

2007

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Recommended Citation

Correa, Cristián. "Waterboarding Prisoners and Justifying Torture: Lessons for the U.S. from the Chilean Experience." Human Rights Brief 14, no. 2 (2007): 21-25.

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Waterboarding Prisoners and Justifying Torture: Lessons for the U.S. from the Chilean Experience

by *Cristián Correa**

Despite its recent prevalence in the Western news media, waterboarding, or “the submarine” (as it is known in some Latin American countries), is anything but novel in the realm of torture. Waterboarding entails many different methods of torture, each using water to suffocate detainees and provoke the sensation of drowning. The effect results within a few seconds or minutes and leaves no external injuries, thereby eluding a definition of torture which requires proof of injury, bleeding, or other physical harm. Waterboarding has been designed to cause intense psychological pain while granting technical impunity to those administering the punishment.

The profoundly debilitating and long-lasting effects of waterboarding were recently exposed in Chile through victim testimony to the Commission to Investigate and Report on Cases of Torture and Political Imprisonment during the Augusto Pinochet dictatorship from 1973-1990. The Commission’s ensuing report contained testimony of waterboarding victims who attested that more than 30 years after being tortured, they continued to suffer the devastating effects of psychological torture.

Notwithstanding the Chilean experience, the Bush administration argues that waterboarding does not cause long-term effects or serious injury or harm, and should not be considered “torture.” The administration’s efforts to legitimize the use of torture, issue exceptions to its absolute prohibition, and limit its definition demonstrate that torture is still considered an important tool in the U.S.-led “War on Terror.” They also demonstrate that legitimate, long-standing democracies are not immune from violating human rights, despite being signatories to international conventions prohibiting such behavior and having long-standing reputations as human rights protectors.

While such conclusions cast doubt on the true advances humankind has made toward securing international human rights protections, the Chilean government’s recent step toward recognition and reparation for state-sponsored torture is a hopeful example of how a country bearing a history of gross violations of human rights may acknowledge the past while instituting protections to prevent future violations. Chile also serves as both an example and a warning to countries like the United States that continue to justify the use of the same types of torture that caused long-lasting psychological pain to thousands of Chileans. The legacy of Chile’s dictatorship exposed the indisputably debilitating effects of waterboarding and other types of torture, and it leaves little room for the Bush administration to justify the use of these techniques.

WATERBOARDING IN CHILE

On September 11, 1973, a Military Junta led by Augusto Pinochet overthrew President Salvador Allende’s democratically-elected government in Chile. Pinochet’s dictatorship lasted 17 years and made extensive use of torture, especially following its initial rise to power. Immediately after the coup, massive repression led to hundreds of deaths and the detention of thousands of people. More people were detained in the first two-and-a-half months of the dictatorship than in the remaining 17 years of Pinochet’s rule.¹ Indeed, ten percent of all those detained over the 17 years of the dictatorship were detained in the first two days following the coup. Victims ranging from ministers and members of Congress to civic leaders in small towns were arrested in every community in the country. The techniques employed were initially unsophisticated, and the torturers did not seem concerned about leaving visible scars or signs.

As the military regime later tried to legitimize control of the country and create institutions that resembled a democracy, other techniques began to be used. Laws were passed to criminalize subversive behavior like “terrorism,” which was broadly defined, to use military courts to judge those cases, and to limit the use of *habeas corpus*. The regime also tried to avoid its responsibility for human rights violations by passing an amnesty law that covered the worst years of repression.

THE FINDINGS OF THE VALECH COMMISSION

In November 2003, President Ricardo Lagos established the National Commission of Political Imprisonment and Torture of Chile, known as the Valech Commission.² According to the records presented, the Commission was created to identify those who, for political reasons, suffered imprisonment and torture at the hands of state agents or people in its service between September 11, 1973 and March 10, 1990. After interviewing more than 35,000 people during a period of six months, the Commission found evidence that 28,459 were victims of political imprisonment and torture.³

Waterboarding was included among the torture methods recorded. The report describes methods such as the asphyxiation of the detainees, aimed at causing physical and psychological suffering by confronting them with the possibility of death. Asphyxiation was usually caused by submerging the detainee’s head into water several times, producing a near-death experience. In some cases, detainees were hung from their legs with ropes and submerged in water tanks. Usually the water used was contaminated or filled with debris. Other alternatives included putting the detainee’s head inside a plastic bag, causing asphyxiation, or forcing with high pressure great amounts of water through hoses into the detainee’s mouth or nose.⁴

The report describes the testimony of a man, tortured in September 1973, at a Navy compound: “[T]hey put cotton on both eyes, then taped them and tightened a hood around my neck.

