



United States of America
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submitted by
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I. EXECUTIVE SUMMARY

(a) Summary of analyses and recommendations

1. The Bush Administration’s authorization of “enhanced” interrogation techniques during the period 2002-2009 permitted the use of physical and psychological torture of detainees in US military and Central Intelligence Agency (CIA) custody in violation of the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (UNCAT).¹ The United States has a responsibility under UNCAT to ensure that victims of the Bush Administration’s use of torture receive reparations for their suffering. The US has not complied with this obligation and must do so.

2. Appendix M of the US Army Field Manual for Human Intelligence Collector Operations No. 2-22.3 (AFM) continues to authorize certain interrogation techniques that can amount to torture and abuse. To comply with its obligations under UNCAT, the US must eliminate Appendix M.

(b) Methodology

3. This submission is based on five years of analysis of national security detention and torture by Physicians for Human Rights’ (PHR) health professional members and staff, whose members include international experts on torture. PHR analyses of national security detention and torture are available on PHR’s Web site. <http://physiciansforhumanrights.org/torture/>.

(c) Organizational description

4. Physicians for Human Rights (PHR), founded in 1986, is a US-based international nongovernmental organization that mobilizes health professionals and forensic scientists to advance health, dignity, and justice and promotes the right to health for all. In addition to reporting on torture and other human rights abuses on individuals in custody, PHR advocates for effective, well-funded, integrated health systems that are equitable and accessible, and demands US and international action to protect the human rights of individuals in conflict.

II. NORMATIVE FRAMEWORK AND ANALYSIS

(a) The US Authorized “Enhanced” Interrogation Techniques in Violation of UNCAT.

5. The United States Senate ratified the UNCAT in 1994, obligating the US to refrain from participating in torture or cruel, inhuman, or degrading treatment.² Nevertheless, during the

¹ See generally Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, G.A. Res. 39/46, U.N. GAOR, 39th Sess., Supp. No. 51, U.N. Doc. A/Res/39/46 (Dec. 10, 1984), available at <http://www.un.org/documents/ga/res/39/a39r046.htm> [hereinafter U.N. Convention Against Torture].

² “Torture means 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, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a

period 2002 through 2008 the Bush Administration authorized so-called “enhanced” interrogation techniques, resulting in physical and psychological torture of detainees in US military and CIA custody. These techniques included, but were not limited to, the use of stress positions, beating, temperature manipulation, waterboarding, threats of harm, sleep deprivation, sensory bombardment, violent shaking, sexual humiliation, prolonged isolation, and sensory deprivation. A 2007 analysis by PHR and Human Rights First showed that these techniques, whether used alone or in combination, rise to the level of violations of both US and international anti-torture law, including UNCAT.³ For purposes of a 2008 report, PHR physicians conducted medical evaluations of former detainees held by US forces at Guantanamo Bay, Cuba, Bagram Air Base, Afghanistan, and Abu Ghraib Prison in Iraq.⁴ PHR researchers found repeated physical and psychological evidence that corroborates the accounts of torture by former detainees. All eleven former detainees who were interviewed and medically evaluated by PHR experts reported being subjected to lengthy periods of isolation as well as other abuses, including various combinations of a number of the abuses described below.⁵

i. Stress Positions: Forced Standing, Handcuffing, and Shackling

6. All of the detainees evaluated by PHR for the 2008 study were subjected to stress positions such as suspensions, forced standing and various awkward poses, often while shackled. Stress positions such as tying detainees’ hands behind their backs and pulling their arms backwards, or shackling their hands or both hands and feet for days at a time have been prohibited by UNCAT.⁶ The UN Committee against Torture has determined that restraining detainees in very painful positions is by itself an act of both torture and cruel, inhuman or degrading treatment.⁷ In a review of US practices, the UN Special Rapporteur on Torture has condemned the use of stress positions on detainees by the United States as violating the Convention Against Torture.⁸

third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.” UN. Convention Against Torture, *supra* note 1, at art. 1.

³ See generally PHYSICIANS FOR HUMAN RIGHTS & HUMAN RIGHTS FIRST, LEAVE NO MARKS: ENHANCED INTERROGATION TECHNIQUES AND THE RISK OF CRIMINALITY (2007), available at <http://physiciansforhumanrights.org/library/report-2007-08-02.html> [hereinafter LEAVE NO MARKS] (The profound harmful health effects of separation (an alternative term for isolation) include hallucinations, severe anxiety and a significantly higher risk of developing psychiatric disorders).

⁴ See generally PHYSICIANS FOR HUMAN RIGHTS, BROKEN LIVES: MEDICAL EVIDENCE OF TORTURE BY US PERSONNEL AND ITS IMPACT (2008), available at http://brokenlives.info/?page_id=69.

