

LEADING BY EXAMPLE:

**Investigating and Prosecuting Those
Responsible for the Torture of
Detainees at Abu Ghraib Prison
and Elsewhere**



Prepared By

THE WORLD ORGANIZATION FOR HUMAN RIGHTS USA

Formerly the World Organization Against Torture, USA

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“The United States is committed to the worldwide elimination of torture and we are leading the fight by example. I call on all governments to join with the United States and the community of law-abiding nations in prohibiting, investigating, and prosecuting all acts of torture and in undertaking to prevent cruel and unusual punishment.”

- President George W. Bush, June 26, 2003.

“The values of this country are such that torture is not a part of our soul and our being.”

- President George W. Bush, June 22, 2004.

“Our values as a nation, values that we share with many nations in the world, call for us to treat detainees humanely, including those who are not legally entitled to such treatment.”

- President George W. Bush, in a White House memo signed by him on February 7, 2002.

World Organization for Human Rights USA

Executive Summary of LEADING BY EXAMPLE:

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In recognition of the International Day in Support of Victims of Torture on June 26th, the World Organization for Human Rights USA is issuing this report demonstrating the need for the criminal investigation and prosecution of high-level U.S. officials who may be responsible for the policy of encouraging the use of torture for the interrogation of suspected terrorists in Iraq, Afghanistan, and elsewhere. This report provides a non-exhaustive list of officials who appear to be implicated in the abuses, explains international and domestic laws that have been violated, and identifies a number of specific enforcement actions that must be taken to bring the perpetrators to justice.

Recent reports 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 that some detainees were held in secret to facilitate these interrogations. These actions constitute the “smoking gun” demonstrating that the abuses at Abu Ghraib and elsewhere are not the isolated acts of a few, but rather are part of a systemic and officially sanctioned policy of condoning, justifying, and encouraging the use of torture.

The torture that has taken place violates a number of domestic laws and international standards, some of which call for the application of criminal penalties for violations. Most notable among these is the statute adopted by the U.S. Congress to implement the Convention Against Torture by holding torturers criminally accountable for their abuses. The following enforcement steps must be taken immediately to fulfill the United States’ obligations under both domestic and international law to prevent torture and to punish those implicated as having committed torture or having encouraged its use. Our organization will be filing complaints and submissions seeking to initiate each of these actions:

1. **Initiate a full criminal investigation** leading to the prosecution of ALL those involved in torture of detainees not just the lower-level, immediate perpetrators. This can be done by:
 - a. **The Attorney General appointing a Special Attorney** to conduct an independent criminal investigation and prosecution, since high-level Justice and Defense Department officials have been implicated; or
 - b. **Congress should pass a law to establish an Independent Counsel** whose authority extends solely to investigate and prosecute violations of domestic and international law in the prisoner abuse scandal, should it become clear that the Attorney General cannot or will not conduct an impartial and objective investigation.
2. **The Chief Prosecutor of the International Criminal Court (ICC) should begin an investigation of torture** committed by United States personnel in Afghanistan.
3. **The United Nations Security Council should defeat the renewal of UN Resolution 1487**, which seeks to exonerate United States citizens from possible war crimes prosecutions for violations committed in Iraq.
4. **The Inter-American Commission for Human Rights should request that the United States take precautionary measures to prevent further abuses**, ensuring that no one in U.S. custody is subjected to torture.
5. **The United Nations Commission on Human Rights’ Special Rapporteurs on Torture and on Extrajudicial, Summary or Arbitrary Executions should investigate and issue a report** on the abuses that have taken place, and the United States should cooperate fully with these investigations.
6. **Pursuant to Article 149 of the Fourth Geneva Convention, a Commission of Inquiry should be established** to investigate abuses of detainees connected with the Iraq and Afghanistan conflicts.
7. **The Human Rights Committee established by the International Covenant on Civil and Political Rights (ICCPR) should request that the United States submit a full report** on the torture of detainees as part of its report on compliance under the ICCPR, which currently is more than five years overdue.
8. **The United States should provide a comprehensive report on the torture of detainees to the United Nations Committee Against Torture**, in connection with that Committee’s responsibility to monitor compliance under the Convention Against Torture.

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- President George W. Bush, June 26, 2003.

I. Introduction

June 26th is the date that has been designated by the United Nations as the International Day in Support of Victims of Torture, the day set aside to bring international attention and support to those subjected to one of the most serious forms of human rights abuse. It is aimed at bringing to an end the practice of torture, and bringing torturers to justice. There can be no more appropriate time to call for more complete and effective action by the United States government to investigate and criminally prosecute all those responsible for acts of torture committed by U.S. military and civilian personnel against suspected terrorists in Afghanistan, Iraq, Guantanamo Bay, and elsewhere.

The human rights community certainly applauds initial efforts that are being made by U.S. military authorities to criminally prosecute many of the individual, lower-level soldiers who were immediately engaged in committing acts of torture in Abu Ghraib prison in Iraq. The authorities, however, have thus far not made similar efforts with regard to examining the potential involvement of higher level military and civilian officials whose actions and policies may have facilitated, authorized, condoned, or otherwise made the torture that has taken place possible. It is essential, if the United States is to regain credibility as a leading defender of human rights compliance worldwide, and if we are to assure the proper treatment of our own citizens and military personnel stationed abroad, that we take more definitive action to prosecute those ultimately responsible for any torture violations that may have taken place.

