



WORLD ORGANIZATION FOR HUMAN RIGHTS USA

Formerly the World Organization Against Torture USA

Morton Sklar, Executive Director

June 26, 2004

CRIMINAL COMPLAINT

TO: The Honorable John Ashcroft, Attorney General of the United States of America.

RE: CRIMINAL COMPLAINT SEEKING THE INVESTIGATION AND PROSECUTION OF U.S. OFFICIALS IMPLICATED IN THE TORTURE OF DETAINEES.

On this day, the 26th of June, set aside by the international community to commemorate the observance of Torture Survivors' Day, we call upon the Attorney General as chief law enforcement official of the United States to take definitive action to deal with the growing revelations suggesting that U.S. officials at the highest levels may have been involved in the policy of encouraging the use of torture of suspected terrorist detainees.

Recent revelations published in the *Wall Street Journal*, the *Washington Post*, the *New York Times* and other authoritative sources indicate that high-level Justice and Defense Department officials provided written approval of policies authorizing the use of torture to obtain information from detainees and suggesting that those committing torture could not be prosecuted. These memoranda provide the most compelling evidence to date that the abuses at Abu Ghraib prison and elsewhere may not have been the isolated acts of a few, but rather part of a systemic and officially sanctioned policy of condoning, justifying and encouraging the use of torture to obtain information from suspected terrorists. Any officials who participated in establishing this policy acted in violation of legal obligations under U.S. law and treaty standards binding on the U.S., including the Convention Against Torture and the Geneva Conventions. Criminal sanctions apply to some of these violations and they must be investigated and applied.

A number of high-level U.S. officials recently have been identified as being involved in, promoting or encouraging the use of torture in the treatment of detainees held in Iraq and other locations. Human rights groups and the press have uncovered enough facts to suggest that there is a reasonable basis for believing that these abuses were not isolated but part of an organized and approved policy established by the U.S. government on a more widespread basis. The facts that have been reported are sufficient to require a full and fair investigation that will lead to the prosecution of those responsible, including high-level officials that helped to set this policy in motion.

Identified below is a list of some of the specific officials who have been named as potentially being involved in establishing or promoting a policy encouraging the use of torture, as well as a listing of the specific laws and standards that may have been violated.

We call upon you to immediately institute a criminal investigation of these and all other individuals who may be involved in the violations of domestic and international laws that prohibit the use of torture on an absolute basis, with the purpose of filing criminal charges against those found responsible under the criminal provisions of the Convention Against Torture as well as other applicable legal requirements. Given the fact that some of the highest level officials in our Department of Justice may have been involved in the process of formulating or encouraging the unlawful use of torture, we further request that you appoint a special attorney to supervise the investigation and any subsequent criminal prosecutions it may produce, and that you grant that special attorney the fullest authority and responsibility to carry out their mandate on as independent a basis as possible. You have the authority to take such a step under 28 USC §§ 515 and 543.

There are a number of applicable laws and legal standards that support the criminal prosecution and punishment of torture. The United States is duty-bound under our own laws and international treaty obligations to fully investigate and prosecute all those who may be responsible for encouraging and participating in acts of torture, irrespective of their positions of authority and the offices they hold. The credibility of our efforts to prevent torture and other human rights abuses in other nations, and the safety and security of our military forces and other citizens abroad who may come under the control and authority of foreign officials require that we take the allegations that have been made more seriously, and investigate and prosecute every U.S. official who has committed or facilitated the commission of torture. Only through a comprehensive effort to identify and prosecute all of those responsible for the Abu Ghraib abuses and other instances of torture can we hope to reestablish our nation's credibility as a major promoter of human rights and the rule of law.

BRIEF LISTING OF OFFICIALS AND CONTRACTORS IDENTIFIED AS BEING POTENTIALLY INVOLVED IN PROMOTING A POLICY TO USE TORTURE

Several U.S. officials and contractors have been identified by human rights and press sources as being potentially involved in promotion, dissemination, and facilitation of a policy supporting the use of torture as a means of obtaining information from suspected terrorist detainees.

