

Guest Essay

ABU GHRAIB: ERODING HUMAN RIGHTS AND AMERICAN CREDIBILITY

Kenneth Roth

When a government breaches international human rights and humanitarian law, it commits a violation. The breach is condemned or prosecuted, but the rule itself remains firm. Yet when a government as dominant and influential as the United States openly defies that law and seeks to justify its defiance, it also undermines the law itself—and invites others to do the same. The US government’s deliberate and ongoing use of “coercive interrogation”—its acceptance and deployment of torture and other cruel, inhuman, or degrading treatment—has had this insidious effect to a degree well beyond that of an ordinary abuse. That unlawful conduct has also undermined Washington’s much-needed credibility as a proponent of human rights and as a leader of the campaign against terrorism.

The US government’s systematic and enduring use of coercive interrogation jeopardizes a pillar of international human rights law—a centuries-old proscription, reaffirmed unconditionally in numerous widely ratified human rights treaties. These treaties state that governments should never subject detainees to torture—defined therein as the intentional infliction of severe pain or suffering—or to other brutal, inhuman, or demeaning treatment. As made clear in the Convention against Torture, which the United States ratified in 1994, “No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.” Yet in fighting terrorism, the US government has treated this cornerstone obligation as merely hortatory—a matter of choice, not duty.

This disdain for so fundamental a principle has done enormous damage to the global system for protecting human rights. Broad public condemnation has certainly greeted the US government’s use of torture and other abusive techniques. To some extent that outrage has reinforced the rules that Washington violated—but not enough. Washington’s lawless example is so powerful and its influence so singular, that its deliberate breaches threaten to overshadow the condemnations and to leave human rights law significantly weakened. If even so basic a rule as the ban on torture can

Kenneth Roth is the executive director of Human Rights Watch. This article is an updated excerpt from the Human Rights Watch’s World Report on Darfur and Abu Ghraib.

be flouted, other rights will inevitably be undermined as well.

To make matters worse, the Bush administration has developed outrageous legal theories to attempt to justify many of its coercive techniques. Whether defining torture so narrowly as to render its prohibition meaningless, suggesting bogus legal defenses for torturers, or claiming that the president has inherent power to order torture, the administration and its lawyers have directly challenged the absolute ban on abusing detainees.

The weakening of one of the most important governmental voices for human rights compounds the problem. For every offender that the US berated for human rights transgressions, there was another whose abuses it ignored, excused, or even supported. Yet despite this inconsistency, the United States historically has played a key role in defending human rights. Its embrace of coercive interrogation—part of a broader betrayal of human rights principles in the name of combating terrorism—has significantly impaired its ability to mount that defense.

Governments facing human rights pressure from the US now find it increasingly easy to challenge Washington's claim of upholding the principles that it violates itself. Whether it is Egypt defending renewal of its emergency law by reference to US anti-terror legislation, Malaysia justifying administrative detention by invoking Guantánamo, Russia citing Abu Ghraib to blame abuses in Chechnya solely on low-level soldiers, or Cuba claiming the Bush administration had "no moral authority to accuse" it of human rights violations, repressive governments find it easier to deflect US pressure because of Washington's own sorry post-September 11 record on human rights. Indeed, when asked by Human Rights Watch to protest administrative detention in Malaysia and prolonged incommunicado imprisonment in Uganda, State Department officials demurred, explaining, in the words of one, "with what we are doing in Guantánamo, we're on thin ice to push this" (Human Rights Watch 43).

Similarly, many human rights defenders, particularly in the Middle East and North Africa, now cringe when the United States comes to their defense. Reformers in the Middle East speak of "the hug of death"—the ill effects of Washington's hypocritical embrace. They may crave a powerful ally, but identifying too closely with a government that so brazenly ignores international law—whether with respect to Iraq, Israel and the occupied territories, or the campaign against terrorism—has become a sure route to disrepute. To his credit, President Bush, in a November 2003 speech, deplored "sixty years of Western nations excusing and accommodating the lack of freedom" in the Arab world. Recalling US efforts to roll back Communist dictatorships in Eastern Europe, President Bush committed the United States to a new "forward strategy of freedom" (George W. Bush

speech on 6 November 2003). Yet because of animosity toward Washington's policies, the close collaboration with civil society that characterized US pro-democracy efforts in Eastern Europe is now more difficult in the Middle East and North Africa. This animosity is not anti-Americanism, as it is often labeled in an effort to dismiss it, but anti-American "policyism."

