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## **Torture : the antithesis of ethical medical practice**

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### Abstract

Some doctors have long participated in, or been complicit with torture. Their motivation ranges from apparent sadistic interest, through political expediency and scientific research to collaboration by default and forced coercion. Over time, although torturers' methods have adapted and the definitions of torture have widened, torture remains as it has always been, the very antithesis of ethical medical practice.

### Prologue

In April 1994 a prominent Rwandan gynaecologist called Sosthene Munyemana, who worked in the University Hospital in the town of Butare, took leave of absence for a month. The way he spent his leave led, ultimately, to the World Medical Association approving the Statement on Licensing of Physicians Fleeing from Criminal Offences (WMA 1997). In 1996 Doctors for Human Rights (DHR), who in July 1994 had investigated genocidal acts in Butare University Hospital, became aware that Sosthene Munyemana was practising as a locum near Bordeaux, where he had fled. Mr Munyemana obtained a fellowship from the French Ministry of Development Cooperation and first worked at the University of Bordeaux II and subsequently found employment in a hospital. His 1994 holiday activities had formed the subject of a monograph published by African Rights, entitled *Dr Sosthene Munyemana: The Butcher of Tumba*<sup>1</sup>. DHR contacted the French Minister of Health and Mr Munyemana was prevented from practising. DHR subsequently facilitated a debate among medical human rights organisations internationally that resulted in the World Medical Association's adoption of a resolution at the 49th General Assembly in Hamburg in November 1997. The Statement recommends that national medical associations should use their licensing powers to ensure that physicians against whom serious allegations of participation in torture, war crimes or crimes against humanity have been made are not able to obtain licences to practise until they have satisfactorily answered these allegations<sup>2</sup>.

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<sup>1</sup> African Rights. Dr. Sosthène Munyemana: The Butcher of Tumba: At Liberty in France, February 1996 London

<sup>2</sup> World Medical Association. Statement on the licensing of physicians fleeing prosecution for serious criminal offences. Ferney-Voltaire WMA 1997  
<http://www.wma.net/e/policy/c16.htm>. (accessed 7th Feb 2006)

## Doctors and Torture

Doctors are obliged to relieve suffering and save lives. Principle 1c of the World Medical Association Declaration on the Rights of the Patient (1981) requires that patient shall always be treated in accordance with his/her best interests<sup>3</sup>. Torturers on the other hand invade, defile and desecrate the shrine that is each person's sense of self. Sergio Pesutic, a Chilean physician, has described torture as "the dehumanised use of power"<sup>4</sup>. In a classic paper on brainwashing, three components were noted to be required for breaking down someone's resistance: debility, dependency, and dread<sup>5</sup>.

Torture is derived from the verb *torquere*, to twist, and has always had a double meaning. For example, the word was used to mean practice of torture and as a medical term for extreme agony or pain<sup>6</sup>. The World Medical Association, in its Declaration of Tokyo, defines it as follows: "Torture is . . . the deliberate, systematic, or wanton infliction of physical or mental suffering by one or more persons, acting alone or on the orders of any authority, to force another person to yield information, to make a confession, or for any other reason"<sup>7</sup>. Torture may include both physical and psychological methods, although they cannot always be separated. For example, hooding impedes normal breathing but also produces disorientation and fear. Sexual torture is common and, not surprisingly, often underreported by men and women<sup>8</sup>.

According to physician and ethicist Giovanni Maio, the medical establishment's involvement in torture dates back to the late Middle Ages. Torture became part of judicial practice and reached its peak in the Inquisition of the Renaissance<sup>9</sup>. The first official reference to medical activity came in 1532, when Charles V promulgated the *Constitutio Criminalis Carolina*, which was binding for the Holy Roman Empire, and codified doctors' involvement in torture. It was not abolished until 1806 by Napoleon.