1. Donald Rumsfeld, Secretary of Defense:

- Approved secret Pentagon project using force for interrogation of Al-Qaeda suspects to be used against detainees in Iraq. Seymour M. Hersh, *The Gray Zone*, The New Yorker, May 24, 2004.
- Ordered military officials in Iraq, in November 2003, to hold a detainee off the prison rolls in order to prevent the International Committee of the Red Cross from monitoring his treatment, in violation of international law. Additionally, prisoners reportedly are being held in at least a dozen facilities which operate in secret, hidden from Red Cross monitoring. Eric Schmitt and Tom Shanker, *Rumsfeld*

- Issued an Order to Hide Detainee in Iraq*, The New York Times, June 17, 2004; *Rumsfeld, at Tenet's Request, Secretly Held Suspect in Iraq*, Wall Street Journal, June 17, 2004; Human Rights First, *Ending Secret Detentions*, June 2004.
- Command-responsible for abuses committed at Bagram Airbase and elsewhere in Afghanistan. See generally Human Rights Watch, *"Enduring Freedom" Abuses by U.S. Forces in Afghanistan*, March 2004.
 - Approved methods for Guantanamo interrogations, including the use of dogs to intimidate prisoners in January 2002. Jess Bravin and Greg Jaffe, *Rumsfeld Approved Methods for Guantanamo Interrogations*, Wall Street Journal, June 10, 2004; R. Jeffrey Smith and Josh White, *General Granted Latitude at Prison*, Washington Post, June 12, 2004.
 - Approved orders sending General Miller from Guantanamo Bay to Iraq to institute harsher interrogation techniques, which included the use of dogs, shackling, and forcing detainees to strip. R. Jeffrey Smith, *General is Said to Have Urged Use of Dogs*, Washington Post, May 26, 2004.
 - Approved the use of tougher interrogation techniques in Iraq in 2003 to obtain information from detainees. Some techniques deviated from the Army's standard interrogation methods and amounted to torture. Jess Bravin, *Pentagon Report Set Framework for Use of Torture*, Wall Street Journal, June 7, 2004; David Johnston and Tim Golden, *Rumsfeld and Aide Backed Harsh Tactics, Article Says*, The New York Times, May 16, 2004.
 - Ordered the establishment of the Interrogation Working Group that issued an April 2003 memo concluding that the prohibition against torture did not apply to interrogations undertaken pursuant to the President's military orders as Commander-in-Chief. Jess Bravin, *Pentagon Report Set Framework for Use of Torture*, Wall Street Journal, June 7, 2004; Dana Priest and R. Jeffrey Smith, *Memo Offered Justification for Use of Torture*, Washington Post, June 8, 2004; Neil A. Lewis and Eric Schmitt, *Lawyers Decided Ban on Torture Didn't Bind Bush*, New York Times, June 8, 2004.

2. Stephen Cambone, Under-Secretary of Defense for Intelligence:

- Headed secret Pentagon interrogation project focused on Al-Qaeda to be used against detainees in Iraq. Seymour M. Hersh, *The Gray Zone*, The New Yorker, May 24, 2004.
- Approved the use of harsher interrogation techniques, some which deviated from the Army's standard interrogation methods and amounted to torture, in Iraq in 2003 to obtain information from detainees. Jess Bravin, *Pentagon Report Set Framework for Use of Torture*, The Wall Street Journal, June 7, 2004; David Johnston and Tim Golden, *Rumsfeld and Aide Backed Harsh Tactics, Article Says*, The New York Times, May 16, 2004.
- Approved order sending General Miller from Guantanamo to Iraq to institute harsher interrogation techniques, which included the use of dogs, shackling, and forcing detainees to strip. R. Jeffrey Smith, *General Is Said to Have Urged Use of Dogs*, Washington Post, May 26, 2004.
- Command-responsible for abuses committed at Bagram Airbase and elsewhere in

Afghanistan. See generally Human Rights Watch, “Enduring Freedom” Abuses by U.S. Forces in Afghanistan, March 2004.