Washington's loss of credibility has not been for lack of rhetorical support for concepts that are closely related to human rights, but its use of explicit human rights language seems to have been calculatedly rare. As in his January 2005 inauguration speech, President Bush speaks often of his devotion to "freedom" and "liberty," and of his opposition to "tyranny" and "terrorism," but rarely of his commitment to human rights. The distinction has enormous significance. It is one thing to pronounce oneself on the side of the "free," but quite another to be bound by the full array of human rights standards that are the foundation of freedom. By the same token, it is one thing to declare oneself opposed to terrorism, but quite another to embrace the body of international human rights and humanitarian laws that enshrine the values that reject terrorism. This linguistic sleight of hand—the refusal to accept the legal obligations embraced by rights-respecting states—has facilitated Washington's use of coercive interrogation.

What has been particularly frustrating about Washington's disregard for international standards is how senseless, and even counterproductive, it has been—especially in the Middle East and North Africa, where counterterrorism efforts have focused. Open and responsive political systems are the best way to encourage people to pursue their grievances peacefully. But when the most vocal governmental advocate of democracy deliberately violates human rights, it undermines democratically inclined reformers and strengthens the appeal of those who preach more radical visions.

Moreover, because deliberately attacking civilians is an affront to the most basic human rights values, an effective defense against terrorism requires not only traditional security measures but also reinforcement of a human rights culture. The communities and nations that exercise the most influence on potential terrorists must themselves be persuaded that violence against civilians is never justified, regardless of its cause. But when the United States disregards human rights, it undermines that human rights culture and thus sabotages one of the most important tools for dissuading potential terrorists. Instead, US abuses have provided a new rallying cry for terrorist recruiters, and the pictures from Abu Ghraib have become the recruiting posters for Terrorism, Inc. Many militants need no additional incentive to attack civilians, but if a weakened human rights culture eases even a few fence-sitters toward the path of violence, the consequences can be dire.

And for what? To vent frustration, to exact revenge, perhaps, but not because torture and mistreatment are needed for protection. Respect for the Geneva Conventions does not preclude vigorous interrogation of detainees about a limitless range of topics. The US Army's interrogation manual makes clear that abuse undermines the quest for reliable information. US military command in Iraq says that Iraqi detainees have provided more useful intelligence when they were not subjected to coercion. In the words of Craig Murray, the United Kingdom's former ambassador to Uzbekistan, speaking of the UK's reliance on torture-extracted testimony: "We are selling our souls for dross."

None of this is to say that the United States is the worst human rights abuser. An investigation of even just twenty-five percent of the world's countries will show many more serious contenders for that notorious title. But the sad truth is that Washington's unmatched influence has made its contribution to the degradation of human rights standards unique.

It is not enough to argue, as its defenders undoubtedly will, that the Bush administration is well-intentioned—that it is the "good guy," in the words of the *Wall Street Journal*. A society ordered on intentions rather than on law is a lawless society. Nor does it excuse the administration's human rights record, as its defenders have tried to do, to note that it removed two tyrannical governments—the Taliban in Afghanistan and the Ba'ath Party in Iraq. Attacks on repressive regimes cannot justify attacks on the body of principles that makes their repression illegal.

To redeem its credibility as a proponent of human rights and as an effective leader of the campaign against terrorism, the Bush administration needs urgently to reaffirm its commitment to human rights. For reasons of principle and pragmatism, it must allow an independent, September 11-style investigative commission to examine completely its interrogation practices. The administration must then acknowledge the wrongfulness of its conduct, hold accountable all those responsible (not just a small group of privates and sergeants), and publicly commit itself to ending all forms of coercive interrogation.