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They tied my hands and legs and submerged me in a 250-liter tank that had ammonia, urine, excrement, and sea water. They submerged me until I could not breathe anymore. They repeated it over and over, while beating me and asking me questions. That is what they called the submarine.”⁵

The effects of torture by “submarine” were very similar to the effects experienced by those who suffered other types of torture described to the Valech Commission. Besides physical pain, torture also provoked a near-death experience that made victims feel helpless. Most victims reported feeling deep humiliation and that their lives were entirely at the mercy of their torturers. According to the report, this is precisely why torture is used: to destroy prisoners’ will, dignity, and moral, psychological, and physical resolve, so that they reveal the desired information. The Commission report describes the deep psychological trauma suffered by torture victims not only at the time of their torture, but, significantly, thirty years later. Most victims reported having some or all of the symptoms of post traumatic stress disorder, including feelings of insecurity or fear, humiliation, worthlessness, shame, guilt, depression, anxiety, and hopelessness.

A man tortured at age 22 said, “Even today I wake up because of having nightmares of dying from drowning.”⁶ A woman declared, “I suffer long periods of insomnia and recurrent nightmares: the noise of opening and closing fences, the noise of chains and steps that stop in front of my door. I see endless lines of bleeding people passing in front of me. I wake up covered with sweat. Why haven’t I been able to forget, and to stop torturing myself in my dreams after so many years?”⁷

These consequences were well documented by the victims’ relatives. They emphasized how their parents or spouses changed after being released from prison and how they became irritable, introverted, or depressed. For many people life changed dramatically, in some cases leading to divorce or alcoholism, or seriously affecting their ability to establish permanent interpersonal relationships or trust other people. Many never talked about their experience even to their spouses or closest relatives, staying isolated by their silence, revealing the profound dimension of their traumatic experiences.

The numerous and long-lasting effects of torture identified by the Commission reinforce the necessity for the absolute prohibition of torture and the inclusion of mental pain and suffering in the definition given by the UN Convention Against Torture (CAT). Methods like waterboarding, which causes the real sensation of death at the hands of interrogators, have profound psychological consequences that can be as severe and debilitating as any wounds left by physical torture. Attempts to limit the definition of torture solely to the infliction of certain amounts of physical pain, without considering psychological suffering, deep humiliation, or near-death experience, is not consistent with the spirit of the CAT’s definition nor the conclusions of the Valech Commission.

Yet the Pinochet regime did not limit the use of torture to interrogations designed to force confessions. The indiscriminate use of torture during many questioning sessions suggests that its real purpose was to destroy people’s will to oppose the regime and give up their commitment and hope for a more egalitarian society. The torture practices destroyed social networks and seriously affected people’s ability to trust each other, making the victims feel isolated, betrayed, and capable of betrayal. As George Orwell described in his novel *1984*, “It imposed fear in the victims and in

society as a whole.” This is the main purpose of torture and the reason dictators use it.

THE LEGACY OF THE PINOCHET REGIME

Pinochet’s dictatorship was not just the product of a handful of unscrupulous soldiers, but was supported by a large percentage of Chileans. When Pinochet was defeated in the 1988 plebiscite, which led to the restoration of democracy, he obtained 44 percent of the popular vote. Pinochet’s promise of stability, order, and progress seduced a large portion of Chilean society that was tired or afraid of the social unrest that characterized the Allende administration. Supporters of the dictatorship felt the violence and instability prevalent in Chile at the time justified the use of torture. Many accepted the need to take “special measures” in “special circumstances,” even though such measures lasted for 17 years. At the time of Pinochet’s death, despite the lack of state honors or public recognition, thousands of supporters attended his military funeral to pay their respects. And even after his death, Pinochet continues to divide Chilean society, serving as a reminder of its painful past.

