



ADVOCATING FOR U.S. POLICIES AND PRACTICES THAT HELP END TORTURE BY OTHER GOVERNMENTS

On December 10, 2009, the Board of Directors of the National Religious Campaign Against Torture (NRCAT) voted to continue its efforts to end U.S.-sponsored torture forever and to expand into the two new areas of work: ending torture in U.S. prisons and advocating for U.S. policies and practices that help end torture by other governments.

At its June 2009 retreat, the NRCAT Board of Directors agreed to begin a planning process to determine if NRCAT should expand its focus into these two new areas.

NRCAT contracted with Barbara Frey, director of the Human Rights Program at the University of Minnesota, to prepare a white paper describing the need for an increased role by the United States government to help end torture by other governments. This paper was an important element in the process that NRCAT used to determine if the organization would expand its focus.

Torture is practiced widely by governments in every region of the world despite a longstanding and absolute prohibition against torture found in international and national laws and reinforced by mechanisms designed to prevent and punish its use. Torture has many targets, including political opponents and persons deemed to be threats to national security, but it is also routinely inflicted on common criminals and marginalized groups including members of minority religious, ethnic, indigenous and social groups. Perpetrators of torture include law enforcement and security forces, as well as government-authorized private contractors. In 2000, Amnesty International documented reports of torture or ill-treatment inflicted by state agents from over 150 countries.

Influence of the U.S. Government

The U.S. Government is a critical actor when it comes to the practice of torture around the world. U.S. laws, policies and actions with regard to torture have a profound impact – for better or worse – on the practices of foreign governments. The U.S. has had an extremely positive influence on international efforts to prohibit torture, including leading efforts to establish international standards and funding torture treatment centers globally through its financial support of the UN voluntary fund for that purpose. Likewise, the U.S. has used its bilateral influence to stop torture by foreign governments, including intervening to prevent torture or to prevent persons seeking asylum from being sent back to countries that engage in torture and calling attention to governments that torture by reporting their abuses in the annual State Department country reports.

At the other end of the spectrum, the U.S. Government has condoned or supported torture by foreign governments, providing military assistance to foreign governments it deems to be crucial allies even though they routinely engage in torture, defending allied governments that torture

from international criticism and scrutiny, and even providing direct support and training for foreign security forces that torture. During the past decade, the world experienced a new low in U.S. leadership on torture when the Bush administration attempted to limit the international prohibition against torture in order to justify abuses by U.S. agents and allies in the “war on terror.”

Despite the U.S.’s most recent foray into the “dark side” of practicing and condoning torture as part of its anti-terrorist campaign -- indeed, because of it -- there is now a tremendous opportunity and need to reaffirm U.S. values by condemning the practice of torture and taking steps to stop it wherever it occurs. Stung by our own experience, the U.S. can emerge wiser in its approach to torture internationally -- less preachy and more supportive of the complex but necessary steps that must be taken to end torture without exception. The world is watching how the U.S. speaks and how it behaves in this second chapter in the post-9/11 era. For good or bad, the U.S. Government will play an important role with regard to torture by its allies and all other governments. NRCAT should speak out to insist that it be a force for good.

Torture Practices by Foreign Governments

Systematic patterns of torture by foreign governments are well documented by the U.S. Government, international organizations and NGOs. The following chart is based on information readily available in the U.S. State Department’s annual [Country Reports on Human Rights Practices](#) and Amnesty International’s annual reports.

GOVERNMENTS WITH THE WORST RECORDS OF TORTURE, 1999-2007	
<p>SUB-SAHARAN AFRICA: Dictatorial regimes, lack of economic development, and political and ethnic violence on the continent are important factors related to the endemic use of torture.</p>	<p>Burkina Faso Burundi Cameroon Central African Republic Democratic Republic of the Congo Kenya Libya Nigeria Rwanda Sudan Uganda Zambia Zimbabwe</p>
<p>ASIA – PACIFIC: Military governments in this region engage in widespread repression, including torture targeted at ethnic groups, human rights activists, religious minorities, journalists and students. Torture is also used against suspects in police custody, especially to extract confessions or information used in criminal proceedings.</p>	<p>Burma / Myanmar Cambodia China India Indonesia Democratic People’s Republic of Korea Sri Lanka</p>

