



Human Rights Now

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7F Creative One Akihabara Bldg. 5-3-4 Ueno
Taito-ku, Tokyo, JAPAN 110-0005

<http://hrn.or.jp/eng/>

Phone: +81-3-3835-2110 Fax: +81-3-3834-1025

Email info@hrn.or.jp

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Human Rights Now – Statement against President Trump’s Stance on Torture

On January 25, 2017, a draft of an executive order was leaked from within President Trump’s administration.¹ The draft order proposes several moves that would violate the United States’ obligations under domestic and international human rights and humanitarian law if taken, including (1) the removal of restrictions on Guantanamo Bay prison, (2) stopping transfers out and allowing new prisoners into Guantanamo Bay prison, (3) an internal review to consider reopening CIA “black site” prisons where terrorism suspects were detained and tortured in the past, and (4) an internal review to re-institute prohibited “enhanced interrogation techniques.”

Human Rights Now, a Tokyo-based international human rights NGO demands that the Trump administration reject any decision to reopen black site prisons and reinstate enhanced interrogation programs which would include illegal torture methods like waterboarding.

There are several especially troubling sections for human rights in President Trump’s draft order. First, Section 1 of the draft order seeks to revoke former President Obama’s executive orders 13491 (“Ensuring Lawful Interrogations”) and 13492 (“Review and Disposition of Individuals Detained at the Guantanamo Bay Naval Base and Closure of Detention Facilities”), which explicitly condemned torture and required the United States to comply with international treaties such as the Geneva Convention.² Second, sections 2 and 4 of the draft order endorse the retention of Guantanamo Bay. Specifically, Section 2(b) declared that facilities at Guantanamo Bay are “legal, safe, and humane, and are consistent with international conventions regarding the laws of war.” And Sections 2(d) and 4(a) call for the “continuation of the detainee facilities” and of “trial by military commission of alien enemy combatants” at Guantanamo Bay. Third, because the

¹ “Executive Order—Detention and Interrogation of Enemy Combatants”, 25 Jan. 2017, <http://apps.washingtonpost.com/g/documents/national/read-the-draft-of-the-executive-order-on-cia-black-sites/2288/> (hereinafter “Leaked Draft”); M. Mazzetti & C. Savage, “Leaked Draft of Executive Order Could Revive C.I.A. Prisons”, New York Times, 25 Jan. 2017, <https://www.nytimes.com/2017/01/25/us/politics/executive-order-leaked-draft-national-security-trump-administration.html>.

² Federal Register, Executive Orders 13491, 13492, 13493, Jan. 27, 2009, <https://www.gpo.gov/fdsys/pkg/FR-2009-01-27/pdf/E9-1885.pdf>.

only authorized interrogation techniques are listed in the Army Field Manual 2-22.3, Section 5 calls on relevant officials to review and make modifications or additions to the Manual in order to allow for currently prohibited actions such as “waterboarding.”³ Also, Section 7 of the draft order calls on relevant officials to “review the current intelligence needs of the United States” and to consider “reinitiat[ing] a program of interrogation of high-value alien terrorists to be operated outside the United States.” This veiled language refers to black site prisons, where foreign suspects have previously been tortured and of which the United Nations Committee against Torture had recommended the cessation.⁴ Finally, Section 8 calls on relevant officials to review the controversial military commissions system in order to provide recommendations on “how best to employ the system . . . for the swift and just trial and punishment of unlawful enemy combatants . . .” This goes against the Supreme Court’s decision in *Hamdan v. Rumsfeld*, in which the Court held that trying Guantanamo Bay detainees under the Guantanamo military commission, where proper due process rights weren’t provided, was illegal under US law and the Geneva Conventions.⁵

We are particularly concerned about Trump’s interview statements supporting torture following reports on the leaked draft executive order. In the interview, he stated his belief that torture “absolutely” works, that intelligence officials support him in that belief, and that the United States should “fight fire with fire” against terrorists.⁶ His statements fundamentally go against the general prohibition of torture under the previous Obama administration and under international human rights obligations. The Special Rapporteur on Torture, Juan Mendez, has stated that “the right to be free from torture and ill-treatment is a rule of customary international law and a peremptory *jus cogens* norm of international law applying to all states [and] the absolute and non-derogable nature of the torture prohibition in international law . . . constitutes an immoral affront to human dignity that can never be justified.”⁷

Trump has also justified torture by specifically arguing that waterboarding does not count as torture.⁸ The Special Rapporteurs on Counter-terrorism and Human Rights and Torture, however,

³ See FM 2-22.3 – Human Intelligence Collector Operations, Department of the Army, Sep. 2006, at 5-21, <https://fas.org/irp/doddir/army/fm2-22-3.pdf>.