The most frequent role of the physician in torture was a judicial one, because torture was proscribed for five categories of people: the blind, the mute, the handicapped, the insane, and the ill. Doctors acted also as torture advisor - they tailored the methods of torture according to the victim's fitness to survive<sup>10</sup>. Sources from the 16th century indicate there were so-called torture physicians, who were called upon as experts not only before a planned session

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<sup>3</sup> World Medical Association. Declaration on the Rights of the Patient. Ferney Voltaire: WMA 1981 <http://www.wma.net/e/policy/14.htm>. (accessed 7th Feb 2006)

<sup>4</sup> Martirena G: Uruguay: Torture and doctors. *Q J Rehabil Torture Victims Prev Torture* 1992; Suppl 2:6-7

<sup>5</sup> Farber IE, Harlow HF, West LJ: Brainwashing, conditioning, and DDD (debility, dependency, and dread). *Sociometry* 1957; 20:271-285

<sup>6</sup> Maio, G. History of medical involvement in torture—then and now. *Lancet*. 2001; 357;1609-1611 <http://www.thelancet.com/journals/lancet/article/PIIS0140673600047292/fulltext>. (accessed 7th Feb 2006)

<sup>7</sup> World Medical Association. Declaration of Tokyo. Guidelines for Physicians Concerning Torture and other Cruel, Inhuman or Degrading Treatment or Punishment in Relation to Detention and Imprisonment. Ferney-Voltaire WMA 1975. <http://www.wma.net/e/policy/c18.htm>. (accessed 7th Feb 2006)

<sup>8</sup> Lunde I, Ortmann J: Prevalence and sequelae of sexual torture. *Lancet* 1990; 336:289-291

<sup>9</sup> *Ibid*

<sup>10</sup> In: Stover E, Nightingale EO, eds. *The breaking of bodies and minds: torture, psychiatric abuse, and the health professions*. New York: Basil Blackwell, 1985

of torture but also during the torture itself<sup>11</sup>. Torture physicians had three further roles: they gave advice as to when to stop the torture to prevent sudden death; they had to assess whether unconsciousness was real or simulated; and they treated the bruises and fractures of the accused to improve their health enough to allow torture to continue<sup>12</sup>. Their complicity is not surprising since up until the 18th century torture was regarded as legitimate, and doctors were viewed as representatives of the authorities<sup>13</sup>. In fact much of the criticism of torture beginning in the 16th century came from the physicians who participated in it. They did not argue on moral or ethical grounds, condemning the cruelty of torment or the infliction of pain. Rather, Maio claims, they questioned the reliability of the testimony given under torture.

Maio contends that prior to the 20th century, the physician's role in torture was always passive - that doctors never took an active part in the ordeal. Modern torture, he says has become progressively more scientific. Physicians became actively involved by inventing new technical possibilities and by administering, for example, psychiatric-pharmacological and psychological forms of torture<sup>14</sup>.

World War II provided the opportunity for some doctors to perpetrate horrific experiments upon prisoners<sup>15</sup>. Japan's Unit 731 employed hundreds of doctors and scientists to conduct experiments on prisoners of war and civilians. Described by their captors as "logs," the victims were deliberately infected with disease and then dissected while still alive so that doctors could check the infections' progress. Between 1936 and 1945, the unit killed an estimated 14,000 people. An important part of experimentation was testing frostbite for military purposes.

Similar experiments were conducted by the Dr. Josef Mengele, the notorious Nazi who placed naked prisoners in sub-freezing temperatures and had their limbs beaten with sticks so that they would understand when the freezing process was over. The "Angel of Death" Josef Mengele, who was long thought to have been the black sheep of Germany's scientists under the Nazi regime, was supported by a network of researchers. Mengele is reported to have injected the hearts of children with chloroform, infected them with typhus and poisoned 900 sets of twins. He was assisted by other doctors - records have been unearthed that Mengele's work was supported by elite researchers attached to the Kaiser-Wilhelm Institute, whose scientists have been awarded more than 20 Nobel prizes<sup>16</sup>. In 1946, in Nuremberg, Germany, seven doctors were sentenced to death for their cruelty in concentration camps.

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<sup>11</sup> Koch T. Ferdinand Leber, der letzte Folterarzt. *Gegenbaurs Morphol Jahrb* 1972; 117: 441-452.

<sup>12</sup> Scott GR. *The history of torture throughout the ages*. London: Luxor, 1959

<sup>13</sup> Vesti PB. Extreme man-made stress and anti-therapy: doctors as collaborators in torture. *Dan Med Bull* 1990; 37: 466-468.