COVER-UP AND SELF-INVESTIGATION

When the photos from Abu Ghraib became public, the Bush administration reacted like many abusive governments that are caught red-handed: it went into damage-control mode. It agreed that the torture and abuse featured in the photographs were wrong, but sought to minimize the problem. The abusers, it claimed, were a handful of errant soldiers, a few "bad apples" at the bottom of the barrel. The problem, it argued, was contained,

both geographically (in one section of the Abu Ghraib prison) and structurally (involving only low-level soldiers, not more senior commanders). The abuse photographed at Abu Ghraib and broadcast around the world, the administration maintained, had nothing to do with the decisions and policies of more senior officials.

Key to this damage control was a series of carefully limited investigations. Most of the investigations, such as those conducted by Maj. Gen. George Fay and Lt. Gen. Anthony Jones, involved uniformed military officials examining the conduct of their subordinates; these officers lacked the authority to scrutinize senior Pentagon officials. The one investigation with the theoretical capacity to examine the conduct of Defense Secretary Donald Rumsfeld and his top aides—the inquiry led by former Defense Secretary James Schlesinger—was appointed by Rumsfeld himself and seemed to go out of its way to distance him from the problem. (At the press conference releasing the investigative report, Schlesinger said that Rumsfeld’s resignation “would be a boon to all America’s enemies.”) The Schlesinger investigation lacked the independence of, for example, the September 11 Commission, which was established with the active involvement of the US Congress. In addition, the Central Intelligence Agency—the branch of the US government believed to have custody of the most important terrorist suspects—has apparently escaped scrutiny by anyone other than its own inspector general. Meanwhile, no one seems to be examining the role of President Bush and other senior administration officials.

When columnist Robert Novak publicly identified Valerie Plame, former Ambassador Joseph Wilson’s wife, as a CIA “operative”—a serious crime because it could endanger her—the administration agreed to appoint a special prosecutor who was promised independence from direction by the administration. Yet the administration has refused to appoint a special prosecutor to determine whether senior officials authorized torture and other forms of coercive interrogation, which is a far more serious and systematic offense than the revealing of a spy’s identity. As a result, no criminal inquiry that the administration itself does not control is being conducted into the US government’s abusive interrogation methods. The flurry of self-investigations cannot obscure the lack of any genuinely independent one.

THE POLICIES BEHIND ABU GHRAIB

The abuses at Abu Ghraib did not erupt spontaneously at the lowest levels of the military chain of command. They were not merely a “management” failure, as the Schlesinger investigation suggested. They were the

direct product of an environment of lawlessness, an environment created by policy decisions taken at the highest levels of the Bush administration, many long before the start of the Iraq war. They reflect a determination to fight terrorism while remaining unconstrained by fundamental principles of international human rights and humanitarian law—even though the United States and governments around the world have committed to respecting those principles even in times of war and while under severe security threats. The Bush administration’s decisions received important support in the United States from a chorus of partisan pundits and academics who, claiming that an unprecedented security threat justified unprecedented measures, were all too eager to abandon the fundamental principles on which their nation had been founded. Those decisions included:

- The decision not to apply the Geneva Conventions to detainees in US custody at Guantánamo, even though the conventions apply to all people picked up on the battlefield of Afghanistan. Senior Bush officials vowed that all detainees would be treated “humanely,” but that vow seems never to have been seriously implemented and at times was qualified by a self-created exception for “military necessity.” Meanwhile, the effective shredding of the Geneva Conventions sent US interrogators the signal that, in the words of one leading counterterrorist official, “the gloves came off.”
- The decision not to clarify for nearly two years that, regardless of the applicability of the Geneva Conventions, all detainees in US custody were protected by the parallel requirements of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Even when, at the urging of human rights groups, a senior Pentagon official belatedly reaffirmed, in June 2003, that the convention prohibited not only torture but also other forms of ill treatment, that announcement was communicated to interrogators, if at all, in a way that had no discernible impact on their behavior.
- The decision to interpret the prohibition of cruel, inhuman, or degrading treatment narrowly, to permit certain forms of coercive interrogation—that is, certain efforts to ratchet up a suspect’s pain, suffering, and humiliation to make him talk. Not surprisingly, those methods became more coercive as they “migrated,” in the words of two Pentagon inquiries, from the controlled setting of Guantánamo to the battlefields of Afghanistan and Iraq.