<p>EUROPE & CENTRAL ASIA: Government officials frequently use torture during the normal course of criminal investigations in prisons, pretrial facilities, and local police and security service precincts. Informants reported several cases of medical abuse, including forced psychiatric treatment.</p>	<p>Kazakhstan Lebanon Russia Turkey Ukraine</p>
<p>LATIN AMERICA & THE CARIBBEAN: Prisoners, human rights defenders, women, street children and indigenous populations are abused by government officials including police and security forces.</p>	<p>Brazil Colombia Haiti Mexico Nicaragua Venezuela</p>
<p>MIDDLE EAST AND NORTH AFRICA: Torture is systemic in several countries, targeting students, ethnic minorities, and perceived political and religious opponents.</p>	<p>Afghanistan Egypt Iran Iraq Israel Pakistan Syria Tunisia</p>
<p>The above analysis is based on the Cingranelli-Richards (CIRI) Human Rights Dataset, www.humanrightsdata.org. Regional categories follow those used in Amnesty International's annual report.</p>	

While information about the torture practices of these and other governments are reported publicly by the U.S. Government there are few obvious consequences from the reports. For this reason, in the fight against torture it may be important to create a “watch list” to highlight countries of exceptional concern. Drawing attention to governments that have an endemic pattern of torture can be used to strengthen the backbone of U.S. policymakers who are otherwise too willing to excuse torture in these countries as secondary to other foreign policy priorities. As Stephen Rickard, Executive Director of the Open Society Policy Center, points out, “There are always powerful forces insisting that the U.S. relationship with this or that government, or the need for ‘stability’ or some other supposed imperative must trump our opposition to torture.” A well-organized constituency against torture is needed to strengthen the resolve of the U.S. government to take more effective steps to end torture by foreign governments. Creating a torture watch list will help do this.

Existing U.S. Law regarding Torture

U.S. laws already provide a general framework for opposing use of torture by foreign governments, but enforcement of these laws varies and sanctions aimed at torturers need to be reinforced and supplemented with incentives to eliminate torture. Current U.S. law affirms the U.S. Government’s policy of opposing torture through the use of public and private diplomacy, international cooperation and export controls.¹ This resolution against torture is largely symbolic and its provisions are weak but it does highlight the actors that need to be engaged to abolish

¹ Joint Resolution Regarding Opposition of the United States to the Practice of Torture by Foreign Governments, codified in 22 U.S.C. § 2656 (2000).

torture by foreign governments: Congress, other governments, NGOs, the U.N., the State Department and its representatives around the world, the Department of Commerce, and military trainers.

The Foreign Assistance Act has been an important vehicle for operationalizing the U.S. Government's opposition to torture, with provisions that:

- (a) Prohibit security assistance to countries that engage in a consistent pattern of gross human rights violations, including torture,²
- (b) Prohibit development assistance for gross human rights violators,³ and
- (c) Direct the State Department to submit annual Country Reports to Congress regarding the human rights practices of every other nation.⁴

In recent years, Senator Leahy has authored additional legislation to increase the priority of human rights in U.S. foreign policy, specifically barring funds for any training program or military assistance program to a specified foreign military unit if that unit has an egregious human rights record.⁵ Officials from the State Department's human rights office indicate that the "Leahy law" works to bar many foreign security officials from receiving training by U.S. forces.

Sanctions against individual human rights violators and their military units send an important message, but real change in the practices of foreign governments may require carrots in addition to sticks. The Foreign Operations Appropriations Act generally prohibits U.S. government funds from being spent in support of torture (sec. 7077).⁶ One important improvement NRCAT could make would be to try to complement the sanctions in the Foreign Operations Appropriations Act with an amendment that would make U.S. assistance available to foreign governments that take genuine steps to eliminate torture.⁷ NRCAT could help pass this legislation by working with Senator Leahy's staff to insert language in the 2011 Appropriations Act to provide incentives to foreign governments that make significant efforts to end torture.⁸

International Efforts to End Torture

The United Nations and regional organizations have a wide array of standards and mechanisms designed to prevent torture. The most important UN mechanisms are:

- The Committee against Torture, a body of ten independent experts that monitors the performance of States Parties to the Convention Against Torture, through State self-reporting, individual complaints, and general comments of interpretation;

² Foreign Assistance Act of 1961, section 502B, as amended, 22 U.S.C §2304, Sec. 502B (a)(2).

³ Id., section 116, as amended, 22 U.S.C § 2151, Sec. 116(a)

⁴ Id., section 502B, as amended, 22 U.S.C §2304, Sec. 502B(b)

⁵ 2002 Defense Appropriations Act, (PL 107-117) and the 2002 Foreign Operations Appropriations (PL 107-115)

⁶ Section 7077 states that "none of the funds made available in this Act shall be used in any way whatsoever to support or justify the use of torture, cruel or inhumane treatment by any official or contract employee of the United States Government." Senate Resolution 1434. S.R. 1434, which is identical to H.R. 3081, which passed the House on July 9th, 2009, is currently being considered in the Senate.