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Yet despite these persistent divisions, Chile has continued to address its responsibility for the widespread use of torture during the Pinochet regime since the restoration of democracy in 1990. Human rights violations have been officially acknowledged by two presidentially appointed commissions that investigate human rights abuses and advise on reparation policies for victims. Chilean courts have prosecuted and condemned to imprisonment several military and police agents for employing torture against detainees and murdering or disappearing political opponents. Among those imprisoned is the director of the *Dirección de Inteligencia Nacional* (the secret police that functioned from 1974-1977 under Pinochet’s direct command). Some of those who supported the regime feebly try to deny knowledge of what happened. Others

admit that they did not do anything to investigate or oppose human rights violations, despite the reports published during the dictatorship by national and international human rights organizations.

Chile gained new leadership in efforts to reconcile its past when President Michelle Bachelet was elected in January 2006. As a torture survivor whose father, an Air Force General, died in state custody during the dictatorship, President Bachelet has shown a strong commitment to addressing the crimes committed during the dictatorship, listening to the victims, and improving reparation policies. For instance, only now, 17 years after the restoration of democracy, is Chile seeking to eliminate the amnesty law passed by Pinochet and his junta. Bolstered by the insistence of relatives of victims of human rights crimes and a recent decision of the Inter-American Court of Human Rights, Bachelet's Administration is proposing a law that will either counteract or revoke amnesty.

THE BUSH ADMINISTRATION'S USE AND JUSTIFICATION OF WATERBOARDING

Unfortunately, as in Chile, the use of waterboarding in the United States has a long history. During the Senate debate on the Military Commissions' legislation in 2006, Senator Edward Kennedy related the case of a Japanese officer who in 1947 received a 15 year sentence of hard labor for waterboarding a U.S. citizen during World War II. *The Washington Post*, in an article that quoted Kennedy, also mentioned that the use of waterboarding was reportedly investigated by the Army in 1968, after *The Washington Post* published a picture of a North Vietnamese soldier being interrogated under the supervision of a U.S. soldier.⁸ More recently, according to a 2005 Human Rights Watch report, the U.S. Central Intelligence Agency (CIA) has authorized several methods of "harsh" interrogation techniques, including waterboarding.⁹

In its 39th session in May 2006, the UN Committee Against Torture (Committee) examined U.S. compliance with the 1984 CAT. The Committee questioned the Bush administration on many aspects, including its failure to designate torture as a federal crime consistent with the definition of the CAT. It also questioned the Bush administration's assertion that the CAT is not applicable in the context of armed conflict, or to certain territories under control of the U.S. armed forces, in addition to highlighting the documented use by U.S. officials of renditions and secret detention centers.

The Committee also asserted that acts that define psychological torture "are not limited to 'prolonged and mental harm,' according to the Bush administration, but are instead a wider category of acts which cause severe mental suffering, irrespective of their prolongation or its duration."¹⁰ In this way, the Committee was responding to the August 2002 and December 2004 memoranda of the Department of Justice that tried to narrow the definition of torture.

On the specific issue of waterboarding, the Committee registered its concern "that in 2002 the State party authorized the use of certain interrogation techniques that have resulted in the death of some detainees during interrogation. The Committee also regret[ted] that 'confusing interrogation rules' and techniques defined in vague and general terms, such as 'stress positions,' have led to serious abuses of detainees." It then recommended that the U.S. government "rescind any interrogation technique, including

methods involving sexual humiliation, 'waterboarding,' 'short shackling' and using dogs to induce fear, that constitutes torture or cruel, inhuman or degrading treatment or punishment, in all places of detention under its de facto effective control, in order to comply with its obligations under the Convention."¹¹ The Committee requested that the United States submit its response to the recommendations within a year.



"The Water Torture." Facsimile of a woodcut in J. Damhoudère's "Praxis Rerum Criminalium" (Antwerp: 1556)

In response to the Committee, and in Department of Justice memoranda, the Bush administration attempted to invoke the extraordinary circumstance of the "War on Terror" to justify the use of waterboarding. As recently as October 24, 2006, Vice-President Richard Cheney publicly assented to a journalist's question of whether "a dunk in water is a no-brainer if it can save lives."¹² Though the White House refused to clarify Cheney's comment, the public understood it to refer to the use of waterboarding. The administration even attempted to argue that the Geneva Conventions are obsolete in the "War on Terror." Those are the same types of justifications used by dictatorships to try to cover their crimes under a veil of apparent necessity and legality.

