

# **Torture and Inhumane Treatment: A Deliberate U.S. Policy**

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International human rights law contains no more basic prohibition than the absolute, unconditional ban on torture and what is known as “cruel, inhuman, or degrading treatment.” Even the right to life admits exceptions, such as the killing of combatants allowed in wartime. But torture and inhumane treatment are forbidden unconditionally, whether in time of peace or war, whether at the local police station or in the face of a major security threat. Yet in 2005, evidence emerged showing that several of the world’s leading powers now consider torture, in various guises, a serious policy option.

Any discussion of detainee abuse in 2005 must begin with the United States, not because it is the worst violator but because it is the most influential. New evidence demonstrated that the problem was much greater than it first appeared after the shocking revelations of abuse at Abu Ghraib prison in Iraq. Indeed, the sexual degradation glimpsed in the Abu Ghraib photos was so outlandish that it made it easier for the Bush administration to deny having had anything to do with it—to pretend that the abuse erupted spontaneously at the lowest levels of the military chain of command and could be corrected with the prosecution of a handful of privates and sergeants.

As Human Rights Watch noted in last year’s World Report, that explanation was always inadequate. For one thing, the abuse at Abu Ghraib paralleled similar if not worse abuse in Afghanistan, Guantánamo, elsewhere in Iraq, and in the chain of secret detention facilities where the U.S. government holds its “high value” detainees. For another, these abuses were, at the very least, the predictable consequence of an environment created by various policy decisions taken at the highest levels of the U.S. government to loosen constraints on interrogators. Those decisions included ruling that combatants seized in the “global war on terrorism” were unprotected by any part of the Geneva Conventions (not simply the sections on prisoners of war); adopting a definition of torture that rendered the prohibition virtually meaningless; not prosecuting offenders until the Abu Ghraib photos became public, even then refusing to permit independent scrutiny of the role of senior policy makers; and making the claim, still not repudiated, that President Bush had commander-in-chief authority to order torture.

Still, it is one thing to create an environment in which abuse of detainees flourishes, quite another to order that abuse directly. In 2005 it became disturbingly clear that the abuse of detainees had become a deliberate, central part of the Bush administration’s strategy for interrogating terrorist suspects.

President Bush continued to offer deceptive reassurance that the United States does not “torture” suspects, but that reassurance rang hollow. To begin with, the administration’s understanding of the term “torture” remained unclear. The United Nations’ widely ratified Convention against Torture defines the term as “any act by which severe pain or suffering, whether physical or mental, is

intentionally inflicted on a person.” Yet as of August 2002, the administration had defined torture as nothing short of pain “equivalent...to that...associated with serious physical injury so severe that death, organ failure, or permanent damage resulting in a loss of significant body function will likely result.” In December 2004, the administration repudiated this absurdly narrow definition, but it offered no alternative definition.

The classic forms of torture that the administration continued to defend suggested that its definition remained inadequate. In March 2005, Porter Goss, the CIA director, justified water-boarding, a sanitized term for an age-old, terrifying torture technique in which the victim is made to believe that he is about to drown. The CIA reportedly instituted water-boarding beginning in March 2002 as one of six “enhanced interrogation techniques” for selected terrorist suspects. In testimony before the U.S. Senate in August 2005, the former deputy White House counsel, Timothy Flanigan, would not even rule out using mock executions.

Moreover, President Bush’s pronouncements on torture continued to studiously avoid mention of the parallel prohibition of cruel, inhuman, or degrading treatment. That is because, in a policy first pronounced publicly by Attorney General Alberto Gonzales in January 2005 Senate testimony, the Bush administration began claiming the power, as noted above, to use cruel, inhuman, or degrading treatment so long as the victim was a non-American held outside the United States. Other governments obviously subject detainees to such treatment or worse, but they do so clandestinely. The Bush administration is the only government in the world known to claim this power openly, as a matter of official policy, and to pretend that it is lawful.

The administration was so committed to this policy that, in October, Vice President Dick Cheney presented the sad spectacle of the nation’s second highest ranking official imploring the Congress to exempt the CIA—the part of the U.S. government that holds the “high value” detainees—from a legislative effort to reaffirm the absolute ban on cruel, inhuman, or degrading treatment.

While proclaiming the power to subject some detainees to “inhuman” treatment, President Bush somehow managed with a straight face still to insist that his administration would treat all detainees “humanely.” He never publicly grappled with this obvious contradiction, and in August, it became clear why. The former deputy White House counsel, Timothy Flanigan, revealed in Senate testimony that, in the administration’s view, the term “humane treatment” is not “susceptible to a succinct definition.” In fact, he explained, the White House has provided no guidance on its meaning.

The Bush administration’s effort to prevent Congress from unambiguously outlawing abusive treatment was hardly an academic matter. Lt. Gen. Michael V. Hayden, the deputy director of national intelligence and one of those who oversees the CIA, explained to human rights groups in August that U.S. interrogators have a duty to use all available authority to fight terrorism. “We’re pretty aggressive within the law,” he explained. “We’re going to live on the edge.”

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\* From Human Rights Watch’s website.