

McCain-Bush “anti-torture” measure gives legal cover for continued abuse

By Joe Kay and Barry Grey
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The agreement reached between the Bush White House and Senator John McCain on a measure ostensibly banning torture does nothing of the kind. The official disavowal of “cruel, inhuman or degrading treatment” of alleged terrorists held by the US is a ploy to cover up Washington’s past defiance of international laws banning torture and provide a pseudo-legal cover for the continuation of the same methods.

The very fact that the US government is obliged to make a public disavowal of torture is a damning indictment of Washington’s lawless methods. The whole world knows that the US is employing torture and other illegal means, including abductions, secret prisons, imprisonment without charge or legal recourse, in the name of its global “war on terror.”

The agreement reached between the White House and McCain—a right-wing Republican senator and fervent supporter of the war in Iraq—is in the form of an amendment to the appropriations bill for the Department of Defense. The amendment, as agreed on by the White House and the senator, requires that the US military treat those detained by it in accordance with the Army Field Manual. It adds that no prisoner “in the custody or under the physical control of the United States Government, regardless of nationality or physical location, shall be subject to cruel, inhuman, or degrading treatment.”

The Bush administration, which had previously opposed any measure proscribing the use of torture on the grounds of “national security” and the “war on terrorism,” was moved to work out a deal with McCain after the senator’s original amendment was passed last month by a lopsided margin in the Senate, and a non-binding resolution supporting the amendment was adopted by a large margin on December 14 in the House of Representatives.

The crafting of the agreed-on amendment has been accompanied by proclamations from Bush and Secretary of State Condoleezza Rice that the United States does not condone or employ torture. These are brazen lies.

What was Abu Ghraib? What about the evidence showing that the sadistic methods employed there were the result of policy decisions made by top Bush administration officials, including Secretary of Defense Donald Rumsfeld and then-White House counsel, now attorney general, Alberto Gonzales?

There are further revelations of prisoner abuse, up to and including murder, in Afghanistan, Iraq and at the US concentration camp in Guantánamo Bay. And there are the CIA’s secret prisons, to which the International Red Cross has, in violation of international law, been denied access.

Let us not omit the practice of “extraordinary rendition,” a euphemism for the abduction of people outside the US by American

agents and their transfer to the torture chambers of foreign governments in league with Washington. At least two cases of innocent men kidnapped by the US and handed over to be tortured have been exposed: that of Maher Arar, a Canadian citizen picked up in New York and dispatched by the CIA to Syria, and Khalid al-Masri, a German who was “disappeared” from Macedonia and trundled off to be tortured in Afghanistan.

The Bush administration is utilizing, appropriately enough, the “Big Lie” propaganda methods perfected by the Hitler regime to cover up Washington’s use of barbaric practices that were employed on a more massive scale by the German fascists.

In 2001, the US officially repudiated the Geneva Conventions as applied to prisoners captured in Afghanistan. Why would the Bush administration repudiate this cornerstone of international law, if not to provide itself with a license to break the law and employ interrogation and detention practices proscribed by the Conventions?

In subsequent months, administration officials and lawyers, including Gonzales, sought to redefine torture and manufacture a pseudo-legal rationalization for its use.

For the US government’s verbal disavows of torture to be taken seriously, Washington would be obliged to officially reverse its policy on the Geneva Conventions, release all those being held illegally in Guantánamo and elsewhere, reveal the location of its secret prisons, and close its gulags down. It will do none of these things.

The McCain amendment will have no effect on US policy toward alleged terrorists detained by Washington. This policy flows organically from the drive by the American ruling elite to achieve by military force a hegemonic position in oil-rich regions such as the Middle East and Central Asia, which is deemed critical to the broader aim of establishing American imperialist hegemony on a global scale.

The hypocrisy that underlies McCain’s position was on display at his joint appearance with President Bush on Thursday. He ended his remarks praising the White House by declaring, “Now I think we can move forward with winning the war on terror and in Iraq.”

The claim that adherence to international law on the treatment of prisoners can be squared with support for the war in Iraq is a repudiation of the fundamental principle laid down at the Nuremberg trial of Nazi war criminals after World War II. The prosecution, led by US Supreme Court Justice Robert Jackson, insisted that the basic crime committed by the defendants, from which flowed all other crimes—including torture, the network of concentration camps, even the extermination of the European Jews—was the planning and waging of aggressive war. Bush, McCain—in fact, the entire US political establishment and both parties—defend just such a war of aggression: the unprovoked “preventive” war against Iraq, plotted years in

advance and launched on the basis of lies.