⁴ The practice of torture and/or cruel, inhuman, and degrading treatment and extraordinary rendition of detainees at CIA black sites is documented in Open Society, “Globalizing Torture”, 5 Feb. 2012, <https://www.opensocietyfoundations.org/sites/default/files/globalizing-torture-20120205.pdf>. Committee against Torture, “Conclusions and recommendations of the Committee against Torture”, 19 May 2006, CAT/C/USA/CO/2, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT/C/USA/CO/2&.

⁵ See *Hamdan v. Rumsfeld*, 548 U.S. 557 (2006).

⁶ ABC News, “Trump’s First Televised Interview as U.S. President”, World News Tonight (interview with David Muir), 25 Jan. 2017.

⁷ SRT Interim Report of 2016, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N16/250/31/PDF/N1625031.pdf>

⁸ FOX News, “President Trump Sits Down with Sean Hannity at White House”, The Sean Hannity Show (interview with Sean Hannity), 26 Jan. 2017 (“waterboarding was just short of torture”).

have made it clear that the use of waterboarding qualifies as torture.⁹ The Special Rapporteur on Torture, in referring specifically to waterboarding and harsher techniques discussed by US policymakers, stated unambiguously that “They are illegal as a matter of international law, they are illegal as a matter of constitutional law in the United States, they are illegal as a matter of military law...and they are immoral anyway.”¹⁰ He also explained that behavioral and scientific data show that practices like “repeated suffocation” actually “weaken[s], disorient[s] and confuse[s] subjects..., render[ing] them prone to fabricat[ing] memories.”¹¹

The United States has had a history of violating its obligations under the Convention Against Torture (CAT). Under the Convention, “torture” is defined as:

any act by which severe pain or suffering whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him..., or intimidating or coercing him or a third person, or for any reason based on discrimination.¹²

In order to avoid its obligations under CAT, the United States has codified a more lax definition which allows for “pain or suffering incidental to lawful sanctions.”¹³ However, the United Nations has spoken directly about how “the example set by the United States on the use of torture has been a big draw-back” in the global fight to end the use of torture,¹⁴ and Human Rights Now urges the U.S. to ensure that its leadership aligns with the international standard for torture.

If decisions allowing torture were to be made under the draft order’s internal reviews, they would be in violation of the United States’ obligations under domestic and international human rights and humanitarian law. Torture is prohibited by the Geneva Conventions and the CAT to which the United States is a state party. The decisions would also remove the limitations on coercive interrogation techniques set by a longstanding Army Field Manual intended to ensure humane military interrogations. The United States cannot negate its international obligations against torture by simply repealing a ban on its use or issuing orders which support it in domestic law.

⁹ Ben Emmerson, “Framework Principles for securing the accountability of public officials for gross or systematic human rights violations committed in the context of State counter-terrorism initiatives”, Human Rights Council, A/HRC/22/5, 1 Mar. 2013, http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A-HRC-22-52_en.pdf; The Guardian, “Obama: ‘I believe waterboarding was torture, and it was a mistake’”, 30 Apr. 2009, <https://www.theguardian.com/world/2009/apr/30/obama-waterboarding-mistake>; Reuters, “U.N. torture envoy concerned at water-boarding rhetoric in U.S. race”, 9 Mar. 2016, <http://www.reuters.com/article/us-usa-election-un-torture-idUSKCN0WB1SI>.

¹⁰ Reuters, *id.*

¹¹ SRT Interim Report of 2016, *supra* n.7, at 5.

¹² *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, United Nations Human Rights Office of the High Commissioner, June 26, 1987, Article 1, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx>.

¹³ 18 US Code §2340.

¹⁴ OHCHR, “‘If the US tortures, why can’t we do it?’ – UN expert says moral high ground must be recovered”, 11 Dec. 2014, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15406&LangID=E>.

We call on President Trump to respect the US's international human rights and humanitarian legal obligations which unequivocally prohibit all forms of torture.