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Interrogations, Torture and Ill Treatment: Legal Requirements and Health Consequences

For over fifteen years Physicians for Human Rights (PHR) has documented and exposed acts of torture and ill treatment and medically examined torture victims from around the world. PHR is one of the principal organizers of the United Nations Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol), which contains international standards for effective investigation and documentation of torture and ill treatment.

US government officials continue to classify certain acts as permissible under the Geneva Conventions. PHR therefore issues the following guiding principles[1] to clarify the US government's legal obligations for interrogations, help ensure that interrogators prevent and account for acts of torture and/or ill treatment of detainees; and make clear the health consequences of all forms of torture and ill treatment, including so-called "stress and duress" coercive techniques.

Moreover, PHR requests that the US government make transparent the levels of involvement of health professionals in making detainees fit for torture and/or ill treatment. PHR also calls for an end to the transfer of detainees for interrogation in other countries known to employ torture techniques such as hooding, beatings, soaking water, and deprivation of food, light and medications.

At a May 11, 2004 hearing before the Senate Armed Services Committee, a list of interrogation techniques used by the U.S. Army in detention facilities in Iraq was released.[2] These include techniques that are in clear violation of the Geneva Conventions, the UN Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (UN Convention Against Torture), American statutes that prohibit torture and other established international norms against torture and ill treatment. Among the

[1] The specific guidance principles were developed by Vincent Iacopino, M.D., Ph.D., Director of Research for Physicians for Human Rights, Boston, MA; and Allen Keller, M.D., Director of the Bellevue/NYU Program for Survivors of Torture, New York, NY.

[2] Interrogation Rules of Engagement, October 12, 2003.

interrogation methods on the list that specifically require special authorization from Lieutenant General Ricardo Sanchez, the senior commander in Iraq, include food, sleep and sensory deprivation, stress positions, and isolated confinement. The manual also stipulates that "detainees will NEVER be touched in a malicious or unwanted manner."

The following day at a hearing before the Senate Appropriations Defense Subcommittee, Secretary of Defense Donald Rumsfeld and General Richard B. Meyers, Chairman of the Joint Chiefs of Staff, categorically denied allegations that U.S. government personnel authorized interrogation methods prohibited in the Geneva Conventions. Secretary Rumsfeld said he personally approved guidelines for interrogation techniques. In their testimony both officials stated that interrogation methods used by U.S. interrogators in Iraq and elsewhere were in compliance with the Geneva Conventions on the treatment of prisoners of war and approved by Pentagon lawyers. Further, Secretary Rumsfeld said the Geneva Conventions are "open to interpretation."

At a Senate hearing on May 13, Deputy Defense Secretary Paul D. Wolfowitz and Marine Corps General Peter Pace, vice chairman of the Joint Chiefs of Staff, said that General Sanchez approved more stringent interrogations and considered these a violation of the Geneva Conventions.

Additionally, according to recent news reports, the C.I.A. has used coercive interrogation techniques that have been endorsed by the U.S. Department of Justice and are in violation of national and international laws and norms against torture and ill treatment.

Further, in the soon-to-be-released US Department of State "Country Reports on Human Rights Practices" the very practices deemed by the Secretary of Defense and others as in compliance with the Geneva Conventions are identified as torture and/or ill treatment.

The US government needs to clarify the contradictory statements by US government officials regarding whether or not the US government has or has not complied with the Geneva Conventions with respect to treatment of detainees.

In light of this information, which reveals U.S. alleged participation in torture and/or ill treatment in Iraq and elsewhere, Physicians for Human Rights (PHR) has issued the following guiding principles to help ensure that interrogators and those responsible for interrogations prevent and account for acts of torture and/or ill treatment of detainees.

Definitions of Torture

Torture and ill treatment by any definition are unequivocally prohibited. There are no circumstances under which torture and/or ill treatment can be justified. The most common legal definitions of torture are those in the UN Convention Against Torture and the Geneva Conventions.

Convention Against Torture
According to the Convention Against Torture, torture is defined 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, 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 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. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

It is important to note that cruel, inhuman and degrading treatment and/or punishment, often referred to as "ill treatment," represents one end of the torture spectrum and is equally prohibited by international human rights and humanitarian law.

