

# **TORTURE IN THE UNITED STATES**

## **The Status of Compliance by the U.S. Government with the International Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**

Prepared By

**THE COALITION AGAINST TORTURE AND RACIAL DISCRIMINATION**

A Joint Working Group of Non-Governmental  
Civil and Human Rights Groups in the U.S.

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## 10. INVOLUNTARY HUMAN SCIENTIFIC EXPERIMENTATION

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This section draws heavily on the 1995 submission to the Human Rights Committee by the Science and Human Rights Program of the American Association for the Advancement of Science included in *The Status of Human Rights in the United States*

### SUMMARY STATEMENT

In past years, the U.S. has conducted a number of scientific experiments on human subjects without their consent or knowledge. This includes the exposure of at least 9,000 human subjects, including children and newborns, to radiation testing by the Atomic Energy Commission, and the Tuskegee experiments in which African-American subjects were denied medical treatment for syphilis in order to document how this disease affected the human body.

Although these cruel and inhuman tests were conducted many years ago, there are two aspects that continue to be of concern. First is the fact that the government kept information about the tests secret for a number of years, and continues to release data that suggests that testing of this type has been more frequent, and with a greater impact, than initially acknowledged. Second is that appropriate action still has not been taken to compensate the victims, and to assure that similar activities will not take place in the future.

### I. RELEVANT CONVENTION PROVISIONS

The prohibition against torture in Article 7 of the International Covenant on Civil and Political Rights, stipulates that "no one shall be subject without his free consent to medical or scientific experimentation." This provision is not included in CAT, which focuses in Article 1 on pain inflicted for punishment or intimidation, or for any reason based on discrimination. However, it was the overwhelming consensus of our working group that human scientific experimentation conducted by the government without the knowledgeable consent of victims constitutes, by its very nature, a type of punishment that fits within the CAT definition as constituting "severe pain and suffering" as described by CAT. There is no question that the human experiments conducted by the Nazis during World War II constituted torture, despite their alleged scientific purposes, because the dangers and

inhumanity victims were subjected to evidenced an essential lack of concern for the well-being of the subjects that resulted in the unnecessary infliction of pain and suffering.

Similar elements that constitute punishment under the meaning of the CAT definition are present whenever human beings are unknowingly subjected to scientific tests, especially when they involve potential severe or long-lasting health consequences, or the purposeful denial of appropriate medical care. This type of disdain for human subjects can not be viewed as anything other than the purposeful infliction of punishment, even if legitimate scientific goals are involved, and the intent to do harm may not be present. It is the lack of due care for the severe (though unexpected) consequences that produces the pain and suffering of the type prohibited by CAT. This is the reason why the Covenant on Civil and Political Rights makes special mention of human scientific experimentation under its treatment of torture, and justifies its inclusion among the activities subject to review under Article 1 of CAT.

## **II. NON-CONSENSUAL HUMAN TESTING BY THE U.S. GOVERNMENT**

The 1995 *Initial Report of the United States* to the United Nations Human Rights Committee acknowledges that a number of Cold War era experiments involving the exposure of humans to radiation were conducted that would be in violation of the International Covenant on Civil and Political Rights ("Covenant"). It does not, however, discuss in any detail:

- the nature of these experiments;
- the manner in which they were conducted (particularly pertinent is how the issue of consent was treated);
- whether steps have been taken to remedy the results of inappropriate testing through appropriate compensation of victims; and
- whether any steps have been taken to ensure that such experimentation does not take place in the future.

In early 1994, in response to public pressure generated by reports appearing in *The Albuquerque Tribune*, and a report issued by the U.S. General Accounting Office confirming that the U.S. government had sponsored Cold War experiments involving the exposure of human subjects to large doses of radiation, the Clinton Administration created an Advisory Committee on Human Radiation Experiments. The Advisory Committee was charged with investigating these experiments and determining how scientific and ethical standards were observed in these activities, and was given access to the records of all relevant federal agencies.