<sup>14</sup> *Ibid*

<sup>15</sup> McCurry J. Japan's sins of the past. *The Guardian*. Thursday October 28, 2004  
<http://www.guardian.co.uk/elsewhere/journalist/story/0,7792,1338296,00.html>. (accessed 7th Feb 2006)

<sup>16</sup> Diver K. Network of top scientists helped 'Angel of Death' Mengele. *The Guardian*. Tuesday March 22, 2005.  
<http://education.guardian.co.uk/higher/research/story/0,,1443315,00.html>. (accessed 7th Feb 2006)

## Defining torture

The United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was adopted by the General Assembly on 10 December 1984 and entered into force on 26 June 1987<sup>17</sup>. International human rights law contains no more basic prohibition than the absolute, unconditional ban on torture and what is known as “cruel, inhuman, or degrading treatment.” Even the right to life admits exceptions, such as the killing of combatants allowed in wartime. But torture and inhumane treatment are forbidden unconditionally, whether in time of peace or war, whether at the local police station or in the face of a major security threat.

In April 1994 the UN Committee against Torture (CAT) made its first ever use of the term unacceptable to describe interrogation methods employed in the State of Israel. Israel described these methods as "moderate physical pressure". At its 1994 consideration of Israel's initial report, CAT held the practice of moderate physical pressure as a lawful mode of interrogation to be “completely unacceptable”<sup>18</sup>. The methods had been permitted by Israel since the report of Israel's Landau Commission Inquiry of 1987, and were held to be necessary to save lives at risk from time bombs.

In November 1996, CAT learned through press reports that Israel's Supreme Court, acting as the High Court, was permitting the practice of moderate physical pressure, by overturning lower court interim injunctions prohibiting such practices. At one point during the High Court hearing, Israeli State Attorney Shai Nitzan was reported as saying: "No enlightened nation would agree that hundreds of people should lose their lives because of a rule saying torture is forbidden under any circumstances"<sup>19</sup>. On November 22, 1996, CAT requested Israel to explain this development in writing by January 31 1997, which Israel did<sup>20</sup>.

On November 11, 1996 the Israeli government responded to a letter of July 14, 1995 from the UN Special Rapporteur on Torture, Nigel Rodley. Israel argued that moderate pressure was permitted under international law, as evidenced by the European Court of Human Rights judgment of April 25 1978 regarding the five practices of interrogation employed by the UK in Northern Ireland in *Ireland v UK* 1978<sup>21</sup>. That judgment had reversed a European Commission on Human Rights finding on the grounds that the methods were not of sufficient intensity and cruelty to amount to torture. A letter from the Israeli Government to the UN Commission on Human Rights (CHR) dated Feb. 20, 1997, made the same point<sup>22</sup>. Nigel Rodley included this response in his report to the CHR 53rd session, held in 1997; but

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<sup>17</sup> <http://www.ohchr.org/english/law/cat.htm>. (accessed 7th Feb 2006)

<sup>18</sup> UN Committee against Torture. CAT/C/SR.184 (28 April 1994) para. 43 (3) (4).

[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CAT.C.SR.184.En?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CAT.C.SR.184.En?Opendocument). (accessed 7th Feb 2006)

<sup>19</sup> New York Times, November 16, 1996

<sup>20</sup> UN Committee against Torture. CAT/C/33/Add.2 Second periodic reports of States parties due in 1996 : Israel. 18/02/97.

CAT/C/33/Add.2/Rev.1.[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CAT.C.33.ADD.2.REV.1.En?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CAT.C.33.ADD.2.REV.1.En?Opendocument). (accessed 7th Feb 2006)

<sup>21</sup> European Court of Human Rights. Publ's of E.Ct.H.R. Series A, vol. 25, 1978 pp. 67-67

<sup>22</sup> UN Commission on Human Rights. Correspondence from Govts. E/CN.4/1997/116

concluded that, used in combination, as they frequently are, such techniques do amount to torture<sup>23</sup>.

The European Court of Human Rights 1978 judgment, which reversed the finding of the European Commission on Human Rights of Jan 25, 1976, had raised a question about "the suffering of particular intensity and cruelty that the term torture implies"<sup>24</sup>. Israel contended that its interrogation methods were not of sufficient severity to constitute torture. The delegation was reluctant to reveal precisely what interrogation methods were employed because uncertainty is a feature of interrogation. It did respond to specific points however. The use of cold air conditioners to chill suspects and the deprivation of either food or use of the WC were not permitted. Sleep deprivation was viewed as appropriate in essential cases, where the location of a bomb was sought. Handcuffing was used during interrogation in order to ensure the life and health of the guards. Head covering was used to prevent prisoners identifying members of the security forces or other prisoners. Loud music was played to prevent prisoners talking with one another; but not as torture, since the interrogators also heard this music and would be unlikely to torture themselves.