Geneva Convention

Common Article 3 of the Geneva Convention also prohibits torture and ill treatment:

> … the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:
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> (a) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
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> (b) Taking of hostages;
>
> (c) Outrages upon personal dignity, in particular, humiliating and degrading treatment;
>
> (d) The passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

Common Article 3 of the Geneva Conventions applies not only to prisoners of war, but to insurgent captives as well.

US State Department Country Reports

In the its annual Country reports on Human Rights Practices, the US Department of State routinely acknowledges the following practices as torture and/or ill treatment:

- sleep deprivation
- forced/prolonged positioning
- forced nakedness and sexual threats and humiliations
- blindfolding or hooding
- isolation, loud music, witnessing or hearing torture
- mock executions, threats to family and insults

Many of these are the same practices that recently have been allegedly approved by the US military in interrogation procedures in Iraq and elsewhere and, if so, represent a clear violation of international human rights and humanitarian law.

International Standards on the Prohibition of Coercion in the Interrogation of POWs and other Detainees

The use of various forms of "coercion" for information gathering or any other purpose is prohibited by international humanitarian law. In the Geneva Convention Relative to the Treatment of Prisoners of War of 12 August 1949 (GPW) prisoners of war must all times be treated humanely and any and all acts of coercion are strictly forbidden:

> 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 unpleasant or disadvantageous treatment of any kind. (GPW, Article 17)
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> Every prisoner of war, when questioned on the subject, is bound to give only his surname, first names and rank, date of birth, and army, regimental, personal or serial number, or failing this, equivalent information. (GPW, Article 17)

Prohibitions on the use of coercion and respect for international humanitarian law are included in some US military field manuals on interrogation such as the Army's Field Manual (FM 34-52) of September 1992.

> The use of force, mental torture, threats, insults, or exposure to unpleasant and inhumane treatment of any kind is prohibited by law and is neither authorized nor condoned by the US Government. Experience indicates that the use of force is not necessary to gain the cooperation of sources for interrogation. Therefore, the use of force is a poor technique, as it yields unreliable results, may damage subsequent collection efforts, and can induce the source to say whatever he thinks the interrogator wants to hear. However, the use of force is not to be confused with psychological ploys, verbal trickery, or other nonviolent and non-coercive ruses used by the interrogator in questioning hesitant or uncooperative sources. (FM 34-52)

Coercion is both unnecessary and counterproductive. Unfortunately, some may assume that physical and psychological coercion techniques serve to "soften-up" detainees for interrogation. In our experience of documenting hundreds of cases of torture and/or ill treatment over the past 15 years, and in gathering testimony from law enforcement and security officials, it is clear that physical and psychological forms of coercion/ill treatment/torture do not provide accurate and reliable information. On the contrary, by inflicting physical and/or emotional pain, perpetrators reduce their victims to a point that precludes obtaining reliable "information," and in so doing, victims frequently falsely confess to whatever they think "interrogators" want to hear. In reality, those who support physical and psychological coercion to facilitate information gathering do so in an attempt to justify inhuman and illegal acts.

According to the Army's guidelines on interrogations, "softening-up" should be achieved, not by forms of coercion and/or ill treatment, but by humane treatment.

> Humane treatment of insurgent captives should extend far beyond compliance with Article 3, if for no other reason than to render them more susceptible to interrogation. The insurgent is trained to expect brutal treatment upon capture. If, contrary to what he has been led to believe, this mistreatment is not forthcoming, he is apt to become psychologically softened for interrogation. Furthermore, brutality by either capturing troops or friendly interrogators will reduce defections and serve as grist for the insurgent's propaganda mill. (FM 34-52)
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> Special care must be taken in handling insurgent suspects, for their degree of sympathy with the insurgency usually is not readily apparent. Improper handling of such persons may foster sympathies for the insurgency or induce them to remain passive at a time when the host country requires active support from its citizens. (FM 34-52)
>
> Additionally, the inability to carry out a threat of violence or force renders an interrogator ineffective should the source challenge the threat. Consequently, from both legal and moral viewpoints, the restrictions established by international law, agreements, and customs render threats of force, violence, and deprivation useless as interrogation techniques. (FM 34-52)

Non-coercive interrogations techniques such as plea bargaining, witness cooperation and accurately informing a detainee of the legal consequences of cooperation vs. non-cooperation are standard, effective law enforcement interrogation measures that do not require coercion.