3. Lieutenant General Ricardo Sanchez, Commander in Iraq:

- Received and approved General Miller's recommendations to bring Guantanamo Bay interrogation techniques to Iraq, including use of military dogs, temperature extremes, reversed sleep patterns, sensory deprivation, stress positions, shackling, forcing detainees to strip, and manipulation of diets. Seymour M. Hersh, *The Gray Zone*, *The New Yorker*, May 24, 2004; R. Jeffrey Smith and Josh White, *General Granted Latitude at Prison*, *Washington Post*, June 12, 2004; R. Jeffrey Smith, *General Is Said To Have Urged Use of Dogs*, *Washington Post*, May 26, 2004.
- Allegedly present during some interrogations and/or incidents of prisoner abuse. Scott Higham, Joe Stephens, and Josh White, *Prison Visits by General Reported in Hearing: Alleged Presence of Sanchez Cited by Lawyer*, *Washington Post*, May 23, 2004.
- Transferred formal command of Abu Ghraib in November 2003 to the 205th Military Intelligence Brigade, under Colonel Thomas M. Pappas, which was responsible for prisoner abuse. Maj. Gen. Antonio Tabuga, *Article 15-6 Investigation of the 800th Military Police Brigade*, March 3, 2004 (Taguba Report).
- Signed an October 12, 2003, memorandum calling for intelligence officials at Abu Ghraib to work more closely with military police to “manipulate an internee’s emotions and weaknesses.” The memorandum explicitly called for interrogators to assume control over the “lighting, heating ... food, clothing, and shelter” of those questioned. R. Jeffrey Smith, *Memo Gave Intelligence Bigger Role; Increased Pressure Sought on Prisoners*, *Washington Post*, May 21, 2004.
- Directed the Combined Joint Task Force-7, which approved the September 10, 2003, memorandum “Interrogation and Counter-Resistance Policy” that permitted the use of yelling, loud music, a reduction of heat in winter and air conditioning in summer, and “stress positions” for as long as 45 minutes every four hours. R. Jeffrey Smith and Josh White, *General Granted Latitude at Prison*, *Washington Post*, June 12, 2004.
- Signed a September 14, 2003, memorandum, which allowed for the use of dogs during interrogations without special approval. R. Jeffrey Smith, *General is Said to Have Urged Use of Dogs*, *Washington Post*, May 26, 2004.
- Command-responsible for abuses committed in Iraq.

4. Col. Thomas Pappas, head of military intelligence at Abu Ghraib:

- Cited in the Taguba report as responsible for detainee abuses. Maj. Gen. Antonio Tabuga, *Article 15-6 Investigation of the 800th Military Police Brigade*, March 3, 2004 (Taguba Report).
- Allegedly approved sleep deprivation tactics, the use of unmuzzled dogs, and other practices to intimidate detainees. He approved interrogation plans involving the use of dogs, shackling, and forcing detainees to strip. *Iraq Jail Contractor Contradicts Generals*, *The Associated Press*, June 15, 2004; Josh White and Scott Higham, *Use of Dogs to Scare Prisoners Was Authorized*, *Washington Post*, June 11, 2004;

R. Jeffrey Smith, *General Is Said To Have Urged Use of Dogs*, Washington Post, May 26, 2004.

5. Major General Jeffrey Miller, deputy commanding general for detention operations in Iraq and former commander in charge of Guantanamo Bay:

- Briefed Iraq detention officers on Guantanamo interrogation methods, with the goal of “rapidly exploit[ing] internees for actionable intelligence.” Allegedly discussed the use of dogs to frighten detainees and facilitate interrogations with the senior military intelligence official at Abu Ghraib. Seymour M. Hersh, *The Gray Zone*, The New Yorker, May 24, 2004; Maj. Gen. Antonio Tabuga, *Article 15-6 Investigation of the 800th Military Police Brigade*, March 3, 2004 (Taguba Report); R. Jeffrey Smith, *General Is Said To Have Urged Use of Dogs*, Washington Post, May 26, 2004; Douglas Jehl and Eric Schmitt, *In Abuse, a Portrayal of Ill-Prepared, Overwhelmed G.I. 's*, The New York Times, May 9, 2004.
- According to the Taguba report, General Miller recommended that the guards at Abu Ghraib and other facilities “be actively engaged in setting the conditions for successful exploitation of the internees.”
- Allegedly told Brig. Gen. Janis Karpinski, who was in charge of Abu Ghraib, that detainees should be treated like dogs. *Abu Ghraib General Says Told Prisoners 'Like Dogs'*, Reuters, June 15, 2004.