Nor should the focus of our efforts to bring to justice those who have committed acts of torture and to prevent the recurrence of those acts be limited to the problem of the abuse detainees at Abu Ghraib prison in Iraq. It must cover, as well, abuses associated with the treatment of detainees in Afghanistan, in Guantanamo Bay, and here in the U.S., in connection with a series of related policies and actions aimed at preventing terrorism. This includes the practice of “rendition to torture,” that is, sending suspected terrorists to third countries for interrogation using harsh techniques that might not be tolerated in the U.S.

For many years, the United States has been a leading advocate calling attention to torture and other major human rights abuses by other governments. We must apply the same standard to ourselves, and do a more thorough job than has been done thus far to prevent and punish torture as a method of intimidation and punishment, whether it is carried out by guards at U.S. military facilities, their military and civilian supervisors, or higher-level officials who condoned or authorized these actions as a means of combating terrorism.

The prohibition against torture is absolute under the international Convention Against Torture (CAT) and under our own country’s laws implementing that treaty. It applies to all acts imposing severe pain and suffering regardless of the reason it takes place. Under these domestic and international laws, there is no justifiable excuse for torture, including the prevention of

terrorism. Nor does the President of the United States, nor any other official or governmental institution, have the authority to override the prohibition against torture and authorize its use for reasons of national security or other emergencies, as high-level U.S. government officials at the Department of Justice and the Department of Defense have apparently suggested and advised.

There are a number of very concrete steps that must be taken consistent with the obligation of the U.S. under the Geneva Conventions, the Convention Against Torture, and U.S. laws passed by Congress to implement these international standards. This report outlines briefly evidence of torture on the part of U.S. government officials that has come to light thus far, provides a non-exhaustive list of officials who appear to be implicated in the abuses, explains international and domestic laws that have been violated, and identifies the specific enforcement actions that must be taken to bring the perpetrators to justice and fulfill our legal obligations under both domestic and international law.

There is no doubt that terrorism is unlawful and must be prevented and punished. As a democratic nation, the U.S. effort to combat terrorism must be done in a way that is consistent with the rule of law and the basic principles of human rights. Defending our humanity and standards of justice requires upholding the prohibition against torture and holding those who violate this principle accountable.

One year ago, on June 26, 2003, in commemoration of Torture Victims' Day, President George W. Bush stated: "The United States is committed to the worldwide elimination of torture and we are leading the fight by example. I call on all governments to join with the United States and the community of law-abiding nations in prohibiting, investigating, and prosecuting all acts of torture and in undertaking to prevent cruel and unusual punishment." If we are to lead by example and fulfill our obligations under domestic and international law as President Bush suggested, the United States must remain true to its word and criminally investigate and prosecute all those implicated in torture, including a number of high-level officials who thus far have enjoyed impunity from prosecution because of the government's insistence that only a few "bad apples" were at fault.

II. Brief Overview of the Evidence that Torture Has Occurred and that Higher-Level Officials May Well Be Implicated

Evidence has been coming to light on a regular and increasingly frequent basis that torture and other abusive treatment of detainees have been taking place under U.S. authority in a number of locations and contexts, not just in Abu Ghraib prison in Iraq. This has included, for example, the treatment of detainees in Camp X-Ray in Guantanamo Bay, Cuba, in other detention facilities in Afghanistan and Iraq, and even here in the U.S. in connection with the practice of "rendition to torture," that is, sending suspected terrorists to third countries, such as Syria, where they can be interrogated using techniques not permitted or tolerated in our own prisons. These abuses are closely tied to new revelations that government officials authorized the maintenance of secret detention facilities, and the holding of some detainees without revealing their capture. These are important indicators that the problems at Abu Ghraib were not simply isolated abuses committed by a few military police officers assigned to detention duty, but part of a more general policy authorizing or encouraging the use of torture as a means of interrogation that was established or promoted at the highest levels of our government.

A. Iraq

The situation in Iraq is indicative of how the policy and practice of torture of detainees has been carried out in many locations. Since the beginning of the war in Iraq, the United States has held civilian and military detainees in custody based on suspected terrorist ties. As demands for intelligence, as well as resistance to the American occupation increased, increased evidence of abuse of prisoners in U.S. custody came to light. Techniques of abuse that were used in a systemic way to obtain information include: hooding, placing detainees in stress positions for extended periods of time, stripping detainees naked, holding them in darkness, forcing them to wear women's underwear, sleep, food, and water deprivation, prolonged exposure to sun, physically assaulting detainees, forcibly arranging detainees in sexually explicit positions for photographing, simulation of electronic torture, threat of execution, sexual abuse, and other forms of torture and humiliating and degrading treatment.¹ Several detainees are reported to have died as a result of these practices.²

As early as May 2003, high level officials received reports of these abuses from the International Committee of the Red Cross.³ Also during 2003, the press, human rights groups, and even a small unit of interrogators at Abu Ghraib brought abuses to the attention of higher-level officials.⁴ Nothing was done to stop or prevent the abuse from occurring until one year later, when shocking pictures of abuse were disseminated around the world. As recently as May of this year, the Red Cross reported that outstanding issues of abuse had not been remedied and called for further relief.⁵

Reports and memoranda by the Department of Defense, Department of Justice, and White House Counsel have recently come to light containing suggestions that torture may be justified in order to obtain information from suspected terrorists, and that the President or those acting under his authority are not bound by domestic and international law prohibiting torture in these instances. An August 1, 2002, Justice Department memo, for example, concludes that "under the circumstances of the current war against Al-Qaeda and its allies, application of Section 2340A (the Convention Against Torture) to interrogations undertaken pursuant to the President's powers as Commander-in-Chief may be unconstitutional," since the prohibition against torture would conflict with military orders issued by the President exercising his military authority.⁶ An April 2003 Defense Department report echoes the same argument, asserting that "in order to respect the President's inherent authority to manage a military campaign ... [the prohibition

¹ "Report of the International Committee of the Red Cross on the treatment by the Coalition Forces of Prisoners of War and other Protected Persons by the Geneva Conventions in Iraq during arrest, internment and interrogation," February 2004; Maj. Gen. Antonio M. Taguba, "Article 15-6 Investigation of the 800th Military Police Brigade" ("Taguba Report"), March 3, 2004.

