

# TORTURE

ASIAN AND GLOBAL PERSPECTIVES

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## THE LOST CAUSE

*Impunity of torture despite anti-torture legislation  
In the Philippines*



Interview

**TORTURE IS JUST  
PLAIN WRONG**

Marjorie Cohn

**“There is absolutely no justification for subjecting any human being to torture. It is just plain wrong.”**

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**M**ARJORIE COHN is a professor of law at the Thomas Jefferson School of Law, San Diego California. As a former president of the US National Lawyers Guild, Professor Cohn lectures throughout the world on human rights and US foreign policy. She is also a prolific writer, most recently editing *Drones and Targeted Killing: Legal, Moral and Geopolitical Issues*. Besides this, her publications include *Cowboy Republic: Six Ways the Bush Gang Has Defied the Law*; *Rules of Disengagement: The Politics and Honor of Military Dissent* (with Kathleen Gilberd); and the edited volume, *The United States and Torture: Interrogation, Incarceration and Abuse*. Professor Cohn has worked throughout the world, including Cuba, China, Mexico, Iran and Yugoslavia. She testified before Congress about Bush torture policy and is a recipient of the Peace Scholar of the Year Award from the Peace and Justice Studies Association.

**LAUREN GLENMERE**, Associate Editor for *Torture: Asian and Global Perspectives Magazine*, recently interviewed Professor Cohn.

**Lauren Glenmere (LG): What inspired your professional path into law, human rights and the military?**

**Marjorie Cohn (MC):** My mother taught me that racism is wrong. I was active in the antiwar movement during the Vietnam War in the 1960s. I saw that it was not just that war that was wrong; it was the US policy of imperialism throughout the world that was so destructive of human dignity.

**LG: You edited and contributed to *The United States and Torture*, which explores America’s “policy of torture”. Why is this an important topic for you?**

**MC:** Torture is not only immoral; it is illegal. It violates the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment as well as the Geneva Conventions, and the International Covenant on Civil and Political Rights. Although torture did not begin with George W. Bush, his administration took it to a new level with their torture

of thousands of men and boys. Moreover, torture doesn’t work - the person being tortured will say anything to get the torture to stop - and it is counter-productive - it creates more enemies who see their people being tortured and hate the United States.

**LG: Aside from the publication of the Bush administration’s “Torture Memos”, we also now have the revelations of Abu Ghraib, the “Torture Report” and much more evidence of US complicity and active participation in torture. How has US torture under the Bush administration weakened the rule of law in America? How do legal scholars such as yourself perceive this impact domestically?**

**MC:** Torture and cruel treatment violate US (as well as international) law. When the United States ratifies a treaty, it becomes part of US law under the Supremacy Clause of the US Constitution. Therefore the commands of the Torture Convention, the Geneva Conventions, and the ICCPR are binding on the United States. Moreover, there is the US Torture

Statute, which punishes torture committed abroad. And the Eighth Amendment to the US Constitution forbids cruel and unusual punishment.

The US Constitution also requires that the President make sure the laws are enforced. By refusing to bring the officials of the Bush administration to justice for their complicity in the torture program, President Obama is also violating his constitutional duty. This impunity will signal to future leaders in the US and elsewhere that they can get away with torture.

**LG: In your book, *Drones and Targeted Killings*, you discuss how the Bush administration tortured, whereas the Obama administration prefers assassination. What do you believe inspired this change? Why not torture?**

**MC:** By assassinating people the US captures instead of detaining and torturing them, Obama doesn't have to send them to Guantanamo. He has been trying to empty the prison there and close it so he has added only one new detainee to the Guantanamo roster. But assassination, or extrajudicial killing, off the battlefield is also illegal, immoral, and unwise from a policy perspective as it creates more enemies of the United States.

Certainly the torture that took place during the Bush years is not occurring now. But Jeb Bush, one of the Republicans who wants to run for president, refuses to rule out the use of torture. Again, as long as those complicit in torture remain unpunished, future leaders will not be deterred from using torture.

