

Bush administration seeks changes to War Crimes Act

Moves to shield government officials from prosecution

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15 August 2006

The Bush administration is seeking changes to war crimes law in an effort to protect government officials, CIA officers and former military personnel from prosecution for mistreatment of war prisoners.

According to US officials speaking on condition of anonymity, the administration has drafted amendments to the War Crimes Act, passed by Congress in 1996 and expanded in 1997, that criminalized violations of the Geneva Conventions in federal criminal courts. The changes are aimed at narrowing the scope of potential criminal prosecutions, particularly those involving cruel, humiliating and degrading treatment of wartime prisoners. No one has ever been charged under the act.

The move to amend the law comes in the wake of the June 29 Supreme Court decision in *Hamdan v. Rumsfeld*, in which the high court ruled that the Bush administration's flouting of the Conventions in relation to trying Guantánamo detainees in military tribunals was illegal.

The American military is also facing exposure of numerous cases of its soldiers committing atrocities against Iraqi civilians. Testimony and evidence in the cases under investigation have revealed a deeply dehumanized military force deployed in the US occupation, with soldiers involved in murder, rape and other brutal acts against the civilian population, including woman and children.

While such cases are handled in the military court system and come under the jurisdiction of a separate law, the Uniform Code of Military Justice, the Bush administration is concerned about the potential liability of high-level military officials and is moving aggressively on a number of fronts to shield administration and military officials from future prosecution.

At issue in particular are the Article 3 provisions

common to the four Geneva Conventions of 1949, which prohibit "outrages upon personal dignity, in particular humiliating and degrading treatment." The changes in the War Crimes Act would limit potential criminal prosecutions to 10 specific categories of illegal acts against prisoners or detainees, including torture, murder, rape and hostage-taking, thus avoiding the article's broader application.

Abuses prohibited by Article 3 have been documented in the US treatment of prisoners at both the Guantánamo Bay detention camp and at the Abu-Ghraib prison in Iraq, and have provoked international revulsion. These include forced nakedness, use of dog leashes, and various instances of sexually humiliating treatment.

The Bush administration has sought to circumvent prohibition of such abuses since the early days of the "global war on terror." In a February 2002 policy memorandum, Bush made clear that in the administration's view Article 3 did not apply "to either Al Qaeda or Taliban detainees." This followed the advice of Alberto Gonzales (then White House counsel and currently attorney general), who said that such a determination would make future prosecutions of US agents under the War Crimes Act more difficult.

Former attorney general John Ashcroft also advised Bush that not applying the protections of the Conventions to prisoners in the war in Afghanistan would "provide the highest assurance that no court would subsequently entertain charges that American military officers, intelligence officials, or law enforcement officials violated Geneva Conventions rules relating to field conduct, detention conduct or interrogation of detainees."

Such abuses by American forces have been systemic, both in the wars in Afghanistan and Iraq, the handling of prisoners at Guantánamo, and in the treatment of the

untold numbers of individuals picked up by the US in the “war on terror” and interrogated and tortured in secret prisons at locations around the world.

A military investigation into intelligence activities in Iraq and Afghanistan documented some of the methods being used on prisoners, including “removing clothing, isolating people for long periods of time, using stress positions, exploiting fear of dogs and implementing sleep and light deprivation.”

Amnesty International (AI) has sharply criticized the new administration efforts to amend the War Crimes Act. The human rights group warns that “any such measure would undermine the rule of law and send a dangerous message about impunity. Torture and ill-treatment thrive on impunity.”

AI has drawn attention to the case of Guantánamo prisoner Mohamed al-Qahtani, which gives an indication of the type of abuse the Bush administration is seeking to protect by shielding those who are authorizing it from prosecution.

According to Amnesty International, al-Qahtani “was subjected to intense isolation for three months in late 2002 and early 2003. He was variously forced to wear a woman’s bra and had a thong placed on his head; was tied by a leash and led around the room while being forced to perform a number of dog tricks; was forced to dance with a male interrogator....”

He was stripped and strip-searched in the presence of woman, and subjected to “sexual humiliation, culturally inappropriate use of female interrogators, and to sexual insults about his female relatives; had water repeatedly poured over his head; had pictures of ‘swimsuit models’ hung around his neck; was subject to hooding, loud music, white noise, and to extremes of heat and cold through manipulation of air conditioning” and to sleep deprivation.

Al-Qahtani was also “forced to urinate in his clothing when interrogators refused to allow him to go to the toilet.” He was interrogated for 18 to 20 hours a day for 48 out of 54 consecutive days.

The methods used against this prisoner were the type authorized at Guantánamo Bay by Defense Secretary Donald Rumsfeld in late 2002. They were also being used against detainees in Afghanistan. A narrowing of the scope of the War Crimes Act is aimed specifically at protecting such senior administration officials from prosecution.

Eugene Fidell, president of the non-profit National Institute of Military Justice, commented to the

Washington Post, “I think what this bill can do is in effect immunize past crimes. That’s why it’s so dangerous.” He said the revisions were aimed not only at “protection of political appointees, but also CIA personnel who led interrogations.”

Appearing August 2 before the Senate Armed Services Committee, Attorney General Gonzales was asked by Sen. Carl Levin (Democrat, Michigan) whether he believed that techniques such as “waterboarding, stress positions, intimidating use of military dogs, sleep deprivation, forced nudity” would be “consistent with common Article 3”—the provision the administration is seeking to limit.

“Waterboarding” refers to an interrogation practice in which prisoners are strapped to a plank and dunked in water until they believe they will drown. The attorney general evaded the question, responding only that the reliability of statements obtained under such techniques was questionable.

In addition to seeking the War Crimes Act amendments, the Bush administration has requested Congress pass legislation barring a prisoner’s right to sue for the enforcement of these protections. They have also asked that an “absolute” human rights standard in interrogations be replaced by legislation which puts intelligence-gathering needs above protection of these basic rights.

Attorneys representing the International Committee of the Red Cross, the organization responsible for upholding the Geneva Conventions, visited the Pentagon and State Department earlier this month to express their opposition to the proposed amendments, but left without any assurance that their objections would be heeded. The Bush administration is pressing to have the major revisions in the War Crimes Act pushed through Congress after Labor Day.



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