The Ethical Duties of Health Personnel

The extent of health professional involvement in the acts of torture and ill treatment in Iraq is not fully documented. The interrogation guidelines, however, issued by the US military indicate that for some of the techniques requiring approval, a health professional needs to be present. In the interrogation manual and also cited in a May 13,2004 article in *Stars and Stripes*, Major General Geoffrey Miller says "keeping prisoners hungry must be supervised by medical personnel". Also, according to the manual, "wounded or medically burdened detainees must be medically clear prior to interrogation". To the extent that health professionals are involved in these activities, for instance conducting examinations to determine fitness for certain forms of interrogation, is a severe breach of medical ethics.

The UN has specifically addressed the ethical obligations of doctors and other health professionals in the Principles of Medical Ethics Relevant to the Role of Health Personnel, Particularly Physicians, in the Protection of Prisoners and Detainees Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (1982). These make clear that health professionals have an ethical duty to protect the physical and

mental health of detainees. They are specifically prohibited from using medical knowledge and skills in any manner which contravenes international statements of individual rights. In particular, it is a gross contravention of health care ethics to participate, actively or passively, in torture or condone it in any way.

"Participation" in torture includes evaluating an individual's capacity to withstand ill treatment; being present at, supervising or inflicting maltreatment; resuscitating individuals for the purposes of further maltreatment or providing medical treatment immediately before, during or after torture on the instructions of those likely to be responsible for it; providing professional knowledge or individuals' personal health information to torturers; intentionally neglecting evidence and falsifying reports, such as autopsy reports and death certificates.

The UN Principles also incorporate one of the fundamental rules of health care ethics by emphasizing that the *only* ethical relationship between prisoners and health professionals is one designed to evaluate, protect and improve prisoners' health. Thus assessments of detainees' health in order to facilitate punishment or torture are clearly unethical.

The World Medical Association (WMA) Declaration of Tokyo of 1975 reiterates the prohibition on any form of medical participation or medical presence in torture or ill treatment. It is reinforced by the UN Principles that specifically refer to the Declaration of Tokyo. Doctors are clearly prohibited from providing information or any medical instrument or substance that would facilitate ill treatment.

Health Consequences of Physical and Psychological forms of Coercion

"Stress and Duress"

Although coercion of any kind is prohibited by the Geneva Conventions, this has not prevented routine practices of physical and/or psychological coercion in places of detention and assertions that such coercion or "stress and duress" methods are benign. This is certainly not the case. There is overwhelming evidence that the medical consequences, both physical and psychological, of coercive practices, so-called "stress and duress" render their use both illegal and immoral. For example, PHR has documented how shaking can result in severe brain damage, including death of a prisoner. Another technique that appears to have been used by US forces in Iraq and Afghanistan, restraining a person for extended periods, can lead to significant musculoskeletal pain as well as torn ligaments and other injuries and disabilities. Methods of torture such as hooding that have been used against detainees held in Afghanistan, Guantanamo, and Iraq, can result in long term psychological damage, particularly, when combined with a mock execution or other psychological methods.

Further, in the United Nations Committee Against Torture's 1997 report on Israel, the Committee concluded that 1) restraining in very painful conditions, 2) hooding under special conditions, 3) sounding of loud music for prolonged periods, 4) sleep deprivation for prolonged periods, 5) threats including death threats, 6) violent shaking, and 7) using

cold air to chill, are interrogation methods in violation of the Convention Against Torture.

To seek to justify these and similar practices on the ground that they do not constitute "severe pain or suffering" also flies in the face of our knowledge of the impact of torture on individuals who experience it. Restraining a prisoner in painful positions can cause significant musculoskeletal pain as well as torn ligaments and other injuries. Subjecting a prisoner to extremes of temperature clearly can cause enormous physical discomfort and suffering. Prolonged periods of sleep deprivation can result in confusion and psychosis, physical symptoms including headaches and dizziness, and chronic disruption of normal sleep patterns.