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**Torture and cruel treatment of individual prisoners can be challenged in the criminal justice system. But a much broader strategy is necessary to end torture once and for all. There must be a national consensus that torture is wrong, illegal, and counter-productive, and must never be used under any circumstances.**  
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**LG: Torture was a recognised and accepted form of interrogation and punishment until the 20th century. Some would say it still is. If we assume that torture as a proscribed act has been weakened under the Bush/Obama administrations, do you believe that there is the political will to challenge this? Is there any building of political pressure in the USA to completely abstain from torture?**

**MC:** Torture enters the national discourse when it is in the news, such as during the revelations of the Abu Ghraib photos, the torture memos, and the Senate torture report. People decry torture and say we should end it. Congress passes laws to outlaw cruel treatment. Obama pledged not to torture during his administration. Yet they continue to violently force feed detainees at Guantanamo, a practice that amounts to torture. And by not punishing the torture team from the Bush years, future administrations will not be deterred from torture.

**LG: You have previously commented on the conditions of US prison systems making torture a part of US domestic policy. Could you explain this for the readers of Torture Magazine?**

**MC:** As described in one of the chapters in my torture book, torture takes place in US Supermax prisons. This includes violent cell extraction and solitary confinement, which can cause hallucinations, catatonia, and suicide. But the US Torture Statute only punishes torture committed outside the United States. And that statute has not been used to punish anyone to date.

■ *cont'd to page 10*

without the tacit approval or backing of government officials. The military and police institutions cannot implement torture if the government has the political will to stop it.

The Philippines government, run by the elite classes desperate to protect their hold on power, are anxious to allow their war dogs to use any method to maintain the status quo. In order to instill fear among the people, to prevent dissent and uprising, the ruling elites will accept the military's use of torture.

While the passage of the 2009 Anti-Torture Act has been commended by international human rights groups, implementation and strong determination by the government to curb torture remains to be seen. Now the law exists, the need to implement it and punish culprits comes to the fore.

This goes to demonstrate that the enactment of a law is not enough to solve the problems of society. Action and determination to curb criminality, especially those committed by uniformed officials, is the next step to take. ■



*Text adapted from the speech given by Rep. Carlos Isagani T. Zarate of the Bayan Muna Partylist House of Representatives, at the 16th Philippine Congress and 3rd Asian Alliance Against Torture and Ill-Treatment (AAATI)*

*Conference of Asian Parliamentarians, 10-14 October, 2014.*

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**LG: Do you think a functioning criminal justice system is the ideal way to challenge torture? What features would such a system require?**

**MC:** Torture and cruel treatment of individual prisoners can be challenged in the criminal justice system. But a much broader strategy is necessary to end torture once and for all. There must be a national consensus that torture is wrong, illegal, and counter-productive, and must never be used under any circumstances. Indeed, the Torture Convention says, "No exceptional circumstances whatsoever, whether a state of war or a threat or war, internal political instability or any other public emergency, may be invoked as a justification of torture." That prohibition is unequivocal.

**LG: It was a whistleblower who leaked the Abu Ghraib photos, resulting in the torture committed becoming a matter of international discussion. What impact can the average individual have in preventing, limiting or challenging torture?**

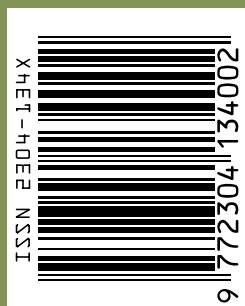
**MC:** Whistleblowers serve a critical function in society. Without them, government can get away with secrecy, lies, and illegal treatment. We should protect and encourage whistleblowers such as Daniel Ellsberg, Chelsea Manning, John Kiriakou and Edward Snowden.

**LG: Finally, in your own opinion, why is torture wrong?**

**MC:** There is absolutely no justification for subjecting any human being to torture. It is just plain wrong. ■

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