² Steven Lee Myers and Eric Schmitt, "Abuse Inquiries Seen as Leaving Significant Gaps," *New York Times*, June 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.

³ Neil A. Lewis, "Red Cross Found Abuses at Abu Ghraib Last Year," *New York Times*, May 11, 2004.

⁴ "Chronology," *Washington Post*, June 2004; Warren Hoge, "U.N. Rights Chief Says Prison Abuse May Be War Crime," *New York Times*, June 5, 2004; Andrea Elliot, "Unit Says It Gave Earlier Warning of Abuse in Iraq," *New York Times*, June 14, 2004; Human Rights Watch, "Timeline of Detainee Abuse Allegations and Responses," May 2004.

⁵ "ICRC Still Concerned on Iraq Jail," *BBC News Online*, May 19, 2004.

⁶ 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.

against torture] must be construed as inapplicable to interrogations undertaken pursuant to his Commander-in-Chief authority.”⁷ Both the Justice Department memo and Defense Department report make the argument that torture “may be justified” on grounds of self-defense, necessity, or extenuating circumstances related to threats of terrorism. It was not until June 22, 2004, that a retraction of these policies was issued by the President. These types of excuses or justifications for torture have been raised by persecutors for decades and roundly rejected by the international community, including the U.S.

The memos also would apply a different and far more narrow definition to what constitutes torture than the one spelled out in the Convention Against Torture (CAT) and U.S. laws implementing CAT. The memos suggest that only the most extreme forms of injury, such that would cause “organ failure, impairment of a bodily function, or even death,” or where “the pain is difficult for the subject to endure,” would constitute torture, and that anything falling short of that would not be prohibited. They also suggest that only acts resulting in “significant psychological harm of significant duration, e.g. lasting for months or even years” would constitute mental torture.

These memos provide further evidence that the Bush administration created an environment where torture was encouraged and facilitated at the highest levels, and that the prisoner abuses are not isolated instances. Higher level officials must be held accountable for seeking to hold U.S. officials and acts of torture above the law, attempting to “redefine” torture to permit abuses prohibited under both international and domestic law, creating an environment encouraging abuse and impunity, and setting the practice of torture in motion.

B. Other Locations

The problems associated with the treatment of detainees in Iraq are typical of the types of abuses reported in other locations and situations where detainees are being held, such as Afghanistan and Guantanamo Bay. In Afghanistan, for example, instances of such abuses as shackling, beatings, sleep deprivation, and humiliating and degrading treatment have been reported at Bagram Airbase and elsewhere.⁸ At least 40 detainee deaths in Afghanistan and Iraq have been reported, some of which resulted from these practices.⁹ Some of these deaths have implicated the same military intelligence unit that oversaw interrogations at Abu Ghraib in Iraq. Afghanistan also is the location where many of the detainees transferred to Guantanamo Bay, Cuba, were captured. January 2002 memoranda from the Justice Department and the White House Counsel argued that the Geneva Conventions did not apply to the detainees from the war in Afghanistan.¹⁰ Though they later backpedaled on this position, it signaled a more general policy of attempting to limit legal protections for detainees so as to justify more stressful interrogations.

⁷ 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; “Working Group Report on Detainee Interrogations in the Global War on Terrorism: Assessment of Legal, Historical, Policy, and Operational Considerations,” Draft March 6, 2003.

⁸ Human Rights Watch, “Enduring Freedom,” Vol. 16, No. 3(C), March 2004.

⁹ Steven Lee Myers and Eric Schmitt, “Abuse Inquiries Seen as Leaving Significant Gaps,” *New York Times*, June 6, 2004; David Johnston and Neil A. Lewis, “US Examines Role of CIA and Employees in Iraq Deaths,” *New York Times*, May 6, 2004.

¹⁰ “Documents Build a Case for Working Outside the Laws in Interrogations,” *New York Times*, June 9, 2004.

In Guantanamo Bay similar abuses have been reported. Little information is available concerning the over 700 detainees in Guantanamo. The Bush Administration at one point declared that Guantanamo detainees were not protected by the Geneva Conventions by virtue of their alleged “unlawful enemy combatant” status. Detention in Guantanamo has been reported to entail beatings, isolation, shackling in “stress positions,” other forms of degrading treatment, little or no access to counsel or communications with family, and no opportunity to contest the designation of detainees as “unlawful enemy combatants,” and their indefinite detention.¹¹ Though a few Guantanamo detainees have been formally charged with military crimes, hundreds remain behind bars with no formal charges or proceedings against them.