- The decision to hold some suspects—eleven known and probably many more—in unacknowledged incommunicado detention, beyond the reach of even the International Committee of the Red Cross. Victims of such “disappearances” are at the greatest risk for torture and other mistreatment. For example, US forces continue to maintain closed detention sites in Afghanistan, where beatings, threats, and sexual humiliation are still reported. Since late 2001, six persons arrested by US forces in Afghanistan have died in custody, one as recently as September 2004.
- The refusal for over two years to prosecute soldiers implicated in the deaths of two suspects in US custody in Afghanistan in December 2002, deaths ruled “homicides” by US Army pathologists. Instead, the interrogators were reportedly sent to Iraq, where some were allegedly involved in more abuse.
- The approval by Defense Secretary Rumsfeld of some interrogation methods for Guantánamo that violated, at the very least, the prohibition of cruel, inhuman, or degrading treatment and possibly the ban on torture. These techniques included placing detainees in painful stress positions, hooding them, stripping them of their clothes, and scaring them with guard dogs. That approval was later rescinded, but it contributed to the environment in which America’s legal obligations were seen as dispensable.
- The reported approval by an unidentified senior Bush administration official, and use, of “water boarding,” known as the “submarine” in Latin America, which is a torture technique in which the victim is made to believe that he will drown, and in practice sometimes does.
- The sending of suspects to governments that practice systematic torture, such as those of Syria, Uzbekistan, and Egypt. Sometimes diplomatic assurances have been sought that suspects handed over will not be mistreated, but if, as in these cases, the receiving government routinely flouts its legal obligation under the Convention against Torture, it is wrong to expect better compliance with the non-binding word of a diplomat.
- The decision (adopted from the Bush administration’s earliest days) to oppose and undermine the International Criminal Court, in part out of fear that it might compel the US to prosecute its personnel

implicated in war crimes or in other comparable offenses that the administration would prefer to ignore. This decision signaled a determination to protect US personnel from external accountability for human rights offenses that the US government might authorize.

- The decision by the Justice Department, the Defense Department, and the White House counsel to concoct dubious legal theories to justify torture. Despite objections from the State Department and from professional military attorneys, these government departments, under the direction of politically appointed lawyers, offered such absurd interpretations of the law as the one that President Bush has “commander-in-chief authority” to order torture. Following that theory, Slobodan Milosevic and Saddam Hussein may as well be given the keys to their jail cells, since they, too, presumably would have had “commander-in-chief authority” to authorize the atrocities they directed.

These policy decisions, taken not by low-level soldiers but by senior officials of the Bush administration, have created an “anything goes” atmosphere, an environment in which the ends are assumed to justify the means. While sometimes the mistreatment of detainees was merely tolerated, at other times it was actively encouraged or even ordered. In those circumstances, when the demand came from on high for “actionable intelligence”—intelligence that would help respond to the steady stream of US casualties at the hands of extraordinarily brutal Iraqi insurgents—it was hardly surprising that interrogators saw no obstacle in the legal prohibition of torture and mistreatment.

To this day, the Bush administration has failed to repudiate many of these decisions. It continues to refuse to apply the Geneva Conventions to any of the more than five hundred detainees held at Guantánamo (despite a US court ruling rejecting its position) and to many others detained in Iraq and Afghanistan. It continues to “disappear” detainees, despite ample proof that these “ghost detainees” are extraordinarily vulnerable to torture. It refuses to disown the practice of “rendering” suspects to governments that torture. It continues its vendetta against the International Criminal Court. It refuses to reject in anything but vague and general terms the many specious arguments for torture contained in the administration’s lawyers’ notorious “torture memos.” And it still refuses to disavow all forms of coercive interrogation or to adopt a clear policy forbidding it. Indeed, it reportedly continued as late as June 2004—long after the Abu Ghraib mistreatment became public—to subject Guantánamo detainees to beatings,

prolonged isolation, sexual humiliation, extreme temperatures, and painful stress positioning—practices the International Committee of the Red Cross reportedly called “tantamount to torture.”