⁵ See PHYSICIANS FOR HUMAN RIGHTS, BREAK THEM DOWN: SYSTEMATIC USE OF PSYCHOLOGICAL TORTURE BY US FORCES 59-69 (2005), available at <http://physiciansforhumanrights.org/library/report-2005-may.html> (documenting the physical and psychological effects of separation and sensory deprivation); see also LEAVE NO MARKS, *supra* note 3, at 30-33 (same).

⁶ UN Committee Against Torture, *Report on Mexico Produced by the Committee Under Article 20 of the Convention, and Reply from the Government of Mexico*, ¶¶ 143, 165, U.N. Doc. CAT/C/75 (May 26 2003), available at <http://www.universalhumanrightsindex.org/documents/828/896/document/en/pdf/text.pdf> [hereinafter *UN Report on Mexico*].

⁷ U.N. Committee Against Torture, *Concluding Observations of the Committee against Torture: Israel*, ¶ 257, U.N. Doc. A/52/44, paras. 253-260 (Sept. 5, 1997), available at www.unhchr.ch/tbs/doc.nsf/0/69b6685c93d9f25180256498005063da?Opendocument [hereinafter *UN Israel Report*].

⁸ The Special Rapporteur of the Commission on Human Rights, *Interim Report of the Special Rapporteur of the Commission on Human Rights on the Question of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, ¶ 17, delivered to the General Assembly, U.N. Doc. A/59/324 (Sept. 1, 2004), available at <http://material.ahrchk.net/notorture/N0449852.pdf> [hereinafter *Interim Report*].

ii. Hooding/Blindfolding

7. All individuals evaluated by PHR for the 2008 study were hooded or blindfolded for long periods of time. Hooding, blindfolding, or otherwise depriving a detainee of sight – like prolonged isolation -- is a form of sensory deprivation and is prohibited under international law. The UN Committee against Torture has determined that “hooding under special conditions” constitutes both torture and cruel, inhuman or degrading treatment or punishment.⁹

iii. Sensory Bombardment

8. Seven of the former detainees evaluated for PHR’s 2008 study reported being subjected to sound and light bombardment. Sound and light bombardment is used to disorient, cause anxiety, and even contribute to personality disintegration, as well as to deprive the person of sleep. It is often combined with other tactics. The UN Committee against Torture has determined that “sounding of loud music for prolonged periods” constitutes torture and cruel, inhuman or degrading treatment or punishment both when it is used in combination with other methods of interrogation and when it is used by itself.¹⁰

iv. Use of Extreme Temperatures

9. All of the individuals whom PHR evaluated reported being subjected to temperature extremes. The UN Committee against Torture has found that exposure to extreme temperatures, even in the absence of other forms of abusive interrogation or detention techniques, constitutes both torture and cruel, inhuman and degrading treatment.¹¹

v. Threats of Harm to Detainees and Their Families

10. The use of various forms of threats were reported by all the former detainees evaluated by PHR. The UN Committee against Torture determined that threats, including but not limited to death threats, constitute both torture and cruel, inhuman or degrading treatment.¹² In its Report on Mexico, the UN Committee described death threats as well as threats of harm to family members as “torture methods.”¹³

vi. Electric Shocks, Sexual Assault, and Physical Assault

11. All of the former detainees evaluated by PHR reported being subjected to some form of physical assault. The UN Committee against Torture has held that physical beatings such as “blows to various parts of the body, including the ears, with fists, police weapons or truncheons” constitute methods of torture.¹⁴ Four former detainees reported being sodomized, subjected to anal probing, or threatened with rape. The international human rights, criminal justice, and humanitarian law communities, including the International Criminal Court (ICC), the ad hoc international criminal tribunals, regional human rights courts, and the UN human rights bodies, are uniform in their designation of rape as a violation of human rights and a crime.

vii. Forced Nakedness and Sexual Humiliation

12. All except one of the former detainees evaluated by PHR described being subjected to forced nakedness and other forms of sexual humiliation. Sexual humiliation and stripping a detainee of

⁹ *UN Israel Report*, *supra* note 7, at ¶ 257.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *UN Report on Mexico*, *supra* note 6, at ¶¶ 143-44.

¹⁴ *Id.* at ¶ 143.

his clothes adds to his sense of vulnerability¹⁵ and are “intended to cause . . . feelings of humiliation and inferiority.”¹⁶ The severe mental pain and suffering of those who have been subjected to sexually humiliating acts constitute cruel or inhuman treatment and can also be considered a psychological form of torture.

(b) *The US Violated UNCAT by Its Failure to Pursue Accountability for Bush-Era “Enhanced Interrogation”.*

13. The United States’ failure to prosecute those who ordered, justified, and implemented this regime of physical and psychological torture is, in itself, a violation of US obligations under UNCAT. Article 14 of the Convention stresses that: “each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible.”¹⁷ This would require prosecuting alleged perpetrators, as well as reparations and victim assistance for those who suffered as a result of US violations.