C. Rendition to Torture

A key tactic in the war on terror is the use of “extraordinary renditions,” or “rendition to torture,” the sending of individuals suspected of terrorist ties for interrogation to countries that are well known to practice torture. Since September 11th, the U.S. allegedly has transferred hundreds of detainees to countries like Syria, Egypt, Morocco, Jordan, and Saudi Arabia, all criticized for their human rights records by the U.S. State Department.¹² The case of Maher Arar exemplifies the problem. Mr. Arar is a dual Canadian and Syrian citizen who was living in Canada as a computer professional. He was arrested as a suspected terrorist by U.S. immigration authorities at an airport in New York en route from a trip from the Middle East to his home in Canada. The U.S. sent him to Syria via Jordan, where he was tortured for ten months before his release.¹³ This policy contravenes the Convention Against Torture (Article 3) prohibiting under any circumstances the sending of persons to states where they may face torture. There are reports of a Justice Department memo that explicitly said charges of torture could be avoided if the detainee was transferred from U.S. custody to another country for purposes of interrogation using torture techniques.¹⁴ U.S. officials have claimed that they received assurances from the third countries in question that the transferred detainees would not be tortured. But common sense suggests that such assurances were meaningless given the well-established reputations of the countries selected for these renditions, based on the U.S. government’s own evaluations.

III. Non-Exhaustive List of Key Officials Who May Be Implicated

The following high-level U.S. officials may have been involved in the process of authorizing or encouraging the use of torture to facilitate the interrogation of detainees who were suspected of involvement in terrorism. While most of the information accumulated thus far may not provide definitive proof of involvement in torture to a degree that would satisfy the “beyond a reasonable doubt” standard required for a criminal prosecution, it certainly is sufficient to justify and require a more comprehensive investigation of the facts to determine whether and to what extent these named officials may be implicated.

¹¹ Human Rights Watch, “The Road to Abu Ghraib,” June 2004.

¹² Stephen Grey, “America’s Secret Gulags,” *Mail on Sunday* (London), May 16, 2004.

¹³ “His Year in Hell,” *CBSNews.com*, January 21, 2004 Stephen Grey, “America’s Secret Gulags,” *Mail on Sunday* (London), May 16, 2004.

¹⁴ “Documents Build a Case for Working Outside the Laws in Interrogations,” *New York Times*, June 9, 2004.

Some of the key evidence suggesting how each of these officials may have been involved, and how they may have contributed to the practice of torture, is described in the following listing, as an indication of why further investigation is required.

1. Donald Rumsfeld, Secretary of Defense:

- Approved secret Pentagon interrogation project authorizing the use of force for interrogation of Al-Qaeda operatives that was used against detainees in Iraq. Seymour M. Hersh, “The Gray Zone,” *The New Yorker*, June 8, 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 harsher 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,” *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.
- Ordered military officials in Iraq, in November 2003, to withhold a detainee’s name from 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,” *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 in Iraq, Afghanistan, and elsewhere.

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

- Controlled secret Pentagon interrogation project, which was used in Afghanistan and later expanded into Iraq, authorizing intelligence officers to carry out more

aggressive interrogation techniques outside the chain of command. Seymour M. Hersh, "The Gray Zone," *The New Yorker*, June 8, 2004.

- Approved the use of harsher interrogation techniques in Iraq in 2003, some which deviated from the Army's standard interrogation methods and amounted to torture to obtain information from detainees. 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," *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 in Iraq, Afghanistan, and elsewhere.

3. Lieutenant General Ricardo Sanchez, Commander in Iraq:

- Received and approved General Miller's recommendations to bring more aggressive 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*, June 8, 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.
- Assigned formal command of Abu Ghraib in November 2003 to the 205th Military Intelligence Brigade, under Colonel Thomas M. Pappas, a unit that had been responsible for prisoner abuse. Douglas Jehl and Eric Schmitt, "In Abuse, A Portrayal of Ill-Prepared, Overwhelmed G.I.'s," *New York Times*, May 9, 2004.
- Signed an October 12, 2003, memo calling for intelligence officials at Abu Ghraib to work more closely with military police to "manipulate an internee's emotions and weaknesses." The memo 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, memo "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, memo, allowing 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. Allegedly personally approved use of sleep deprivation tactics and the use of unmuzzled dogs to intimidate detainees. He approved interrogation plans involving the use of dogs, shackling, and forcing detainees to strip. “Iraq Jail Contractor Contradicts Generals,” *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 Geoffrey Miller, deputy commanding general for detention operations in Iraq and former commander in charge of Guantanamo Bay:**
- Briefed Iraq detention officers on the use of more aggressive 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*, June 8, 2004; Maj. Gen. Antonio M. Taguba, “Article 15-6 Investigation of the 800th Military Police Brigade” (“Taguba Report”), March 3, 2004; 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,” *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.” “Taguba Report,” March 3, 2004.
 - Allegedly told 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.
 - Command-responsible for abuses committed in Iraq and Guantanamo Bay.
- 6. Brig. Gen. Janis Karpinski, formerly in charge of the 800th Military Police Brigade, in charge of Abu Ghraib Prison and other detention facilities in Iraq:**
- Her leadership failures and lack of adequate supervision led to the abuses at Abu Ghraib, making her directly responsible for them as supervising officer. “Taguba Report,” March 3, 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,” *New York Times*, June 9, 2004.
 - Allegedly reviewed and approved reports by a small unit of interrogators at 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,” *New York Times*, June 14, 2004.