As the Bush administration assembles its cabinet for a second term, President Bush seems to have ruled out even informal accountability. Secretary of State Colin Powell, the cabinet official who most forcefully opposed the administration’s disavowal of the Geneva Conventions, has left the cabinet. Defense Secretary Donald Rumsfeld, who ordered abusive interrogation techniques in violation of international law, is staying. White House Counsel Alberto Gonzales, who sought production of the memos justifying torture and who himself wrote that the fight against terrorism renders “obsolete” and “quaint” the Geneva Conventions’ limitations on interrogation and the treatment of prisoners, has been rewarded with nomination for the position of Attorney General. As for the broader Bush administration, the November elections seem to have reinforced its traditional disinclination to serious self-examination. Apparently seeing the election results as a complete vindication, it refuses to admit its role in Abu Ghraib and in other interrogation abuses.

THE TWISTED LOGIC OF TORTURE

A warped and dangerous logic lies behind the Bush administration’s refusal to reject coercive interrogation. Many American security officials seem to believe that coercive interrogation is necessary to protect Americans and their allies from a catastrophic terrorist attack. Torture and inhumane treatment may be wrong, they contend, but mass murder is worse, so the lesser evil must be tolerated to prevent the greater one. Yet, aware of how fundamental the prohibition of torture is to modern civilization, even proponents of a hard-line approach to counter-terrorism are reluctant to prescribe systematic torture. Instead, they purport to create a rare exception to the rule against torture by invoking the “ticking bomb” scenario, a situation in which interrogators are said to learn that a terrorist suspect in custody knows where a ticking bomb has been planted and must force that information from him to save lives.

The ticking bomb scenario makes for great philosophical discussion, but it rarely arises in real life—at least not in a way that avoids opening the door to pervasive torture. In fact, interrogators hardly ever learn that a suspect in custody knows of a particular, imminent terrorist bombing. Intelligence is rarely if ever good enough to provide such specific, advance warning. Instead, the ticking bomb scenario is a dangerously expansive metaphor capable of embracing anyone who might have knowledge of un-

specified future terrorist attacks. After all, why are the victims of only an imminent terrorist attack deserving of protection by torture? Why not also use torture to prevent a terrorist attack tomorrow or next week or next year? And, once the taboo against torture is broken, why stop with the alleged terrorists themselves? Why not also torture their families or associates, and anyone else who might provide life-saving information? The slope is very slippery.

Israel provides an instructive example of how dangerously elastic the ticking-bomb rationale can become. In 1987, the Landau Commission in Israel authorized the use of “moderate physical pressure” in ticking-bomb situations. A practice initially justified as rare and exceptional, taken only when necessary to save lives, it gradually became standard procedure. Soon, some 80 to 90 percent of Palestinian security detainees were being tortured until, in 1999, the Israeli Supreme Court curtailed the practice. Other schemes have also been suggested to allow only exceptional torture. Judges might be asked to approve torture. Consent of the highest levels of the executive branch might be required. Yet in the end, any effort to regulate torture ends up legitimizing it and inviting its repetition. “Never” cannot be redeemed if allowed to be read as “sometimes.” Regulation too easily becomes license.

The Bush administration tried to allow just limited coercion through close regulation, but that allowance, predictably, led to more expansive use. Once a government allows interrogators to ratchet up the level of pain, suffering, and humiliation to which it subjects detainees, severe abuse will not be far behind. That’s because a hardened terrorist is unlikely to be moved by minor discomfort or by modest levels of pain. Once coercion is permitted, interrogators will be tempted to intensify the mistreatment until the suspect cracks. And so cruel, inhuman or degrading treatment gives way to torture.

As most professional interrogators explain, and as the US army’s interrogation manual confirms, coercive interrogation is far less likely to produce reliable information than the time-tested methods of careful questioning, probing, cross-checking, and gaining the confidence of the detainee. A person facing severe pain is likely to say whatever he thinks will stop the torture. But a skilled interrogator can often extract accurate information from the toughest suspect without resorting to coercion.

Moreover, once the norm against torture is breached, it is difficult to limit the consequences. Those who face increased risk of torture are not only “terrorist suspects” but anyone who finds himself in custody anywhere in the world—including, of course, Americans. After all, how can the United States protest others’ mistreatment of its troops when their jailors

do no more than what Washington does to its own detainees? In addition, a compromised prohibition of torture undermines other human rights, which imperils us all, in part because of its dangerous implications for the campaign against terrorism. Why, after all, is it acceptable to breach the fundamental prohibition of torture but not acceptable to breach the fundamental prohibition against attacking civilians? The torturer may justify his conduct by appeal to a higher good, but so do most terrorists. In neither case should the end be allowed to justify the means.

