



The Center for Victims of Torture Ban Evidence Obtained Under Torture

The United States must ban the use of hearsay evidence and evidence obtained under torture or cruel, inhuman and degrading treatment.

BACKGROUND: The Military Commissions Act (MCA) was passed to regulate the trial and detention of enemy combatants. While outlawing torture as a war crime, the legislation created a tangled web of evidence rules that allow hearsay evidence as well as evidence obtained through coercion and torture. The MCA puts the burden on the party seeking to exclude hearsay evidence to prove that it is unreliable or lacking in probative value. But in many cases, defendants will not be able to meet this burden because most evidence is classified. As a result, questionable evidence that will determine a detainee's fate is likely to be admitted.

ANALYSIS

Evidence obtained using coercion or torture must be banned.

The MCA forbids the admittance of evidence obtained under torture. However, evidence obtained through other illegal or coercive means that do not rise to the level of torture but constitute cruel, degrading or inhuman treatment is permitted through a complicated list of exceptions. This practice is unacceptable and rewards to those who abuse detainees.

MCA places an unreasonable burden on detainees to refute hearsay evidence.

The MCA allows military commissions to hear all hearsay evidence as long as it is deemed "reliable" and "probative". Although second- and third-hand evidence violates fair trial standards, it can be introduced in trials of enemy combatants. Defendants and their attorneys can even be denied information about how evidence was obtained. As a result, evidence obtained through waterboarding, stress positions or sleep deprivation, techniques that qualify as torture, can be introduced but the government can classify the source, making it impossible for defendants to disqualify the information because it was obtained through torture. If our laws prohibit torture but do not provide the tools to examine allegations of abuse and counter hearsay evidence, mistreatment will continue.

President should not be authorized to interpret the Geneva Conventions without Congressional oversight and approval.

The Bush Administration has a track record of carving out legal exceptions for torture or cruel and inhuman treatment. In 2002, the Administration said torture is limited to actions which "must be equivalent in intensity to the pain accompanying serious physical injury, such as organ failure, impairment of bodily function, or even death," a position that violated every commonly understood definition of torture under US and international law. Without Congressional oversight and approval, the US will be party to the Geneva Conventions in name only.

SUMMATION

- **Ban** the use of coercive evidence obtained through torture;
- **Reject** the use of unchallengeable hearsay evidence;
- **Support** and cosponsor the Restoring the Constitution Act.