The differences between McCain and the White House were from the start more a matter of form than substance. The sticking point had been the insistence of Bush and Vice President Dick Cheney that the CIA be exempted from any ban on the use of torture or abusive methods.

The real position of McCain and other congressional backers of his amendment is that such open sanction for torture is politically and militarily inexpedient. McCain is well aware that the US and forces trained and financed by Washington have long engaged in such methods, most notoriously in Latin America and Vietnam. Their basic position can be summed up as: do it, but don't talk about it.

McCain, a Vietnam-era navy pilot who was held as a prisoner of war in Hanoi, is close to sections of the military brass. He speaks for those in the military, and the ruling elite more generally, who consider the open defense of detainee abuse to be highly damaging to the interests of American imperialism, including the struggle to crush the insurgency in Iraq and prepare future military interventions elsewhere.

They are concerned that Bush's open repudiation of international law has undermined the ability of the US to present itself as a defender of democratic rights, that it opens up US soldiers to the same type of treatment, and that it could land American officials, military as well as civilian, in the dock in future war crimes trials.

The basic aim of the agreement reached between McCain and Bush is to provide a new legal and public relations cover behind which Washington will continue to abduct individuals and hold them indefinitely, maintain a network of secret prisons, and torture and abuse detainees.

This is underscored by both the language of the "compromise" amendment and other measures taken in conjunction with it. In working out the agreement with the White House, McCain agreed to include a provision to allow CIA officials accused of torture to argue in court that they had a reasonable belief they were following legal orders. This will serve to undermine any attempts to prosecute those who carry out torture.

There are other loopholes in the amendment. The only language that places explicit limits on the methods allowed states that no person under the control of the Department of Defense "shall be subject to any treatment or technique of interrogation not authorized by and listed in the United States Army Field Manual on Intelligence Interrogation."

Even as the agreement between McCain and the Bush administration was being negotiated, the Pentagon was busy revising the Army Field Manual, undoubtedly to give a green light to torture and other abusive measures. The *New York Times* reported December 13 that the Pentagon had approved a secret addendum to the manual concerning interrogation procedures. Army officials have refused to release details on what methods are authorized, however "some military officials said the new guidelines could give the impression that the Army was pushing the limits on legal interrogation," the *Times* wrote.

A separate amendment to the same Defense appropriations bill would deny habeas corpus rights to prisoners held at Guantánamo Bay. *Newsweek* reported on Thursday that it had obtained a new draft of the amendment, co-sponsored by Democratic Senator Carl Levin, which contains language permitting US military tribunals to use evidence obtained through the torture of prisoners in other countries. "The new Graham draft also adds more restrictions on the rights of terror detainees to sue or launch an action against the US government

outside of a narrow appeals process," the magazine wrote.

The Graham amendment passed with the support of most Democratic senators, as well as that of John McCain. This very fact demonstrates the cynicism behind the McCain amendment on inhumane treatment. With one breath its backers claim to oppose torture, with the other they support the use of "evidence" obtained through its use.

On top of this, the Bush administration defines torture so narrowly—in a manner entirely at odds with international law—that virtually any abusive method can be said to fall outside the definition. A *New York Times* editorial on Friday noted that hours after the McCain-White House deal was announced, "Attorney General Alberto Gonzales made it crystal clear that the administration would define torture any way it liked. He said on CNN that torture meant the intentional infliction of severe physical or mental harm, and repeated the word 'severe' twice. He would not even say whether that included 'waterboarding'—tormenting a prisoner by making him think he is being drowned."

The *Washington Post* editorial of the same day, which praised the amendment in general, noted that the Bush administration and the Pentagon had sought to redefine torture and inhumane treatment "as not covering in all circumstances such CIA techniques as 'waterboarding,' or simulated drowning; 'cold cell,' the deliberate induction of hypothermia; mock execution; and prolonged and painful 'short-shackling.'"

The newspaper added that the administration's position implied that such methods could be used on US citizens.

The administration is only able to employ such methods, and lie so brazenly to the American people, because it knows it will not be seriously challenged by the Democratic Party or the media. On the contrary, the Democratic leadership supports not only the war in Iraq, but also, whether openly or tacitly, the use of torture as an instrument of US imperialist policy around the world.

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