(c) *Currently authorized techniques may also lead to violations of UNCAT.*

14. President Obama’s Executive Order, *Ensuring Lawful Interrogations*, which was issued January 22, 2009, prohibits most of the interrogation techniques described above.¹⁸ The order required that all US personnel follow the Army Field Manual for Human Intelligence Collector Operations No. 2-22.3 (AFM). Appendix M of AFM 2-22.3, however, continues to permit isolation, sensory deprivation, and sleep deprivation, which, used either individually or in combination, can constitute torture and/or cruel, inhuman and degrading treatment as defined by UNCAT and US anti-torture law.¹⁹

i. *Prolonged Isolation*

15. All of the former detainees evaluated by PHR in preparation for its 2008 “Broken Laws, Broken Lives” analysis reported having been put in prolonged “isolation” (also referred to as “solitary confinement” and “separation”), where they had contact with only guards or interrogators. In interrogation, this technique is used to disrupt profoundly the senses or personality, and, therefore, could be prosecuted as an act of psychological torture. The UN Committee against Torture has noted (outside the interrogation context) that prolonged solitary confinement could constitute cruel, inhuman or degrading treatment or punishment.²⁰

ii. *Sleep Deprivation*

16. All except two of the participants evaluated by PHR reported prolonged sleep deprivation, usually in combination with other abusive interrogation methods. The UN Committee against Torture has noted that sleep deprivation used to extract confessions from suspects is impermissible,²¹ and that “sleep deprivation for prolonged periods” constitutes torture.²²

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ U.N. Convention Against Torture, *supra* note 1, at art. 14.1.

¹⁸ See Exec. Order No. 13,491, 74 Fed. Reg. 4,893 (Jan. 22, 2009), available at <http://edocket.access.gpo.gov/2009/pdf/E9-1885.pdf>.

¹⁹ Torture Convention Implementation Act of 1994, 18 U.S.C. § 2340 (2004).

²⁰ U.N. Committee Against Torture, *Conclusions and Recommendations of the Committee Against Torture: New Zealand*, ¶ 5(d), U.N. Doc. CAT/C/CR/32/4 (June 11, 2004), available at [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CAT.C.CR.32.4.En?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CAT.C.CR.32.4.En?Opendocument).

²¹ U.N. Committee Against Torture, *Concluding Observations of the Committee Against Torture: Republic of Korea*, ¶ 56, U.N. Doc. A/52/44, paras. 44-69 (Nov. 13 1996), available at [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/A.52.44.paras.44-69.En?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/A.52.44.paras.44-69.En?Opendocument).

III. RECOMMENDATIONS

(a) *The United States should eliminate Appendix M of the Army Field Manual.*

17. The Obama Administration should eliminate from the Army Field Manual Appendix M, “Restricted Interrogation Technique–Separation.” As discussed above, the application of this restricted technique can result in torture or cruel, inhuman and degrading treatment.

(b) *The United States should provide reparations for the unlawful arrest and detention, torture and/or cruel, inhuman or degrading treatment endured by former detainees.*

18. Redressing the damage caused to these individuals should include, as required by individual circumstances, a variety of reparations, such as clearing the detainee’s name, restoring social status, citizenship, employment and place of residence, and returning property. Monetary compensation is warranted for damage resulting from the physical and mental harm, emotional distress, and loss of earnings, harm to dignity, medical, psychological and social services as well as legal fees. Further reparations could include public acknowledgement of the facts, apology, and acceptance of responsibility and guarantees of non-repetition.²³

(c) *The United States should establish an Independent Commission.*

19. The executive branch and Congress should establish an independent commission to fully investigate and publicly report on the circumstances of detention and interrogation in Bagram, Kandahar and elsewhere in Afghanistan, Iraq, and Guantánamo Bay since 2001. This independent commission should have subpoena power to compel witnesses and declassify documents concerning interrogation techniques and conditions of detention including medical records and documentation by behavioral science consultant teams of psychologists in order to establish a full public record. The investigation should extend to individuals in the position of making policy as well as those who carried those policies out, including all healthcare professionals who were in the position of providing care or supporting the interrogation of detainees.

(d) *The United States should hold perpetrators accountable.*

20. All individuals who played any role in the torture or ill-treatment of detainees, including those who authorized the use of methods amounting to torture or exercised command authority over them, should be held to account through criminal and civil processes (such as disciplinary action). Officials at every level should be held accountable for crimes they committed or for the acts of officials subordinate to them. Health professionals who engaged in or facilitated the abuse of detainees, and/or failed to report torture and ill-treatment should be investigated and appropriately sanctioned, and disciplined via Department of Defense and state licensing boards.

²² *UN Israel Report*, *supra* note 7; *see also UN Report on Mexico*, *supra* note 6, at ¶ 143.

²³ For a comprehensive summary of types of reparation, *see Redress, What is Reparation*, www.redress.org/what_is_reparation.html (last accessed Mar. 22, 2010).