After the embarrassment of *Hamdan v. Rumsfeld*, the Bush administration initiated a damage control operation by passing a law that regulates the Military Commissions. The Military Commissions Act (MCA), approved by the majority of Congress

in September 2006, established special commissions to try detainees from the war on terror held in custody at Guantánamo Bay.¹³ The MCA strips the right of *habeas corpus* from non-U.S. citizens accused of participating in terrorist activities or founding terrorist groups, and provides retroactive protection to U.S. agents who used torture methods. Such protection may also extend to government officials who authorized the use of waterboarding and other torture techniques on prisoners. These laws are reminiscent of the amnesty laws passed by the Pinochet dictatorship in Chile.

The Bush administration's justifications of the use of waterboarding and other torture techniques have not gone unnoticed by Americans and the international community. Diligent efforts by some media outlets, human rights activists, and scholars exposed the administration's position and revealed to the public the detri-

Information Agency) which, derived from the Home Ministry, prevented the access of attorneys or independent physicians to the detainees. Similarly, the MCA established special jurisdiction for judging "illegal combatants" from the "War on Terror," which is external even to regular U.S. military courts. Guantánamo prisoners have been subject to severe restrictions on outside contact, notably, with their lawyers and the Red Cross. Indeed, the Bush administration "has proposed limiting contact between defence lawyers and detainees at Guantánamo Bay because it says detainees' communications, such as news of world events, could incite the prisoners to violence."¹⁵

Third, both administrations passed laws restricting detainee civil rights. The laws passed by the Pinochet regime authorized that during the investigation of allegedly terrorist crimes, detainees could be held for long periods in complete isolation and in secret

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mental effect of these policies on human rights. This ongoing discourse concerning the legality of the military commissions established by the administration to try detainees at Guantánamo Bay is an important reminder of the boundaries that human rights principles place on the exercise of power, even in extreme situations.¹⁴

MOVING FORWARD: LESSONS FROM THE CHILEAN EXPERIENCE

Both the Pinochet regime and the Bush administration have used waterboarding against their enemies. Both have sought to conceal and justify this fact in similar ways.

First, both the Pinochet dictatorship and the Bush administration exploited the threats of terrorism, violence, and social unrest to justify the use of torture. Second, both passed laws granting jurisdiction over "terrorism" to special military courts that lack the necessary independence to deal impartially with claims of torture. In Chile, terrorism suspects were judged by military tribunals directly under Pinochet's chain of command as Commander-in-Chief of the army. Judges and military prosecutors paid no attention to detainees' claims of torture. Military prosecutors were granted the authority to prolong detainees' isolation for weeks and months. During this time, detainees were held in custody by the *Central Nacional de Informaciones* (National

detention centers operated by the National Information Agency. Such isolation aided in the torture process, increasing the detainee's sense of vulnerability and allowing time for signs of physical torture to heal. Under a state of siege and other states of emergency declared by the junta, the exercise of *habeas corpus* was limited. When, in an extraordinary act of defiance, the Supreme Court challenged this decision,¹⁶ the junta passed a law that reaffirmed its position. A similar policy was used by the Bush administration, with the endorsement of Congress, to exclude non-U.S. citizens from *habeas corpus* protections in the MCA.

Finally, both the Pinochet and Bush governments passed laws that give protection or amnesty to agents who used torture. Even though the amnesty law passed by Pinochet's regime is now being challenged by the Inter-American Court of Human Rights and by the Chilean government and congress, it posed a serious obstacle to the investigation and processing of cases of torture and summary executions for many years after democracy was restored. The Bush administration's Military Commissions Act is likely to pose a similar obstacle because it excludes CIA agents from any legal charges arising from their use of waterboarding and other methods of torture. Moreover, it might even protect officials who authorized or used torture in the "War on Terror." Yet a law passed by a junta of four generals and admirals during a dictatorship is very different from one passed by a democratically-elected congress in

the United States, where there is substantial press freedom and a history of criticism against the use of torture.

The similarities between the Bush administration and the Pinochet regime in using legal and political instruments to justify and conceal the use of torture are disturbing. In both cases significant efforts were made to attempt to hide the use of torture with a veil of legality, and to protect agents who tortured. However, it is important to note that Chile's eventual acknowledgement of its massive use of torture, and prosecution of at least some agents, suggests that even the Bush administration's use of torture will not exist forever in impunity.