Although there may be considerable variability in the psychological effects of torture and/or ill treatment, such experiences, including those euphemistically labeled "stress and duress," often result in profound, long-term psychological trauma. According to the Istanbul Protocol,[3] the most common psychological problems are posttraumatic stress disorder (PTSD) and major depression,[4] but may include the following:

- Re-experiencing the trauma
- Avoidance and emotional numbing
- Hyperarousal symptoms
- Symptoms of depression
- Damaged self-concept and foreshortened future
- Dissociation, depersonalization and atypical behavior
- Somatic complaints
- Sexual dysfunction
- Psychosis
- Substance abuse
- Neuropsychological impairment

Such psychological symptoms and disabilities can last many years or even a lifetime. It is important to realize that the severity of psychological reactions depends on the unique cultural, social and political meanings that torture and/or ill treatment has for each individual and do not require extreme physical harm. In our experience, seemingly benign forms of "stress and duress" can and do have devastating, long-term psychological effects. Deprivations or normal sensory stimulation (e.g. sound, light, sense of time, isolation, restrictions of sleep, food, water, toilet facilities bathing, motor activity, medical care, and social contacts) serve to disorient victims, to induce

[3] The Istanbul Protocol is the result of three years of analysis, research, and drafting undertaken by more than 75 forensic doctors, physicians, psychologists, human rights monitors, and lawyers who represent 40 organizations and institutions from 15 countries. Available at: http://www.unhchr.ch/pdf/8istprot.pdf. PHR was on of the principal organizers of the Istanbul Protocol Project.

[4] There is considerable evidence for biological changes that occur in PTSD and major depression and, from that perspective, these conditions are amenable to treatment both biologically and psychologically.

exhaustion and debility, difficulty concentrating, impair memory and instill fear, helplessness, despair, and, in some cases, can result in severe anxiety and hallucinations and other psychotic reactions.

Disorientation, humiliations (e.g. verbal abuse, denial of privacy, prevention of privacy, arbitrary rules, overcrowding of cells, forced nakedness, filth in food, and infected surroundings) and threats to victims and their friends and families, together represent deliberate attempts to break down the will of individuals. Similarly, various forms of torture and/or ill treatment are often used to induce the sense of "learned helplessness," that the abuse continues whether or not the victim cooperates. Specific forms of torture and/or ill treatment that result in a profound helplessness are associated with greater psychological distress.[5]

There is no limit to the number of forms that torture and/or ill treatment can take. Here are just a few examples from our experience of documenting medico-legal evidence of torture and/or ill treatment and caring for survivors that have had profound psychological effects:

- Being forced to lick the boots of an "interrogator," or blood on the floor of another victim
- Being forced to be naked in the same cell with others, a brother and sister and forcing them to engage in sexual acts.
- Forced nakedness combined with the threat of assault and/or verbal humiliations and molestation
- The threat of sexual assault of a family member conveyed in a complement of "beauty"
- Forcing Muslims to eat pork or drink alcohol
- Cutting the hair of a Sikh man, an article of Sikh faith.
- Hearing the sounds of others being abused
- The presence of attack dogs.
- The display of torture devises during "interrogation" with or without specific reference to them
- Not permitting a menstruating women access to toilet facilities or to bathe
- Witnessing the abuse of others or being forced to participate in the abuse of others.
- A father brought to cell to see his daughter sitting naked, apparently unharmed, in a chair
- An "interrogator" touching his gun when asking specific questions
- Being confined in a coffin-like box for prolonged periods of time

[5] See Basoglu M. Mineka S. Paker M. Aker T. Livanou M. Gok S. Psychological preparedness for trauma as a protective factor in survivors of torture. [Journal Article] *Psychological Medicine. 27(6):1421-33, 1997 Nov*.; and Holtz TH. Refugee trauma versus torture trauma: a retrospective controlled cohort study of Tibetan refugees. [Journal Article] *Journal of Nervous & Mental Disease. 186(1):24-34, 1998 Jan.*

In many cases, these forms of ill treatment were much more traumatic to individuals than other, severe forms of physical torture such as suspension, beatings, and electric shock that they had experienced. There is no clear line that can be drawn between stress and duress, ill treatment and torture. This is precisely why any and all coercive practices are strictly prohibited by the Geneva Conventions; they are, indeed, forms of cruel, inhuman or degrading treatment or punishment.

