

US rights group calls for criminal probe of Rumsfeld

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Human Rights Watch (HRW) issued a statement April 24 calling for the appointment of a special prosecutor to investigate the role of Defense Secretary Donald Rumsfeld and other high US officials in connection with the torture of American-held prisoners.

The rights group also named George Tenet, former director of the CIA, Lieutenant General Ricardo Sanchez, the former commander of US forces in Iraq, and General Geoffrey Miller, the former head of the prison camp at Guantanamo Bay, Cuba.

An accompanying report, *Getting Away with Torture? Command Responsibility for the US Abuse of Detainees*, says there is mounting evidence that these civilian and military leaders “made decisions and issued policies that facilitated serious and widespread violations of the law.” HRW points to evidence that these officials knew about the abuse carried out at Abu Ghraib and elsewhere in Iraq and Afghanistan, but did nothing to stop it.

Rather than punishing those ultimately responsible for the torture, the US government has sought to place the blame entirely on a few individual soldiers and low-level officials. According to Human Rights Watch, the US “is doing what dictatorships do the world over when their abuses are discovered—loudly proclaiming its respect for human rights while covering up and shifting blame downwards to low-ranking officials and ‘rogue actors.’”

The timing of this report could not have been more apt. It came a day after press reports that an investigation by the Army inspector general has exonerated top Army officials of any wrongdoing. This investigation, which did not address the role of Rumsfeld and other civilian officials, has cleared Sanchez and his top deputies. It is intended to be the Army’s final word on the responsibility of senior military officials for torture, revealed first at the Abu Ghraib detention facility in Iraq. The text of the inspector general’s findings has not yet been released.

In addition to Sanchez, the inspector general cleared Major General Walter Wojdakowski, Sanchez’s top deputy, Major General Barbara Fast, the former chief intelligence officer in Iraq, and Colonel Marc Warren, the top legal officer in Iraq, who advised Sanchez. According to an April 23 *Washington Post* article, the Army has concluded that allegations that these individuals failed to prevent or stop abuses were “unsubstantiated.”

On April 28, 2004, almost exactly one year ago, the first of the now-infamous Abu Ghraib torture photos surfaced. With the inspector general’s findings, the US government has nearly completed a very deliberate process of cover-up and obfuscation.

Unable to ignore the evidence of torture, the military has charged a handful of soldiers directly involved in the abuse. At least seven internal investigations have been launched by the military, all of

which in one way or another whitewash the role of top officials. The essential purpose of these investigations is to present the appearance that something is being done, that people are being held accountable, even as the primary authors of the war crimes are exonerated.

A large quantity of government documents obtained and made public by the American Civil Liberties Union and other organizations over the past several months makes clear that the abuse first exposed to the world in the Abu Ghraib photos was part of a widespread pattern.

The Pentagon and the US government are above all determined to shield Sanchez and other top military officials because to tie them to the abuse would implicate civilian officials at the highest levels of the Bush administration, including the president and vice president. While Human Rights Watch limits its demands to an investigation of Rumsfeld, Tenet, Sanchez and Miller, ample evidence has emerged showing that the policy decisions that led to torture and abuse of prisoners were endorsed by the White House.

The HRW report traces the events that led up to the torture revealed at Abu Ghraib and elsewhere, beginning with statements made by the Bush administration immediately after September 11, 2001. For example, on September 16, Vice President Dick Cheney said on NBC’s “Meet the Press” that the US would “have to work... [on] the dark side...in the shadows of the intelligence world,” using “any means at our disposal, basically, to achieve our objective.”

A series of memoranda in late 2001 and 2002, written under the supervision of then-White House counsel and current Attorney General Alberto Gonzalez, sought to create a legal justification for torture. In February 2002, President Bush announced that the US government would not consider any of the prisoners held in Guantanamo Bay to be prisoners of war. They were denied their rights under the Geneva Conventions, in contravention of international law. The main reason for violating the Conventions was to deny those detained in the so-called “war on terror” any legal recourse, and open the way for US officials to employ brutal methods explicitly proscribed by international law in the interrogation of their captives.

One of the principle pieces of evidence that Human Rights Watch cites in relation to Rumsfeld was a memo he wrote on December 2, 2002, on the treatment of prisoners held at Guantanamo Bay. Rumsfeld gave blanket approval of a number of techniques, including “removal of clothing,” the “use of stress positions (like standing) for a maximum of four hours,” isolation for up to 30 days, and “using detainees’ individual phobias (such as fear of dogs) to induce stress.”

These techniques are clear and direct violations of the Geneva Conventions’ prescriptions for the treatment of prisoners of war, which is why the US government declared that prisoners at

Guantanamo Bay were not POWs. The Human Rights Watch report notes, however: “Depending on how they are used, these methods also likely violate the Geneva Conventions’ prohibition on torture or inhuman treatment of prisoners, regardless of whether the prisoners are entitled to POW protections. Their use on prisoners would thus constitute a war crime.” The use of guard dogs is a particularly egregious violation of international law, since threatening a prisoner with torture is considered itself to be a form of torture.