- Command-responsible for abuses committed in Abu Ghraib prison and other detention facilities under her command.
- 7. Capt. Carolyn A. Wood, supervisor of interrogation units at Bagram and Abu Ghraib:**
- Allegedly helped to bring more aggressive interrogation procedures developed in Afghanistan to Iraq. Douglas Jehl and David Rohde, “Afghan Deaths Linked to Unit at Iraq Prison,” *New York Times*, May 24, 2004.
- 8. John Ashcroft, Attorney General:**
- Responsible for a series of Justice Department memos that encouraged the Defense Department to circumvent domestic and international law and facilitate acts of torture.
 - An August 1, 2002, Justice Department memo 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. The memo 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 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 January 22, 2002, Justice Department memo suggested that American officials could not be charged with war crimes regarding the detention and interrogation of prisoners. The memo said that Geneva Convention protections did not apply to detainees from the Afghanistan war. Neil A. Lewis and Eric Schmitt, “Lawyers Decided Ban on Torture Didn’t Bind Bush,” *New York Times*, June 8, 2004.
 - A January 9, 2002, Justice Department memo suggested how U.S. officials could be kept from being charged with war crimes violations of the Geneva Conventions. The memo entitled “Application of Treaties and Laws to al Qaeda and Taliban Detainees,” was written by John C. Yoo and Robert J. Delahunty, Justice Department lawyers at the time. Neil A. Lewis, “Justice Memos Explained How to Skip Prisoner Rights,” *New York Times*, May 21, 2004; Memorandum from U.S. Department of Justice Office of Legal Counsel, “Application of Treaties and Laws to al Qaeda and Taliban Detainees,” January 9, 2002.
 - The *New York Times* also reported the existence of another Justice Department memo 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 the practice of “rendition to torture.” Neil A. Lewis, “Justice Memos Explained How to Skip Prisoner Rights,” *New York Times*, May 21, 2004.
 - Oversaw the senior Justice Department officials who approved the rendition of Canadian citizen Maher Arar to torture in Syria. Dana Priest, “Top Justice Aide Approved Sending Suspect to Syria,” *Washington Post*, November 19, 2003.
 - The April 2003 Defense Department report on interrogation methods, suggesting that the President was not bound by prohibitions against torture, relied heavily on August 1, 2002, and January 22, 2002, Justice Department memos containing

similar conclusions. 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.

9. Alberto Gonzales, White House Chief Legal Counsel:

- Issued a January 25, 2002, memo to President Bush urging the Bush administration to declare captives in Afghanistan 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.
- Allegedly participated in meetings with Defense Department General Counsel William Haynes and David Addington, Vice President Dick Cheney's counsel, to discuss the acceptability of specific interrogation techniques. They declared acceptable such techniques as "water-boarding," which leads detainees to feel they are drowning, and threatening to bring in interrogators from other nations. Michael Hirsch, John Barry, and Daniel Klaidman, "A Tortured Debate," *Newsweek*, June 21, 2004.

10. Dick Cheney, Vice President:

- Through his representatives, facilitated the creation of an environment where torture was permissive and encouraged. His counsel, David Addington, allegedly participated in meetings with Defense Department General Counsel William Haynes and Alberto Gonzales to discuss the acceptability of specific interrogation techniques. They declared acceptable such techniques as "water-boarding," and other forms of severe pain and suffering constituting torture. Michael Hirsch, John Barry, and Daniel Klaidman, "A Tortured Debate," *Newsweek*, June 21, 2004. Mr. Addington also was involved in the deliberations to prepare an April 2003 Defense Department memo to Mr. Rumsfeld, which concluded that the prohibition against torture did not apply to interrogations undertaken pursuant to the Commander-in-Chief's military authority. Neil A. Lewis and Eric Schmitt, "Lawyers Decided Ban on Torture Didn't Bind Bush," *New York Times*, June 8, 2004.
- Information collected from prisoners at Abu Ghraib allegedly was requested by "White House Staff," resulting in the use of harsher torture techniques. The requested information concerned "any anti-coalition issues, foreign fighters, and terrorist issues." R. Jeffrey Smith, "Soldier Described White House Interest," *Washington Post*, June 9, 2004.

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

- Supervised CIA employees who 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.

- Responsible for conditions at the CIA interrogation center at Bagram air base in Afghanistan, where detainees 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.
- Responsible for CIA lawyers who asked for an explicit authorization that Geneva Convention prohibitions did not apply to its operatives, according to a February 2, 2002, memo. 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 involved abuse. Eric Schmitt and Tom Shanker, “Rumsfeld Issued an Order to Hide Detainee in Iraq,” *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.
- Responsible for operations of the CIA’s own detention centers, separate from the Pentagon’s official detention facilities such as Guantanamo and Abu Ghraib and not subject to the Red Cross and other monitoring efforts. Dana Priest and Joe Stephens, “Secret World of U.S. Interrogation,” *Washington Post*, May 11, 2004.
- Responsible for the policy of transporting hundreds of suspects captured in different parts of the world to foreign intelligence services for harsher interrogations and detention in the jails of Egypt, Syria, Morocco, and Uzbekistan

where extreme methods such as electric shock and drugs can be used on suspects who have no access to lawyers. 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.

- Command-responsible for abuses committed in Iraq, Afghanistan, and elsewhere.

12. CACI International Inc.:

- As a private contractor authorized to help conduct interrogations, their employees directly participated in the interrogation process and may have encouraged, participated in, or known about the abuse of prisoners in Iraq.

