturing virtually every Palestinian security detainee - thousands of people - on the theory that they might know something about some unspecified, future terrorist act. In 1999, the Israeli Supreme Court rejected the use of torture, although the practice seems to have increased in the past year.

In addition, the ticking bomb scenario offers no logical limitations on how much or what kind of torture would be permitted. If the detainee does not talk when shaken or hit, why shouldn't the government move unto more severe measures, such as the application of electric shocks? Why not threaten to rape the suspect's wife or to torture his children? Once torture is allowed, setting limits is extraordinarily difficult.

Q: Does the U.S. lose valuable information if torture is prohibited?

Torture is as likely to yield false information as it is to yield the truth. Cesare Beccaria, the eighteenth century philosopher whose critique of torture remains influential today, observed that when a person is tortured, the "impression of pain may increase to such a degree, that, occupying the mind entirely, it will compel the sufferer to use the shortest method of freeing himself from torment[H]e will accuse himself of crimes of which he is innocent." Beccaria also pointed out the problem of using torture to discover the accused's accomplices: "Will not the man who [under torture falsely] accuses himself yet more readily accuse others?" [Beccaria, Cesare, [*Of Crimes and Punishments*](#), (15 Nov. 2001).]. Contemporary law enforcement professionals concur. Oliver Ravel, former deputy director of the FBI, has stated that force is not effective: "people will even admit they killed their grandmother, just to stop the beatings." Indeed, the unreliability of forced confessions was one of the principal reasons that U.S. courts originally prohibited their use.

The prohibition on torture or other forms of cruel, inhuman or degrading conduct does not leave the government helpless before terrorists. Convictions in recent cases involving terrorism show that investigators currently have the means and legal methods to acquire the evidence necessary for successful prosecutions.

Q: May the U.S. send detainees to other countries to be questioned?

The United States may not send detainees to another country to be questioned by police or security forces who use torture or cruel, inhuman or degrading treatment during their interrogation. Article 3 of the Convention against Torture expressly prohibits sending a person to another state "where there are substantial grounds for believing that he would be in danger of being subjected to torture." Human Rights Watch believes that the U.S. government would be complicit in torture - in essence, aiding and abetting torture - if it sent detainees to another country aware that they might be tortured there. The purpose of U.S. human rights commitments would be circumvented if the U.S. government could effectively subcontract interrogation techniques that it is prohibited from using itself.

Q: What are the remedies against torture?

Under U.S. law, victims of torture can sue in state or federal court for damages. But there are numerous practical obstacles to such lawsuits - including the difficulty of securing evidence of torture and the financial costs of legal representation - as well as legal and procedural impediments to a successful conclusion. Moreover, even if a case is successful and damages are awarded, the financial compensation does not undo the harm done - the experience of torture and its often ongoing physical, psychological, and emotional consequences. Officials who engage in torture - including those who give the orders as well as those who carry them out - can and should be prosecuted criminally as well as disciplinarily sanctioned. Nevertheless, history counsels that the decision to prosecute public officials, the actual charges brought, and the penalties sought are often influenced by such extra-legal considerations as public sympathy for the victim or support for the officials and the political context in which the crime took place. The best "remedy" for torture is thus prevention. U.S. officials should resolutely resist any temptation or encouragement to use torture or cruel, inhuman or degrading treatment against detainees held and questioned in connection with its campaign against terrorism.

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