Further elaboration on forms of torture and ill treatment is included in the United Nations Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol), which contains international standards for effective investigation and documentation of torture and ill treatment:

Methods of Torture and Ill Treatment

1. Blunt trauma: punch, kick, slap, whips, wires, truncheons, falling down
2. Positional torture: Suspension, Stretching limbs apart, prolonged constraint of movement, forced positioning
3. Burns: cigarettes, heated instrument, scalding liquid, caustic substance
4. Electric shock
5. Asphyxiation: wet and dry methods, drowning, smothering, choking, chemicals
6. Crush injuries: smashing fingers, heavy roller to thighs/back
7. Penetrating injuries: stab and gunshot wounds, wires under nails
8. Chemical exposures: salt, chili, gasoline, etc. (in wounds, body cavities)
9. Sexual: violence to genitals, molestation, instrumentation, rape
10. Crush injury or traumatic removal of digits and limbs
11. Medical: amputation of digits or limbs, surgical removal of organs
12. Pharmacologic torture: toxic doses of sedatives, neuroleptics, paralytics, etc.
13. Conditions of detention, e.g.:
    - Small or overcrowded cell
    - Solitary confinement
    - Unhygienic conditions
    - No access to toilet facilities
    - Irregular and/or contaminated food and water
    - Exposure to extremes of temperature
    - Denial of privacy
    - Forced nakedness
14. Deprivations:
    - Of normal sensory stimulation, such as sound, light, sense of time via hooding, isolation, manipulating brightness of the cell
    - Of physiological needs: restriction of sleep, food, water, toilet facilities, bathing, motor activities, medical care
    - Of social contacts: isolation within prison, loss of contact with outside world - victims often are kept in isolation in order to prevent bonding and mutual identification and to encourage traumatic bonding with the torturer
15. Humiliations: verbal abuse, performance of humiliating acts

16. Threats: of death, harm to family, further torture and/or imprisonment, mock executions
17. Threats to or arranging conditions for attacks by animals such as dogs, cats, rats, and scorpions
18. Psychological techniques to break down the individual: forced "betrayals," learned helplessness exposure to ambiguous situations and/or contradictory messages, etc.
19. Violation of taboos
20. Behavioral coercion
    - Forced to engage in practices against one's religion (e.g. forcing Muslims to eat pork)
    - Forced to harm others: e.g. the torture of others, or other abuses
    - Forced to destroy property
    - Forced to betray someone placing them at risk for harm

21) Forced to witness torture or atrocities being inflicted on others

As mentioned above, prohibitions of any form of coercion in the Geneva Conventions do not depend on adverse health consequences. Regardless of whether specific forms of physical and/or psychological coercion are associated with adverse health consequences, their use is strictly forbidden under the Geneva Conventions. Furthermore, without independent and effective monitoring of all interactions of detainees, it is impossible to verify whether the rights of detainees are being respected. Prevention of and accountability for torture and ill treatment requires adherence to all provisions of the Convention Against Torture and the Geneva Conventions, not merely the prosecution of a handful of offenders when abuses occur.

Recommendations to the US Government:

1. Ensure that guidelines for interrogations conform to the Geneva Conventions and the UN Convention Against Torture, including the absolute prohibition of the use of any coercive measures and UN standards for independent investigation and documentation of torture and ill treatment included in the Istanbul Protocol.
2. Make public all guidelines for interrogations.
3. Access to facilities where detainees are being held should be granted to independent human rights organizations.
4. Account for the whereabouts of all detainees and notify family members of their whereabouts. This includes information on transfer of detainees.
5. Identify all facilities where detainees are being held within the US and in other countries.
6. Ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.
7. Keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons

subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture.

8. Provide to the American public a full accounting of interrogation practices, including all records and documents relating to both the most recent violations and past allegations of abuse in Afghanistan, Iraq, Guantanamo, the US and other countries where individuals have been sent.
9. Appoint an independent ombudsman, who has the authority to visit and unrestricted access to any place of detention, should be appointed.
10. Video tape all interrogations and statements or confessions.
11. Hold accountable those responsible for interrogation procedures that violate international human rights and humanitarian law.
12. Respect the duty of health personnel not to participate in any way in torture and/or ill treatment as provided in the World Medical Association's Declaration of Tokyo and the UN Principles of Medical Ethics Relevant to the Role of Health Personnel, Particularly Physicians, in the Protection of Prisoners and Detainees Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment
13. Prohibit the transfer of detainees to other countries that permit torture.