13. TITAN Corporation:

- As a private contractor authorized to help conduct interrogations, their employees directly participated in the interrogation process and may have encouraged, participated in, or known about the abuse of prisoners in Iraq.

IV. Violations of Domestic and International Laws and Standards:

There are a number of domestic and international laws and instruments that prohibit torture and other types of human rights violations, that may have been violated in the course of the abuses listed above. It is important to have an understanding of these standards, and how they relate to the alleged abuses taking place in Iraq, Afghanistan, and elsewhere, in order to make a fair and considered assessment of whether and to what extent these laws were violated, and whether criminal culpability should attach to any violations that may have occurred.

A. International Standards

The principal international standards that apply to the circumstances involving the abuse of detainees are the following:

1. The U.N. Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (Convention Against Torture or CAT) establishes an absolute prohibition against torture, providing that torture cannot be justified under any circumstances or for any reason, not even by a state of war, public emergency, or superior orders. (Article 2) It defines torture as "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person" through government action or acquiescence regardless of the reason that the abuse was inflicted. (Article 1) CAT also prohibits "cruel, inhuman or degrading treatment or punishment which do not amount to torture," and absolutely prohibits sending a person to a situation of torture. (Articles 16 and 3)
2. The Geneva Conventions provide detainees captured in an armed conflict the right to be free from torture, humiliating and degrading treatment, and coercive interrogation, and require that any person who is in the custody of a party to an

armed conflict be treated humanely, whether they qualify as prisoners of war or are considered “unlawful enemy combatants.” These provisions of the Geneva Conventions apply to the armed conflicts in Iraq and Afghanistan. In addition, the Geneva Conventions require that any question regarding the status of a detainee in an armed conflict must be determined by a “competent tribunal.”

3. The Statute of the International Criminal Court (Rome Treaty) establishes criminal penalties for torture as a crime against humanity. While the U.S. is not yet a party to the treaty on the ICC, our citizens are subject to its provisions for actions committed in countries that have ratified the treaty, such as Afghanistan. Similar provisions are included in the statutes of other international tribunals (such as the ones for the former Yugoslavia and Rwanda) established to prosecute war crimes and crimes against humanity in the context of particular war zones.
4. International Covenant on Civil and Political Rights (ICCPR) states, “No one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment.” (Article 7) The ICCPR provides that this right is non-derogable and cannot be suspended under any circumstances, even in times of national emergency. (Article 4)

B. Violations of Domestic Laws

Torture violates a number of domestic laws, some of which attach criminal penalties to violations.

1. Criminal Provisions of the Convention Against Torture (18 U.S.C. § 2340A) – The torture of prisoners in Iraq, Afghanistan, and elsewhere would constitute a violation of the criminal provisions adopted by Congress to implement the United States’ obligations under the Convention Against Torture. These criminal provisions impose criminal liability of up to 20 years imprisonment (increased to a term of more than 20 years or life imprisonment if the act of torture results in death), and/or a monetary fine, for anyone who commits, attempts to commit, or conspires to commit torture outside the United States. U.S. officials here in the U.S. who authorized or knew of such acts and condoned them or failed to prevent them could be held subject to these criminal penalties under the CAT implementing statute on the theory that their acts, while taking place in the U.S., contributed to acts of torture taking place abroad, or were part of a conspiracy aimed at such violations.
2. U.S. War Crimes Act of 1996 (18 U.S.C. § 2441) – Any U.S. national or member of the Armed Forces who commits a war crime is criminally liable under the War Crimes Act, and can be punished by fine, imprisonment, or the death penalty. The Act defines war crimes as violations or grave breaches of international conventions, including the Geneva Conventions. The War Crimes Act applies specifically to acts involving violence to life and the physical well-being and

integrity of a victim, including murder, mutilation, cruel treatment, torture, and humiliating and degrading treatment.

3. U.S. Law Prohibiting Rendition to Torture – The rendition of detainees in U.S. custody to countries where they are likely to be tortured violates Article 3 of the Convention Against Torture and its implementing legislation. The rendition to torture of detainees explicitly contravenes Public Law 105-277 § 2242, which states “it shall be the policy of the United States not to expel, extradite, or otherwise effect the involuntary return of any person to a country in which there are substantial grounds for believing the person would be in danger of being subjected to torture,” and comparable implementing regulations, 8 CFR § 208.16-18 and 8 CFR § 1208.16-18. The participation of U.S. officials in the policy of rendition to torture constitutes conspiracy to torture someone abroad, which is prohibited by Article 4 of CAT and the criminal provisions at 18 U.S.C. § 2340A(c).
4. Uniform Code of Military Justice (UCMJ) – Higher-level military officers responsible for abuses in Iraq, Afghanistan, Guantanamo Bay, and elsewhere may have violated the UCMJ, including its provisions against maiming, assault, murder, manslaughter, and conspiracy. They would be subject to criminal prosecution before military Courts Martial, as would the lower-level members of the military who directly took part in acts of torture.
5. Military Extraterritorial Jurisdiction Act (MEJA) – Private contractors who were involved in acts of torture are in violation of MEJA. MEJA applies to those who, while employed by or accompanying the Armed Forces outside the U.S., engage in conduct that would constitute an offense punishable by more than one year’s imprisonment if it had been committed within U.S. territory. The Department of Defense has not yet issued implementing regulations under this Act, but this deficiency may not preclude criminal prosecutions under the Act itself.
6. The USA PATRIOT Act of 2001 – The PATRIOT Act provides jurisdiction over crimes committed by any U.S. national on lands, buildings, or facilities designated for use by the United States government, such as detention centers in Afghanistan and Iraq. (Sect. 804 of the Act; codified as 18 U.S.C. § 7(9).) Any U.S. national responsible for abuses in Afghanistan and Iraq may therefore be held criminally accountable for assault (18 U.S.C.S. § 113(a)), maiming (18 U.S.C.S. § 114), murder (18 U.S.C.S. § 1111), manslaughter (18 U.S.C.S. § 1112), and other crimes, even though they were committed abroad and might otherwise be outside the reach of federal court jurisdiction on that basis.
7. Federal Conspiracy Laws – Actions taking place within the United States designed to perpetrate crimes taking place outside the U.S. may violate U.S. conspiracy laws, including conspiracy to commit assault, maiming, murder, and manslaughter. Those who conspire to violate these provisions are deemed subject to the jurisdiction of U.S. courts even if the main crimes themselves were carried