The Committee disagreed with Israel's position. It concluded that the use of the above methods as well as restraining in very painful positions and the use of threats, including death threats, constitute torture, even when not used in combination, as apparently they usually were. In saying this, the Committee did not abandon the severity test used by the European Court of Human Rights over twenty years previously. Instead, it provided a clear statement about how certain methods of interrogation met that test, "even when not used in combination". The Committee recommended that such interrogation methods cease immediately, and that Israel report to the Committee no later than September 1, 1997 on the measures taken in response<sup>25</sup>.

The CAT Chair wrote to Israel at the end of its November 1997 session, pointing out that the requested communication had not been received. A reply was received in 1998 and Israel appeared in May 1998. In December 1997, an Israeli NGO, "LAW" reported that the High Court of Israel had postponed a ruling on the general use of interrogation techniques in prisons. The international human rights NGO, SOS-Torture, reported that, on 7th January 1998 the High Court of Israel refused to issue an order prohibiting the intelligence service from employing the stress position and hooding as an interrogation technique. Amnesty International repeated their concerns at the UN CHR on March 17, 1998<sup>26</sup>.

Nigel Rodley in his report to the UN CHR 1998 54th session, referred to the consistency

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<sup>23</sup> UN Commission on Human Rights. Rept of Special Rapporteur on torture E/CN.4/1997/7/Add.2.

<sup>24</sup> European Court of Human Rights. Publ's of E.Ct.H.R., Series B, # 23 I, Case of Ireland v UK pp.101-139

<sup>25</sup> Concluding observations of the Committee against Torture : Israel. 09/05/97.

A/52/44,paras.253-260. CAT/C/X/XVIII/CRP.1/Add.4.

[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/A.52.44,paras.253-260.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/A.52.44,paras.253-260.En?OpenDocument). (accessed 7th Feb 2006)

<sup>26</sup> Amnesty International. AI Index: MDE15/24/98

between his previous report and that of CAT<sup>27 28</sup> . He cited a complaint which indicated that "moderate physical pressure" was not restricted to cases where a "terrible disaster" looms concerning Mr. Tarabieh<sup>29</sup> . Mr. Tarabieh, a consultant to Human Rights Watch (HRW), was reportedly interrogated in Jalameh prison near Haifa in August 1996 about his work for HRW. He was allegedly hooded, tied to a chair with hands and feet bound, forced to sit for hours in contorted positions and denied regular meals.

During the May 1998 CAT Hearing on Israel's second periodic report, Israel claimed it was held to a higher standard than others. It criticised CAT for asking 70 questions in the morning and expecting a response by the afternoon; and suggested that some questions were for the onlookers. The use of the same member as Rapporteur at two consecutive hearings was questioned. CAT reiterated its conclusions from earlier hearings that Israel's interrogation methods breached Art's 1, 2 & 16 and should cease immediately<sup>30</sup> . The Committee might have concluded that Israel's policies constitute a material breach of the Convention, under the Vienna Convention on the Law of Treaties, Art. 60(3), and advised the UN Secretary General of this. It appears that CAT's approach was to continue to dialogue, rather than risk seeing a State Party excluded from the treaty process.

At its hearing of July 15 and 16, the UN Human Rights Committee concluded that Israel's interrogation methods violated Article 7 of the International Covenant on Civil and Political Rights, which says no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

On September 16, 1999, the Supreme Court, acting as the High Court of Justice, ruled that Israel's interrogation methods amounted to torture and were therefore illegal<sup>31</sup> . There were some proposals in 1999 to introduce legislation to permit physical pressure in urgent situations, but these were abandoned early in 2000.

### Redefining torture

On September 11th 2001 two hijacked planes flew into the World Trade Centre, massacring 3,000 people and changing the perceptions of the US administration. Within a year, Alberto Gonzalez, then Counsel to the President and later to become Attorney General, was redefining torture, stating that "for an act to constitute torture ... it must inflict pain that is difficult to endure". The memorandum continues: "Physical pain amounting to torture must be equivalent in intensity to the pain accompanying serious physical injury, such as organ

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<sup>27</sup> UN Commission on Human Rights Rept of Special Rapporteur on torture E/CN.4/1998/38

<sup>28</sup> Committee against Torture - A/52/44, paras.253-260. (Concluding Observations/Comments)

[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/A.52.44,paras.253-260.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/A.52.44,paras.253-260.En?OpenDocument)  
(accessed 7th Feb 2006)

<sup>29</sup> UN Commission on Human Rights Rept of Special Rapporteur on torture E/CN.4/1998/38/Add.1, para. 214.