6. Brig. General Janis Karpinsky:

- Her leadership failures led to the abuses at Abu Ghraib, making her directly responsible for them. Maj. Gen. Antonio Tabuga, *Article 15-6 Investigation of the 800th Military Police Brigade*, March 3, 2004 (Taguba Report).
- Allegedly reviewed and approved reports by a small unit of interrogators of Abu Ghraib describing abuse of prisoners at Abu Ghraib between November 2003 and January 2004. Andrea Elliott, *Unit Says It Gave Earlier Warning of Abuse in Iraq*, The New York Times, June 14, 2004.
- Signed a December 24, 2003 letter to the International Committee of the Red Cross justifying the abuse of detainees as a “military necessity” to obtain intelligence. *Documents Build a Case for Working Outside the Laws in Interrogations*, The New York Times, June 9, 2004.
- Command-responsible for abuses committed in Abu Ghraib prison and other detention facilities under her command.

7. Capt. Carolyn A. Wood, served in supervisory positions at interrogation units at Bagram and Abu Ghraib:

- Allegedly brought harsh interrogation procedures developed in Afghanistan to Iraq. Douglas Jehl and David Rohde, *Afghan Deaths Linked to Unit at Iraq Prison*, The New York Times, May 24, 2004.

8. Attorney General John Ashcroft:

- Responsible for a series of Justice Department memoranda that allowed the Defense Department to circumvent domestic and international law and facilitated acts of

torture.

- An August 1, 2002, Justice Department memorandum advised the White House torture “may be justified,” and that international laws prohibiting torture “may be unconstitutional if applied to interrogations” conducted in the war on terrorism. The memorandum was signed by Assistant Attorney General Jay S. Bybee. Dana Priest and R. Jeffrey Smith, *Memo Offered Justification for Use of Torture*, Washington Post, June 8, 2004; Memorandum from Office of Legal Counsel, “Standards of Conduct for interrogation under 18 USC §§ 2340-2340A,” Aug. 1, 2002.
- A January 22, 2002, Justice Department memorandum provided arguments to prevent American officials from being charged with war crimes regarding the detention and interrogation of prisoners. The memorandum said that the Geneva Conventions did not apply to detainees from the Afghanistan war. Neil A. Lewis and Eric Schmitt, *Lawyers Decided Ban on Torture Didn't Bind Bush*, The New York Times, June 8, 2004.
- A January 9, 2002, Justice Department memorandum gave arguments to keep US officials from being charged with war crimes and arguments for avoiding jurisdiction of the Geneva Conventions. Memorandum from John Yoo and Robert J. Delahunty, “Application of treaties and laws to Al Qaeda and Taliban detainees,” Jan. 9, 2002; Neil A. Lewis, *Justice Memos Explained How to Skip Prisoner Rights*, The New York Times, May 21, 2004.
- The New York Times also reported the existence of another Justice Department memorandum that explicitly said charges of torture could be avoided if the detainee had been transferred to another country from American custody. This set the basis for “rendition to torture.” Neil A. Lewis, *Justice Memos Explained How to Skip Prisoner Rights*, The New York Times, May 21, 2004.
- Oversaw the senior justice department official that rendered Syrian-Canadian citizen Maher Arar unto torture in Syria. Dana Priest, *Top Justice Aide Approved Sending Suspect to Syria*, Washington Post, Nov. 19, 2003.
- An April 2003 Defense Department report on interrogation methods, concluding that the President was not bound by prohibitions against torture, relied heavily on the August 2002 and January 22, 2002, Justice Department memoranda. Dana Priest and R. Jeffrey Smith, *Memo Offered Justification for Use of Torture*, Washington Post, June 8, 2004; Neil A. Lewis and Eric Schmitt, *Lawyers Decided Ban on Torture Didn't Bind Bush*, The New York Times, June 8, 2004.