out abroad. (18 U.S.C. § 371) The criminal code also punishes those who aid, command, and counsel the violations as principals. (18 U.S.C. § 2) These provisions provide another bases for holding U.S. officials criminally responsible even if the result of their actions produced crimes committed abroad.

V. Steps that Must Be Taken to Enforce the Prohibition Against Torture

Based on the above review of international standards relevant to the abuse of detainees, especially those establishing criminal liability for violations, and given the evidence indicating an increasing likelihood that violations may well have taken place, there are a number of enforcement actions that appear to be justified and that should be taken immediately. A detailed list of these methods for securing an end to the violations, and for initiating suitable remedial action, including the criminal investigation and prosecution of all those involved in the abuses, is provided below.

First and foremost among these necessary and suggested steps is the initiation of a comprehensive criminal investigation, and subsequent criminal prosecution, of all those, however high their position and level of authority, who may have been involved in authorizing, encouraging, or facilitating the use of torture against detainees, or who were aware of these practices and failed to take action to prevent them from taking place. Only in this way, by applying these standards to ourselves as well as others, can our government re-establish this country's commitment to strict observance of human rights, and regain its credibility in the international community.

The government's position that a few lower-level individuals were responsible for the abuses, and that torture never was approved or authorized from above is not consistent with the evidence being uncovered, or with our country's obligations under domestic and international law that makes every government official, irrespective of their position, subject to the prohibition against torture and to the penalties attached to violations. Under the doctrine of command responsibility, higher-level officials must be held accountable for war crimes committed by their subordinates, even if they did not order them, if the subordinates were under their effective control and the officers knew or should have known about the crimes and did nothing to stop them. This doctrine is well-established in international law and is accepted in domestic courts.¹⁵

Nor can higher-level officials be shielded by immunity claims. Contrary to the claims of the Attorney General's Office of Legal Counsel, the Defense Department, and the President's Counsel, no one is immune from charges that they have been involved in acts of torture, and no one, including the President, can override the prohibition against torture in U.S. and international law, whatever the justification. A recently revealed Defense Department memo argued that the Executive Branch was beyond the reach of criminal laws and international treaties when it acted pursuant to the President's Commander in Chief powers. The memo also put forward two defenses: a necessity defense, that any crimes committed were necessary to prevent other more

¹⁵ Rome Statute of the International Criminal Court, 52d Sess., Annex II, U.N. Doc. A/CONF.183/9 (1988), art. 28 [hereinafter "ICC Statute"]; Statute of the International Criminal Tribunal for the Former Yugoslavia, (1993), art. 7(3) [hereinafter "ICTY Statute"]; International Criminal Tribunal for Rwanda, Art. 6(3) [hereinafter "ICTR Statute"]; The Prosecutor v. Alfred Musema, Case No. ICTR-96-13-T (2000); Special Court for Sierra Leone, Art. 6(3) [hereinafter "SCSL Statute"]; Romagoza et al v. Garcia and Vides Casanova, No. 99-8364 (S.D.Fla. July 31, 2002); Ford v. Garcia, 289 F.3d 1283 (11th Cir. 2002).

serious harms, and self-defense, claiming that the acts were necessary to the self-defense of the United States and its armed forces. These arguments, in essence, call for complete impunity for Executive action abroad related to anti-terrorism efforts. It is a well-established principle of international law, from the Nuremberg trials to the Rome Statute of the International Criminal Court, that even heads of state cannot be relieved of criminal responsibility for the most serious crimes against humanity.¹⁶ Moreover, the prohibition against torture in the Convention Against Torture and its implementing laws is absolute. There can never be an excuse or defense for acts of torture.

Unless these enforcement and remedial actions are promptly initiated, and fully and fairly carried out, it will be difficult for the United States to maintain its position as a standard-bearer for human rights compliance on a world-wide basis.