<sup>30</sup> UN Committee against Torture. CAT/C/33/Add.3, 6 March 1998

<sup>31</sup> Public Cte Against Torture in Israel et al v. State of Israel et al

failure, impairment of bodily function, or even death.<sup>32</sup>

Soon after the invasions of Afghanistan and Iraq reports of the torture of detainees began to surface. These crimes followed the development of an enhanced role for the US military in collecting intelligence in the war on terrorism<sup>33</sup>. So severe were the violations of international humanitarian law at Abu Ghraib Prison, Baghdad, that the acting United Nations High Commissioner for Human Rights claimed they might amount to crimes against humanity<sup>34</sup>. Within months of Gonzalez's redefinition of torture the US secretary of defense, Donald Rumsfeld, approved 17 new techniques including stress positions, isolation, 20 hour interrogations, and nakedness<sup>35</sup>. The US had begun its embrace of abusive interrogation techniques as a tool for intelligence gathering<sup>37</sup>. Tellingly, in an April 2003 revision of interrogation instructions the US defense secretary specified general safeguards to include "being medically evaluated as suitable" for interrogation<sup>38</sup>. By 2005 it had become disturbingly clear that the abuse of detainees had become a deliberate, central part of the Bush administration's strategy for interrogating terrorist suspects<sup>39</sup>.

The report *BREAK THEM DOWN, Systematic Use of Psychological Torture by US Forces* published by the Boston based Physicians for Human Rights (PHR) is a devastating indictment of the widespread use of psychological torture on detainees held in US custody<sup>40</sup>. The impact of the iconic images of physical torture in Abu Ghraib prison belies the pervasiveness of psychological torture as the favoured technique for coercive interrogation of detainees. These methods, which began in prison facilities in Afghanistan in 2002, becoming progressively more abusive as they migrated to Guantanamo Bay and then to Iraq.

Using information collated from documents within the public domain supplemented by their own research, PHR established that coercive techniques included prolonged isolation, sleep deprivation, severe sexual and cultural humiliation, and threats of death or dog attack. For instance up to 125 Guantanamo detainees are reported to have been held in solitary confinement at any one time. Sources familiar with interrogation in Guantanamo reported that some detainees suffer from incoherent speech, disorientation, hallucination, irritability, anger, delusions, and sometimes paranoia. The PHR report examines the evidence on the effects of psychological torture and concludes that psychological torture can cause more severe and

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<sup>32</sup> Bybee JS, [office of legal counsel, US Department of Justice]. Standards of conduct for interrogation under 18 USC 2340-2340A [memorandum for Alberto R. Gonzales, August 1, 2002].

<sup>33</sup> Priest D, Bradley G. US struggled over how far to push tactics. Washington Post 2004 June 24: A01.

<sup>34</sup> Ramcharan B. The present situation of human rights in Iraq. Geneva: Office of the High Commissioner for Human Rights, 2004.

<sup>35</sup> Dunlavey MJ, Department of Defense, Task Force 170. Counter-resistance strategies. Guantanamo Bay, 2002. [www.defenselink.mil/news/Jun2004/d20040622doc3.pdf](http://www.defenselink.mil/news/Jun2004/d20040622doc3.pdf) (accessed 7th Feb 2006).

<sup>36</sup> Prisoner torture "not sanctioned." BBC News release. 23 June 2004. <http://news.bbc.co.uk/2/hi/americas/3831399.stm> (accessed 7th Feb 2006)

<sup>37</sup> Human Rights Watch World Report 2006. P7

<sup>38</sup> Rumsfeld D. Counter-resistance techniques in the war on terrorism. Memorandum for the commander US southern command. Washington: Department of Defense, 2003. <http://www.defenselink.mil/news/Jun2004/d20040622doc9.pdf> (accessed 7th Feb 2006)

<sup>39</sup> Human Rights Watch World Report 2006. P5

<sup>40</sup> Break Them Down: Systematic Use of Psychological Torture by US Forces. Physicians for Human Rights. Boston 2005. Available at [http://www.phrusa.org/research/torture/news\\_2005-05-01.html](http://www.phrusa.org/research/torture/news_2005-05-01.html). (accessed Feb 2006)

long-lasting damage than does the pain inflicted during physical torture.