THE EUROPEAN UNION

As US credibility on human rights wanes, there is an urgent need for others to assume the mantle of leadership. The European Union is an obvious candidate, but its performance has been inconsistent at best. At a formal level, the EU has embraced a rules-based order by holding that “establishing the rule of law and protecting human rights are the best means of strengthening the international order” (European Security Strategy 12). It has also repeatedly affirmed that all measures against terrorism must comply fully with international human rights and humanitarian law. And it has been a firm supporter of the emerging international system of justice.

Yet European governments themselves have been willing to violate basic human rights standards—even those involving torture. Sweden, for example, sent two terrorist suspects to Egypt, a government with an established record of systematic torture. Stockholm tried to hide behind the fig leaf of diplomatic assurances from Cairo that the men would not be mistreated, but those assurances were predictably ignored. Germany, the Netherlands, Austria, and the United Kingdom have also returned or attempted to return terrorist or security suspects to places where they were at risk for torture. The United Kingdom refuses to rule out using information extracted from torture in court proceedings; its fig leaf is that it does not commission the torture itself, but merely passively receives its fruits, even though its ongoing relationship with intelligence partners ends up encouraging more torture.

A similar erosion of human rights standards governing the fight against terrorism can be found in certain EU members’ detention practices. The UK government suspended core human rights obligations to allow itself to detain indefinitely, without charge or trial, foreign nationals who were suspected of terrorist activity. In Spain, terrorism suspects can be held virtually incommunicado for up to thirteen days, with no ability to confer in private with attorneys. France asserts the right to detain for up to three years without charge the French nationals released from Guantánamo.

These abusive practices compromise the European Union's ability to fill the leadership void left by Washington's embrace of coercive interrogation. At a moment that calls for distance from misguided American practices, the European Union seems to be opting for emulation. A clear recommitment to human rights principle is immediately needed if the European Union is to serve as an effective counterweight to Washington's insidious influence on human rights standards.

THE WAY FORWARD

Faced with substantial evidence showing that the abuses at Abu Ghraib and elsewhere were caused in large part by official government policies, the Bush administration must reaffirm the importance of making human rights a guiding force for US conduct, even in fighting terrorism. This requires acknowledging and reversing the policy decisions behind the administration's torture and mistreatment of detainees, holding accountable those responsible at all levels of government for this abuse (not just a bunch of privates and sergeants), and publicly committing to ending all forms of coercive interrogation. These steps are necessary to reaffirm the prohibition of torture and ill treatment, to redeem Washington's voice as a credible proponent of human rights, and to restore the effectiveness of a US-led campaign against terrorism.

Yet that is easier said than done. How can we convince President Bush and the Republican-controlled US Congress to establish a fully independent investigative commission, similar to the one created to examine the attacks of September 11, 2001, to determine what went wrong in the administration's interrogation practices and to prescribe remedial steps? How can we convince Attorney General Gonzales, who as White House counsel played a central role in formulating the administration's interrogation policy, to recognize his obvious conflict of interest and to appoint a special prosecutor charged with investigating criminal misconduct independently of the Justice Department's direction? These are not steps that the administration or its congressional allies will take voluntarily. Pressure needs to be applied, and that pressure cannot and should not come only from the usual suspects. Torture and abuse of prisoners are affronts to the most basic American values, and are antithetical to the core beliefs in the integrity of the individual on which the US was founded. And, they violate one of the most basic prohibitions of international law—a prohibition so fundamental that breach of it is considered a crime of universal jurisdiction, prosecutable in any competent court worldwide.

References

Bush, George W. Speech at 20th Anniversary of the National Endowment for Democracy. 6 November 2003.

European Security Strategy. 15895/03, 8 December 2003, 12.

Human Rights Watch. In the Name of Security: Counterterrorism and Human Rights Abuses Under Malaysia's Internal Security Act. Vol. 16, No. 7, May 2004, 434.