1. Initiate a full criminal investigation leading to the prosecution of ALL those implicated, not just the lower-level, immediate perpetrators, in abuses in Iraq, Afghanistan, Guantanamo, and elsewhere. This can be done by:
 - a. The Attorney General appointing a Special Attorney to conduct an independent criminal investigation and prosecution. (Pursuant to 28 U.S.C. §§ 515, 543.) The Attorney General must appoint a Special Attorney to carry out the investigation and prosecutions, because officials in the Department of Justice, including the Attorney General, may be implicated in allegations of abuse and are unable to conduct a fair and impartial investigation of themselves. The Special Attorney should have expertise in human rights and international law.
 - b. Congress should pass a law to establish the Office of an Independent Counsel specifically to investigate and prosecute violations of domestic and international law in the prisoner abuse scandal. It is necessary for Congress to establish an Independent Counsel because high-level officials in the Department of Justice and the Department of Defense are themselves implicated in allegations of prisoner abuse and are incapable of conducting an impartial and objective investigation of themselves. Appointment of a Special Attorney by the Attorney General is unlikely to take place, and even if a Special Attorney is appointed, he or she would be subject to supervision and/or termination by the Attorney General and/or the President. Congress should consider adoption of an Independent Counsel statute along the lines of 28 U.S.C. §§ 591-599, but limited to the sole purpose of dealing with the prisoner abuse issue.
2. The Chief Prosecutor of the International Criminal Court (ICC), Mr. Luis Moreno-Ocampo, should begin investigations for crimes committed by the United States in Afghanistan, pursuant to his power in Article 15(1) of the Rome Statute. Violations may have occurred of Art. 7 (crimes against humanity, including

¹⁶ Nuremberg, Art. 7, 8; Genocide Convention, Art. 4(a); ICC Statute, Art. 27 (expressly prohibits making distinctions on the basis of official capacity); ICTY Statute, Art. 7(a); ICTR Statute, Art. 6; SCSL Statute, Art. 6; Regina v. Bartle, ex parte Pinochet, [1999] 2 W.L.R. 827, [1999] 38 I.L.M. 581 (1999) (U.K. House of Lords).

torture) and Art. 8 (war crimes). Because Afghanistan is a party to the ICC, even though the United States is not, U.S. citizens can be prosecuted by the ICC for crimes committed in Afghanistan. Although the United States has an impunity agreement with Afghanistan, which attempts to render citizens of the United States immune from liability arising from ICC prosecutions, this agreement may not be valid to the extent that it seeks to immunize actions that constitute jus cogens violations of international law. The Prosecutor can pursue investigation and possible prosecution because the United States appears to be “unwilling or unable genuinely to carry out the investigation and prosecution” of higher-level officials itself. (Art. 17(1)(a).) There also is a serious question of whether the U.S. government can “independently or impartially” investigate violations in which they implicated. This leaves room, under Art. 17(2)(c), for the Prosecutor to begin an independent investigation.

3. The United Nations Security Council should defeat the renewal of UN Resolution 1487, which seeks to exonerate the United States citizens from possible war crimes prosecutions for violations committed in Iraq. The Resolution, adopted on June 12, 2003, is due to be renewed by July 1, 2004. Even if it is renewed, there is some question whether the Resolution can grant United States citizens immunity for these types of international crimes.
4. The Inter-American Commission for Human Rights should request that the United States take precautionary measures to enjoin further acts of torture of detainees in order to prevent irreparable harm to persons and to ensure that no one in U.S. custody is subjected to torture. Pursuant to its authority under Art. 25(1) of its Rules of Civil Procedure, the Inter-American Commission, in serious and urgent cases such as this, can on its own initiative request that the State party concerned prevent irreparable harm from taking place.
5. The United Nations Commission on Human Rights’ Special Rapporteur on Torture and Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions should investigate and issue a report on abuses of prisoners in U.S. custody in Iraq, Afghanistan, and elsewhere. UN Special Rapporteur on Extrajudicial Killings, Asma Jahangir, wrote a letter to the U.S. Ambassador to the UN in Geneva, expressing concern over reports of deaths in custody as a result of torture. As of May 2004, she had already written to the U.S. Ambassador three times about this, and asked for detailed information about the deaths. The United States should cooperate fully with these investigations.
6. Pursuant to Article 149 of the Fourth Geneva Convention, a Special Commission of Inquiry should be established to investigate U.S. violations of the Geneva Conventions. Article 149 states: “At the request of a Party to the conflict, an enquiry shall be instituted, in a manner to be decided between the interested Parties, concerning any alleged violation of the Convention. If agreement has not been reached concerning the procedure for the enquiry, the Parties should agree on the choice of an umpire who will decide upon the procedure to be followed.

Once the violation has been established, the Parties to the conflict shall put an end to it and shall repress it with the least possible delay.”

7. The Human Rights Committee established by the International Covenant on Civil and Political Rights (ICCPR), to which the United States is a signatory, should request that the United States submit a full report on the torture of detainees as part of its report on compliance under the ICCPR, which currently is more than five years overdue.
8. The United States should provide a comprehensive report to the United Nations Committee Against Torture, indicating how recent detainee abuses relate to Convention Against Torture standards, in connection with that Committee’s responsibility to monitor compliance under the Convention Against Torture.

About the World Organization for Human Rights USA

The World Organization for Human Rights USA (formerly the World Organization Against Torture USA) is a human rights non-profit organization dedicated to the prevention of torture and other major human rights abuses. The World Organization for Human Rights USA is an independent, affiliated national member of the International World Organization Against Torture and SOS Torture Networks. The tools we use to accomplish our mission include: monitoring U.S. policies and practices; issuing reports and submitting them to international agencies supervising compliance by the U.S. with human rights standards; filing lawsuits and friend of the court legal briefs in the U.S. and other courts in cases designed to obtain restitution for survivors of torture, to hold major human rights abusers responsible for their acts, and to bring public and international attention to the most serious violations; and serving as an information clearinghouse and legal support group to assist survivors of abuse and advocates working on these issues.

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This report is available online at
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