There is convincing evidence of medical complicity. The Fay report cited some medical corps personnel failing to report abuse at Abu Ghraib, and the ICRC reportedly found medical records were made available to interrogation teams at Guantanamo Bay<sup>41 42</sup>. PHR was informed that confidentiality was openly disregarded by many members of the US medical staff there, and that this was due to an order “from the top”. At both Abu Ghraib and Guantanamo Bay, teams comprising psychologists or psychiatrists and physicians were formed with the express purpose of facilitating interrogation<sup>3 43</sup>. As a result detainees refused to discuss their psychiatric problems with US physicians lest the information be used against them during interrogations, putting their mental health at even greater risk<sup>3</sup>.

But the most alarming aspects of the scandal has been the facility with which a sophisticated democratic government, hitherto a vociferous critic of regimes that torture, has become gamekeeper turned poacher. As PHR put it, the abusive regime was made possible by Orwellian interpretations of longstanding laws governing torture, that turned laws meant to protect people from torture into a means of authorising it. So far only relatively low ranking soldiers have been prosecuted, but Human Rights Watch, in its report subtitled ‘Command responsibility for the US abuse of detainees’ named defence secretary Donald Rumsfeld and senior military commanders as being potentially complicit or bearing command responsibility for torture<sup>44</sup>. This conclusion accords with Kelman’s observation that torture is a crime that takes place, not in opposition to the authorities, but under explicit instructions from the authorities or in an environment in which such acts are implicitly sponsored, expected or at least tolerated by the authorities<sup>45</sup>. Amnesty International concludes that the numerous official investigations into allegations of torture, which mostly comprise the military investigating itself, have been a whitewash<sup>46</sup>. The chairman of one, James Schlesinger, speaking Orwellese himself, characterised Secretary Rumsfeld’s conduct on interrogation policy as exemplary, despite his infamous, publicly accessible, December 2002 authorisation of stripping, isolation, hooding, stress positions, sensory deprivation, and the use of dogs in interrogations<sup>47</sup>. Unsurprisingly the American Civil Liberties Union, which forced the government to provide access through a Freedom of Information Act lawsuit to more than 30,000 pages of damning evidence of abuse, has concluded the US administration does not intend to establish who is responsible.

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<sup>41</sup> AR 15-6 Investigation of the Abu Ghraib Detention Facility and 205th Military Intelligence Brigade. Fay MGR. 2004: 95. Available from: <http://news.findlaw.com/hdocs/docs/dod/fay82504rpt.pdf>. (accessed 7th Feb 2006)

<sup>42</sup> Lewis NA. “Red Cross Finds Detainee Abuse in Guantánamo.” New York Times. November 30, 2004.

<sup>43</sup> Article 15-6 Investigation Interview by Major General Taguba, CFLCC Deputy Commanding General, US Army. With Colonel Thomas M. Pappas, Commander, 205th Military Intelligence Brigade. February 9, 2004:3

<sup>44</sup> Getting Away with Torture? Command Responsibility for the U.S. Abuse of Detainees. Human Rights Watch. New York. 2005. Vol. 17, No. 1(G). Available at: <http://www.hrw.org/reports/2005/us0405/>. (accessed 7th Feb 2006)

<sup>45</sup> The policy context of torture: A social-psychological analysis. Kelman HC. International Review of the Red Cross Vol 87 Num 857,123-134. Geneva. 2005.

<sup>46</sup> UNITED STATES OF AMERICA: Guantánamo and beyond: The continuing pursuit of unchecked executive power. Amnesty International. London. 2005.

<sup>47</sup> Memorandum: counter resistance techniques. Rumsfeld D. Department of Defense. 2/12/2002

## International law and medical ethics

The deafening silence from health professionals with a responsibility for the physical and mental health of detainees who have been tortured establishes them as the dogs that did not bark. The 1949 Geneva Conventions protect imprisoned combatants and civilians against intimidation and torture and doctors of the detaining power not only have a responsibility for the health of detainees but must be ready to defend medical ethics even when confronted by a conflicting military imperative. The International Committee of the Red Cross has long been surprised how often doctors favour detaining authorities against the interest of their patients (J Stroun, Conference in London, October 1993). President Bush denies the applicability of the Geneva Conventions to Guantanamo Bay—the International Committee of the Red Cross vigorously disputes this interpretation—but the United States is party to the UN Convention against Torture, from which there can be no derogation. The CAT, having determined in the case of Israel that not only torture but other practices along a continuum, including cruel, inhuman, and degrading treatment are equally forbidden, will need to consider the evidence. Human Rights Watch had characterised Israel's years of torture, supposedly justified on the same basis as the US, on the ticking bomb scenario, as a slippery slope which led to some 80 to 90 percent of Palestinian security detainees being tortured—until the 1999 Israeli Supreme Court ruling that curtailed the practice<sup>48</sup>.

