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Universal Declaration of Human Rights at 70: 30 Articles on 30 Articles - Article 5

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Article 5: Freedom from Torture

There is one absolute prohibition in the Universal Declaration of Human Rights (UDHR) that is universally accepted as unequivocal: Article 5's ban on torture. At times, states may have disputed the definition of what constitutes torture, but virtually none now openly defend the practice, even if some still carry it out in what the UN High Commissioner for Human Rights described as "some of the darkest corners of our planet."

The ban on torture is another reflection of the revulsion against Nazi concentration camps and Nazi medical experiments on living people that so motivated the drafters of the UDHR in the late 1940s. It is further elaborated in the 1984 UN Convention Against Torture, which makes the absolute nature of the prohibition of torture crystal clear: "No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as justification of torture."

Given this universal abhorrence, why would any contemporary democratic society condone the use of torture? The case most often made *for* torture is that – particularly in the fight against terrorism – it can save lives of innocent people..

Aside from all the flaws in the imaginary "ticking bomb" argument (How do security forces know they have the right person? How do they know the suspect won't make things up simply to relieve the pain?) most reject it as merely an excuse for dehumanizing behaviour designed to assert power.

The ban on torture is so absolute that the UN body charged with monitoring the prevention of torture has recommended even trainee soldiers should be reminded that they have a duty to disobey orders from a superior officer to commit torture. The fact that some states have gone to such lengths to redefine some of their practices, some argue, shows that they actually respect the universal prohibition on torture, even as they try to subvert it.

Following the September 11 attacks on the United States in 2001, the administration of President George W. Bush reinterpreted the word "torture" very narrowly in an effort to give officials leeway to mistreat suspects. Memos later made public showed the administration believed the prohibitions against torture were "quaint" and "obsolete," did not apply in what it labelled the "war on terrorism," and even that the President could "override" international law.

New euphemisms were invented to cover the administration's actions. Under "extraordinary rendition" the U.S. whisked suspects off to "black sites" – detention centres in Abu Ghraib in Iraq. Baqam Prison

the over-minor suspects of the Black Sites – detention centres in Iraq, Guantanamo Bay in Afghanistan, Guantanamo Bay in Cuba – to be subjected to “enhanced interrogation techniques.”

These shocking practices were condemned by a long list of organizations and people, including a number of retired generals, admirals, military lawyers and intelligence officers. But any discussion of human rights tended to be submerged under more ‘practical’ discussions – irrelevant under international law – of whether torture was an effective and reliable means of extracting useful information.

Finally, it was the ubiquitous digital camera rather than moral arguments that turned the tide against “defining away” torture. Photos of naked Iraqi prisoners being humiliated while U.S. soldiers grinned proudly into the camera became emblematic of official human rights abuses. The U.S. later repudiated these practices.

Today activists around the world risk their lives to document abuses and disseminate evidence quickly on social media. But what is done with the information depends on political will. “The problem is not lack of early warning,” says Pierre Sané of Senegal, former head of Amnesty International, “but lack of early action.”

Even so, the UN considers that regular monitoring of places of detention by internal and external independent oversight mechanisms to be one of the most effective methods of preventing torture. The elevation of human rights to the international level means that behaviour is no longer governed solely by national standards. International and regional treaties against torture (as well as against genocide and enforced disappearances) have overcome arguments that certain individuals enjoy international immunity from prosecution. Under the principle known as ‘universal jurisdiction’ people suspected of the most serious international crimes – including torture – may be arrested, tried and convicted in countries other than their own.

As one former UN Human Rights Chief Navi Pillay put it, “no one is let off the hook – neither the actual torturers themselves, nor the policy-makers and public officials who define the policy or give the orders.”

As just one example, “Chuckie” Taylor, son of the former president of Liberia, is in prison in Florida in the United States, serving a 97-year sentence for torture and other human rights violations committed on his home soil.

When former Chilean dictator Augusto Pinochet died in 2006, he had spent a year and a half under house arrest in London, and upon his return to Chile was charged with several of the more than 300 crimes in which he had been implicated in relation to human rights violations during the military dictatorship from 1973-1990. Although held under house arrest, he had not yet been tried or convicted by the time he died.

In 1975, a young woman was arrested by Pinochet’s political police and interrogated at the infamous Villa Grimaldi torture centre in Chile’s capital, Santiago. Decades later, after democracy was restored, Michelle Bachelet went on to serve two terms as president of Chile. Today she is the UN High Commissioner for Human Rights.

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