9. Alberto Gonzales, Counsel to the President:

- Issued a January 25, 2002, memorandum to President Bush urging the Bush administration to declare captives exempt from the protections of the Geneva Conventions in order to pre-empt war crimes charges and justify the denial of rights and more extreme forms of interrogation. This memorandum provided a presumed legal basis for the abuses in Guantanamo and Afghanistan, and, through General Miller's advice and actions, in Iraq. Memorandum from Alberto R. Gonzales, “Decision Re Application of the Geneva Convention on Prisoners of War to the Conflict with Al Qaeda and the Taliban,” January 25, 2002.

10. George J. Tenet, former Director of the Central Intelligence Agency

- CIA employees under Mr. Tenet's supervision and control were directly involved in the interrogation and abuse of detainees in Iraq and Afghanistan and had knowledge of the abuses taking place. The Department of Justice is investigating the involvement of CIA officers and CIA contract employees in three deaths of detainees, and has indicted one CIA contractor for the death of a detainee in Afghanistan. *Many Abuse Inquiries Under Way*, BBC News Online, May 6, 2004; David Johnston and Neil A. Lewis, *U.S. Examines Role of CIA and Employees in Iraq Deaths*, New York Times, May 6, 2004; Richard A. Oppel Jr. and Ariel Hart, *Contractor Indicted in Afghan Detainee's Beating*, New York Times, June 18, 2004.
- Detainees held at the CIA interrogation center at Bagram air base in Afghanistan, and subject to CIA supervision, were "kept standing or kneeling for hours in black hoods or spray-painted goggles... [and] held in awkward, painful positions and deprived of sleep with a 24-hour bombardment of lights—subject to what are known as 'stress and duress' techniques." Dana Priest and Barton Gellman, *U.S. Decries Abuse but Defends Interrogations; 'Stress and Duress' Tactics Used on Terrorism Suspects Held in Secret Overseas Facilities*, Washington Post, December 26, 2002.
- The CIA prompted the Justice Department to write the August 1, 2002, memo, which advised the White House that torture "may be justified," and that international laws prohibiting torture "may be unconstitutional if applied to interrogations" conducted in the war on terrorism. Michael Hirsch, John Barry, and Daniel Klaidman, *A Tortured Debate*, Newsweek, June 21, 2004; Dana Priest and R. Jeffrey Smith, *Memo Offered Justification for Use of Torture*, Washington Post, June 8, 2004; Memorandum from the U.S. Department of Justice Office of Legal Counsel, "Standards of Conduct for Interrogation under 18 U.S.C. §§ 2340-2340A," August 1, 2002.
- A February 2, 2002, memo notes that CIA lawyers asked for an explicit authorization that Geneva Convention prohibitions did not apply to its operatives. Neil A. Lewis and Eric Schmitt, *Lawyers Decided Ban on Torture Didn't Bind Bush*, New York Times, June 8, 2004.
- Determined with Defense Secretary Rumsfeld, in November 2003, that an Iraqi detainee be held off the prison rolls in order to prevent the International Committee of the Red Cross from monitoring his treatment, in violation of international law. Additionally, prisoners reportedly are being held in at least a dozen facilities which operate in secret, hidden from Red Cross monitoring. The ostensible reason for this and other "secret detentions" is to allow for non-monitored interrogations that potentially involve abuse. Eric Schmitt and Tom Shanker, *Rumsfeld Issued an Order to Hide Detainee in Iraq*, New York Time, June 17, 2004; *Rumsfeld, at Tenet's Request, Secretly Held Suspect in Iraq*, Wall Street Journal, June 17, 2004; Human Rights First, *Ending Secret Detentions*, June 2004.
- The CIA operates its own detention centers, separate from the Pentagon's detention system such in as Guantanamo and Abu Ghraib, hiding detainees from the Red

Cross. Dana Priest and Joe Stephens, *Secret World of U.S. Interrogation*, Washington Post, May 11, 2004.

- Since September 11th, the U.S. has quietly transported hundreds of suspects captured in different parts of the world to Middle Eastern countries for harsher interrogations. The CIA has transferred detainees to foreign intelligence services for interrogations and uses the jails of Egypt, Syria, Morocco, and Uzbekistan where extreme methods such as electric shock and drugs can be used on suspects with no access to lawyers or prospects of freedom. Dana Priest and Joe Stephens, *Secret World of U.S. Interrogation*, Washington Post, May 11, 2004; Stephen Grey, *America's Secret Gulags*, Mail on Sunday (London), May 16 2004. *His Year in Hell*, CBSnews.com, January 20, 2004.