⁷ This approach is found in the pending 2010 Appropriations bill with regard to international prison conditions. FY 2010 Department of State, Foreign Operations and Related Programs Appropriations bill, section 7086.

⁸ In a meeting with Barbara Frey on November 13, 2009, Tim Rieser, majority clerk of the Senate Appropriations Committee's subcommittee on State, Foreign Operations, and Related Programs, expressed his willingness to work with NRCAT on proposed legislation.

- [The Special Rapporteur against Torture](#), who monitors and reports to the Human Rights Council on government practices with regard to torture. The Rapporteur has the authority to carry out investigative visits, to request information from governments, and to intervene in urgent situations;
- [The UN Voluntary Fund for Victims of Torture](#) accepts contributions to provide humanitarian assistance to victims of torture and their families.

The U.S. Government should be encouraged to continue to support these mechanisms and to make them more effective.

In addition, NRCAT could actively support U.S. ratification of a relatively new U.N. treaty, the [Optional Protocol to the Convention Against Torture](#) (OPCAT). While the above-described mechanisms have no enforcement powers to prevent torture, OPCAT goes a step further by setting up a system of regular visits to all places of detention aimed at preventing torture. OPCAT establishes a two-part system of regular visits: first, by a new international body, the U.N. Subcommittee on the Prevention of Torture, and second, by one of several National Preventive Mechanisms, created by governments. Places of detention include police stations, prisons, pre-trial centers, juvenile detention centers, asylum detention centers, psychiatric hospitals, and places for administrative detention.

OPCAT has 63 signatories and 50 parties, a number that is quite remarkable, given the somewhat extensive visiting procedures discussed above. Its success is based to a large extent on the experience of other independent monitors, including the International Committee of the Red Cross and the European Committee to Prevent Torture, which have made a significant difference in protecting detainees from torture. The European monitoring experience has been in place for 20 years and covers 47 countries.⁹ Consistent independent monitoring of detention sites-- whether sites for criminal detainees, administrative detainees or those captured in armed conflict—has been found to be the most effective way to deter torture and cruel treatment. Governments, of course, have a vested interest in keeping their secrets. A well informed civil society has the capacity to push governments to open up their processes to scrutiny and to adopt practices that respect human dignity.

The U.N. Subcommittee to Prevent Torture, the body established by OPCAT, is just starting its site visits. This nascent system of monitoring should be encouraged and supported to meaningfully reduce torture by all governments. NRCAT could lead a national effort to build pressure, first, for the President to sign this treaty and, second, to begin to create support in the U.S. Senate for ratification. In the process, NRCAT could educate its members and other opinion leaders about the trend toward transparency to protect the human rights of detainees. Other NGOs, including Human Rights First and the Center for Victims of Torture, expressed their support for NRCAT to take a strong leadership role on OPCAT, since they do not have the funds or constituencies in place to do it themselves.

⁹ The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (“CPT”) was set up under the 1987 Council of Europe Convention of the same name. The CPT implements its preventive function through two kinds of visits – periodic and ad hoc.

Links to Resources

Joint Resolution Regarding Opposition of the United States to the Practice of Torture by Foreign Governments, codified in 22 U.S.C. § 2656 (2000).

<http://www.law.harvard.edu/students/orgs/hrj/iss14/nagan.shtml>

Office of the United Nations High Commissioner for Human Rights: *Committee Against Torture*

<http://www2.ohchr.org/english/bodies/cat/>

Office of the United Nations High Commissioner for Human Rights: *Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*

<http://www2.ohchr.org/english/law/cat-one.htm>

Office of the United Nations High Commissioner for Human Rights: *Optional Protocol to the Convention Against Torture – Subcommittee on Prevention of Torture*

<http://www2.ohchr.org/english/bodies/cat/opcat/index.htm>

Office of the United Nations High Commissioner for Human Rights: *Special Rapporteur Against Torture*

<http://www2.ohchr.org/english/issues/torture/rapporteur/>

Office of the United Nations High Commissioner for Human Rights: *Voluntary Fund for Victims for Torture*

<http://www.ohchr.org/EN/ISSUES/Pages/TortureFundMain.aspx>

Council of Europe: *European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment*

<http://www.cpt.coe.int/EN/about.htm>