The authorization to use these techniques was withdrawn a month later. The report notes that if any of the techniques approved by Rumsfeld were used during that period, then “Secretary Rumsfeld could potentially bear direct criminal responsibility,” in addition to “command responsibility” for abuse carried out in Guantanamo Bay. The term “command responsibility” refers to high-level officials who know a crime has occurred or is about to occur, but fail to act to prevent the crime, or punish the perpetrator.

Rumsfeld wrote a new set of guidelines in April 2003, which was somewhat more restrictive in the methods allowed. However, according to Human Rights Watch, they “still allowed techniques that go beyond what the Geneva Conventions permitted for POWs. Indeed, the Secretary’s memo itself states in relation to several techniques—including isolation and removing privileges from detainees—that ‘those nations that believe detainees are subject to POW protections’ may find that technique to violate those protections.”

In addition to these guidelines on the treatment of prisoners, Rumsfeld has openly admitted to ordering, at the request of then-CIA chief Tenet, the secret detention of at least one prisoner held by the CIA. Under international law, the secret holding of prisoners is illegal, since the International Committee of the Red Cross (ICRC) must be given access to all prisoners.

The report notes that beginning as early as January 2002, Rumsfeld was notified of potential abuse in Guantanamo Bay, Afghanistan and, later, Iraq, but did nothing to stop it. Because of his position as civilian head of the armed forces, Rumsfeld’s failure to act to prevent or halt the abuse would legally implicate him in the criminal acts.

While the US used its formal denial of POW status to Taliban and Al Qaeda detainees as a pseudo-legal cover for abuse in Afghanistan and Guantanamo Bay, no such legal fig leaf could be manufactured for prisoners held in Iraq. The administration was forced to concede that prisoners captured during the war in Iraq were POWs. According to the Geneva Conventions, such prisoners are protected from any form of coercion.

Nevertheless, through the intervention of Rumsfeld, Sanchez and Miller, the methods approved by Rumsfeld for use in Guantanamo Bay were transferred to Iraq. The move to intensify interrogation of Iraqi prisoners began in earnest during the late summer of 2003. Human Rights Watch quotes an e-mail it received from Scott Horton, chair of the Committee on International Law of the New York City Bar Association. Citing a “senior uniformed officer” present at an intelligence briefing conducted at the time, the e-mail states:

“Rumsfeld complained loudly about the quality of the intelligence which was being gathered from detainees in Iraq. He contrasted it with the intelligence which was being produced from detainees at Guantanamo following the institution there of new ‘extreme’ interrogation practices. Expressing anger and frustration over the application of Geneva Convention rules in Iraq, Rumsfeld gave an oral order to dispatch MG Miller to Iraq to ‘Gitmoize’ the intelligence gathering there.”

After Miller’s visit to Iraq in August and early September 2003, Sanchez issued a memo that authorized a number of techniques, including “presence of military working dogs,” “yelling, loud music and light control” and “stress positions.” These procedures, illegal in relation to Afghanistan and Cuba, were even more clearly illegal when used against prisoners in Iraq whom the US acknowledged to be POWs. Sanchez apparently justified these measures by unilaterally declaring some prisoners to be “unlawful combatants,” and therefore not subject to the Geneva Conventions.

As with Rumsfeld, reports of abuse—including reports issued by the International Committee of the Red Cross in May 2003 and again in November 2003—reached Sanchez early on. Sanchez’s response was not to seek to end the abuse. Rather, he sought to end ICRC access to prisoners. This again exposes him to liability under the command responsibility doctrine.

In addition to Rumsfeld and Sanchez, the report lays out the evidence of crimes of commission and omission on the part of Miller and Tenet. Miller, who is currently serving as the commanding general of detention operations in Iraq, is cited for both his role at Guantanamo Bay and his role in transferring methods used in Guantanamo Bay to Iraq.

Former CIA Director George Tenet is cited for the CIA’s use, under his command, of torture, including “waterboarding” and the withholding of medicine. According to the report, “other tactics reportedly used by the CIA include feigning suffocation, ‘stress positions,’ light and noise bombardment, sleep deprivation, and making detainees believe they were in the hands of governments that routinely torture.” Since September 11, 2001, the CIA has vastly expanded its practice of “extraordinary rendition,” the illegal practice of transporting prisoners to countries where they are likely to be tortured.

In addition, the CIA operates secret detention facilities around the world where prisoners are held indefinitely and incommunicado.

The other military officials cleared by the Army inspector general were also taken up by Human Rights Watch. Fast was the senior intelligence officer on Sanchez’s staff. A military investigation headed by General Anthony Jones found that Fast was responsible for designing the new intelligence-gathering “architecture” set up at Abu Ghraib in late 2003.

Another investigation, headed by former Defense Secretary James Schlesinger, noted that Sanchez “delegated responsibility for detention operations to his Deputy, MG Wojdakowski,” who apparently approved aggressive techniques on a number of occasions. As for Colonel Marc Warren, it was his responsibility to advise Sanchez on the application of the Geneva Conventions to interrogation policies in Iraq.

The full text of the Human Rights Watch report is available at:
<http://www.hrw.org/reports/2005/us0405/>



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