Twelve months ago the American Medical Association (AMA) reiterated its condemnation of interrogation techniques that inflict psychological harm, adding the enjoiner “Physicians must not be a party to and must speak out against torture or other abuses of human rights”<sup>49</sup>. The World Medical Association (WMA) upon which the AMA represents the US medical profession, requires that a doctor “shall not provide [...] substances or knowledge to facilitate the practice of torture or other forms of cruel, inhuman or degrading treatment or to diminish the ability of the victim to resist such treatment”. Nathanson, while acknowledging it to be received wisdom that doctors have an important role in detecting, documenting, and prosecuting torture, speculated that ignorance might be a factor when they fail<sup>50</sup>. But it is a doctor's responsibility to recognise when a conflation of risk factors increases the probability of a diagnosis—child abuse being an apposite example. The Istanbul protocol, which provides guidelines on the assessment of torture and ill treatment and on reporting the findings of such investigations, was published more than four years ago<sup>51</sup>.

## Conclusion

Doctors who have been complicit might be comforted by a sense of impunity encouraged by the bilateral agreements with which the US government has sought to immunise its forces

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<sup>48</sup> HRW. Human Rights Watch World Report 2005 p21

<sup>49</sup> American Medical Association House of Delegates. Humane treatment of prisoners and detainees: resolution 12 (A-04) 5/24/04

<sup>50</sup> Nathanson V. Doctors and torture. *BMJ* 1999;319: 397-8.

<sup>51</sup> Physicians for Human Rights. Endorsement. The manual on the effective investigation and documentation of torture and other cruel, inhuman or degrading treatment or punishment (the Istanbul protocol). [www.phrusa.org/research/istanbul\\_protocol/endorse.html](http://www.phrusa.org/research/istanbul_protocol/endorse.html) (accessed 7th Feb 2006).

and leaders from prosecution by the International Criminal Court. In the absence of any serious attempt to establish accountability by the USA, every one of the 139 countries that ratified the UN Convention against Torture is obligated to either prosecute suspects entering its territory or extradite them to a country that will. Crucially, the US executive's creative interpretation of what defines torture will hold no sway over the courts of other sovereign nations. Hitherto dormant universal jurisdiction exists that is independent of the International Criminal Court. Kick started into activity by Senator Pinochet's 1998 arrest in the UK, universal jurisdiction has been increasingly flexing its muscles. Last year Israelis allegedly responsible for war crimes in the Middle East were targeted for prosecution while visiting both the UK and US, while in three European countries foreign nationals were successfully prosecuted for torture perpetrated in foreign lands. With no statute of limitation on these crimes, perpetrators can be arrested whenever they travel abroad throughout the rest of their lives. In 1997, a Sudanese doctor working for the UK National Health Service was arrested in Scotland on charges of participation in torture while acting in an official capacity in Sudan. In 2005 the current British Attorney General personally led the successful prosecution of a former Afghan warlord living in London, using video-linked witness participation in the court from a specially prepared room in the British Embassy in Kabul.

Every four years each state that has ratified the Convention against Torture is assessed by the UN committee that monitors parties' implementation of the Convention. The US's report to committee against torture submitted on May 6th 2005, insists that none of the "extensive investigative reports" into abuses against detainees in US custody in the "war on terror" have found that "any governmental policy directed, encouraged or condoned these abuses". The Committee, which will hold a dialogue with US government representatives during its May 2006 session that will take account of information submitted by human rights organisations, is unlikely to find much sympathy with this conclusion.

Lastly, national medical organisations have a responsibility to ensure that doctors who have participated in torture, whether as a human rights violation, a war crime, or crime against humanity, are denied licence to practise and are reported to the authorities<sup>2</sup>. If doctors against whom exists prima facie evidence travel to countries prepared to meet their obligations under the Convention against Torture, national medical organisations should liaise internationally over their identities to facilitate their prosecution.