11. CACI International Inc:

- Interrogation contractor alleged to violate RICO, conspiracy to violate RICO, conspiracy to violate rights secured by the Geneva Conventions, as well as conspiracy to torture. Complaint, *Al-Rawi v. Titan*, (S.D. Cal. 2004) (No. 04-1143).

12. TITAN Corporation:

- Interrogation contractor alleged to violate RICO, conspiracy to violate RICO, conspiracy to violate rights secured by the Geneva Conventions, as well as conspiracy to torture. Complaint, *Al-Rawi v. Titan*, (S.D. Cal. 2004) (No. 04-1143).

LAWS PROHIBITING TORTURE AND ESTABLISHING CRIMINAL PENALTIES FOR VIOLATIONS

A number of domestic and international laws prohibit the use of torture on an absolute basis and establish criminal penalties for violations. United States criminal courts have jurisdiction over crimes committed by or against a U.S. national on the premises of any U.S. government mission in foreign countries, including any military and diplomatic missions. 18 USC §7(9). The Military Extraterritorial Jurisdiction Act grants jurisdiction over certain federal crimes that are committed by military contractors and others accompanying the armed forces abroad. 18 USC § 3261.

Convention Against Torture.

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) binds parties to take measures to prevent torture within their respective jurisdiction. Article 2 of the convention states that no exceptional circumstances whatsoever – including war, threat of war or other emergency – may be invoked as a justification for torture.

Pursuant to Article 5 of the Convention, the United States has criminalized acts of torture abroad: "Offense – whoever outside the United States commits or attempts to commit torture shall be fined under this title or imprisoned not more than 20 years" 18 USC § 2340A(a).

Conspiracy to commit acts of torture abroad is also covered, "Conspiracy. – A person who conspires to commit an offense under this section shall be subject to the same

penalties (other than the penalty of death) as the penalties prescribed for the offense, the commission of which was the object of the conspiracy." 18 USC § 2340A(c).

Other Federal Crimes.

Several federal criminal statutes punish the actions alleged to have been committed throughout the detainee system. These include:

1. Assault. 18 USC § 113.
2. Maiming. 18 USC § 114.
3. Murder. 18 USC § 1111.
4. Manslaughter. 18 USC § 1112.

Some parts of the detainee system may be outside the territorial jurisdiction of these provisions. However, the criminal code also punishes those who aid, command, procure and counsel the violations as principals. 18 USC § 2. Similarly, those who conspire to violate these provisions are also liable. 18 USC § 371. Conspirators and non-present principals may have committed their violations within the territorial jurisdiction of the criminal code.

Uniform Code of Military Justice.

The Uniform Code of Military Justice contains several provisions applicable to the abuse of detainees in Iraq and the wider war on terror, including but not limited to:

1. Maiming. 10 USC § 924.
2. Assault. 10 USC § 928.
3. Conspiracy. 10 USC § 881.
4. Accessory after the fact. 10 USC § 878.
5. Murder. 10 USC § 918.
6. Manslaughter. 10 USC § 919.

War Crimes Act / Geneva Conventions.

The War Crimes Act of 1996 punishes violations of Article 3 of the Geneva Conventions and the grave breaches as defined in those Conventions. 18 USC § 2441. Article 147 of the Fourth Geneva convention lists as grave breaches: wilful killing, torture or inhuman treatment, wilfully causing great suffering or serious injury to body or health. The common Article 3 calls for blanket humane treatment, and to that end prohibits: violence to life and person, including murder, mutilation, cruel treatment and torture; the taking of hostages; and outrages upon personal dignity, such as humiliating and degrading treatment. There should be no dispute that the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War applies to Iraq.

Deprivation of Rights.

Violations and conspiracies to violate the rights of detainees established under U.S. law are prohibited. 18 USC §§ 241, 242.

Respectfully Submitted,

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