CONCLUSION

The actions undertaken by the Bush administration to strip away human rights protections in recent years are strikingly similar to those executed by the Pinochet dictatorship 30 years ago in Chile. Both expanded the concept of terrorism, cited "special circumstances" in authorizing "special methods," isolated detainees, created special courts that lacked independence, permitted impunity and the exemption of criminal responsibility for those involved in torture, and restricted *habeas corpus* rights for certain detainees. Both governments attempted to place a veil of legitimacy on what international consensus had previously defined as crimes against humanity. Indeed, recently released secret memoranda of the Department of Justice are astonishing in their use of legal reasoning to justify what is unjustifiable. As in the Pinochet or Nazi

regimes, these memoranda reveal the danger of legal maneuvering designed to support and legalize the power of the state to commit crimes.

Chile remains deeply affected by the consequences of human rights violations committed during the 1973 to 1990 dictatorship. Thousands of people still seek justice after profound suffering from the lasting effects of torture, exile, or the disappearance of a relative. Former military and police agents now prosecuted for human rights violations feel that they have been abandoned by part of society and by their superiors who ordered them to commit such crimes. Chilean society is still divided about these issues and is struggling to discover how, if possible, to learn from such a painful history.

The Chilean experience does, however, offer hope. If a country is able to move beyond dictatorship, it can also opt to learn about, and from, its own horrors. To do so, it must have a strong conscience — active groups of persistent people who keep these issues on the agenda — and must be open to external criticism from international institutions for the protection of human rights. The United States has a very strong and active civil society committed to protecting human rights and a long tradition of respecting these rights. Being more open to external criticism and learning from the experiences of places like Chile can provide an important means of reversing the Bush Administration's perilous trend towards diminishing human rights protections.

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ENDNOTES: Waterboarding Prisoners and Justifying Torture

1 Sixty-eight percent of all detentions registered by Chile's National Commission of Political Imprisonment and Torture occurred between September 11 and December 31, 1973.

2 The Commission is informally named in honor of its president, Monsignor Sergio Valech, a Roman Catholic Bishop that was the head of the *Vicaría de la Solidaridad*, the most important organization that defended human rights during the dictatorship.

3 *Informe de la Comisión Nacional sobre Prisión Política y Tortura* (National Commission Report on Political Prisoners and Torture) (2005), available in Spanish at www.comisiontortura.cl, to be translated into English by the University of Notre Dame. The Commission's report explains the political context in which this massive violation of human rights occurred. It also describes the methods of torture that the victims declared in their testimonies and reports the consequences that the imprisonment and torture had and continues to have on the victims.

4 *Id.* at 249-50.

5 *Id.* at 250.

6 *Id.* at 597.

7 *Id.*

8 Walter Pincus, *The Washington Post*, "Waterboarding Historically Controversial," Oct. 5, 2006, at A17.

9 Human Rights Watch, *World Report* 504, available at <http://hrw.org/english/docs/2006/01/18/usdom12292.htm>. The report describes the

technique as "forcefully submerging a suspect's head in water or otherwise making him believe he is about to drown." *Id.*

10 UN Committee Against Torture, *Consideration of Reports Submitted by States Parties under Article 19 of the Convention: Conclusions and Recommendations of the Committee Against Torture*, ¶ 13, 25, U.N. Doc. CAT/C/USA/CO/2 (July 25, 2006), available at [http://www.unhcr.ch/tbs/doc.nsf/317ab54d16e0e6aac1256bdd0026bd27/e2d4f5b2dccc0a4cc12571ee00290ce0/\\$FILE/G0643225.DOC](http://www.unhcr.ch/tbs/doc.nsf/317ab54d16e0e6aac1256bdd0026bd27/e2d4f5b2dccc0a4cc12571ee00290ce0/$FILE/G0643225.DOC).

11 *Id.* at ¶ 24.

12 Dan Eggen, *The Washington Post*, "Cheney Defends 'Dunk in the Water' Remark," Oct. 8, 2006, at A02.

13 *The United States Military Commissions Act of 2006*, Pub. L. No. 109-366, 120 Stat. 2600 (Oct. 17, 2006).

14 These boundaries were summarized by the Supreme Court in *Hamdam v. Rumsfeld*, 126 S. Ct. 2749 (2006), and in the 2006 Congressional debate about the Military Commissions Act.

15 William Fisher, *Inter Press Service*, "Near-Total Isolation Sought for Guantánamo," Dec. 5, 2006.

16 In general, however, the Chilean Supreme Court played an important role in supporting the dictatorship, as was stated in the two truth commissions to investigate human rights violations in 1990 and 2003.