The Advisory Committee's research acknowledges that government sponsored experiments involving the exposure of human subjects to potentially dangerous levels of radiation were far more common than had been believed. Between 1948 and 1952, they

included at least 13 deliberate releases of radiated materials into the atmosphere near populated areas to study fallout patterns and the rate of radioactive decay of atmospherically released particles. Initial reports also indicate that, while high level officials were aware of the dangers and the ethical considerations involved, there was a consistent lack of effective regulation governing administration of the tests.

Based on the Advisory Committee's research, six broad categories of experiments can be identified:

- Experiments aimed at determining the danger to workers assembling nuclear weapons from ingestion, inhalation or injection of irradiated materials. These experiments involved total body irradiation and the injection of radioactive isotopes into human subjects.
- Experiments aimed at determining the effects of exposure to radiation on soldiers serving either as part of the crew of a proposed nuclear powered aircraft or on a nuclear battlefield. These experiments involved total body irradiation, injection of radioactive isotopes, ingestion of irradiated materials by human subjects and exposure of subjects to atomic clouds during and after bomb detonations.
- Development of nuclear weapons. These experiments involved atmospheric releases of radiation without the knowledge of exposed civilian population.
- Studies on the dispersal, fallout, biological intake and decay of radioactive materials following a nuclear explosion. These experiments involved atmospheric releases of radiation, ingestion of radioactive and exposure to atomic clouds.
- Studies of the effects of radiation on "radiosensitive" malignancies such as leukemia and lymphoma, and in the performance of bone marrow transplantations. These experiments involved total body irradiation. They included irradiation of 88 cancer patients at the University of Cincinnati alone.
- Experiments regarding the potential effects of radiation on astronauts. These experiments involved partial body irradiation.

Among the tests were the 1963 exposure of 131 prison inmates in Oregon to massive doses of radiation to their sexual organs, and subsequent vasectomies that were performed to prevent the subsequent birth of malformed children from contaminated sperm. On 10 February 1995, *The New York Times* also reported (p. A12) that "about 9,000 Americans, including children and newborns were used in 154 human radiation tests" sponsored by the Atomic Energy Commission, with additional tests being conducted by other governmental agencies. Subsequent reports released since that time suggest that the experiments and their impacts on human were far greater than originally indicated.



The extreme danger posed by these experiments, and the frequent absence of informed consent measures in their implementation, place them in violation of the scientific experimentation provisions of Article 7 of the Covenant on Civil and Political Rights and Article 1 of CAT. Although these events took place before the U.S. ratification of these instruments, the steps taken by the U.S. government to ensure that they are not repeated, to release full information on the tests and their impacts, and to provide compensation to those persons who were harmed by them, are highly pertinent to the question of current U.S. compliance.

Internal Manhattan Project memoranda indicate that high level policy makers knew of the potential danger to human subjects in radiation experiments as early as 1944. A number of what were considered to be overriding concerns, including a fear that scientists in the former Soviet Union were conducting similar experiments, resulted in a decision to proceed on a secret basis despite the dangers to the human subjects.

In 1953, Secretary of Defense C.E. Wilson approved a memorandum imposing uniform regulations on all branches of the military for the use of human volunteers in experimental research. The Wilson memorandum was based on the Nuremberg Code and established much stricter guidelines than had been used by any governmental agency up to that point. Among the new restrictions was the requirement that informed written consent be obtained from all subjects. Previously, only doctor witnessed oral consent had been required. The implementation of the new regulations was greatly limited by their high level of classification, which prevented their circulation to many of those administering radiation experiments, and the failure to specify whether or not they applied to outside contractors. As a result, the Wilson Memorandum guidelines were not widely implemented, and did not prevent the extensive radiation experimentation that took place.

In 1962, Army regulation 70-25 (AR 70-25) established regulations similar to those imposed by the Wilson memorandum. But military training and research were specifically exempted from coverage. The Army attempted to remedy this deficiency by issuing an additional provision, Article 16, which imposed AR 70-25 guidelines on all outside contractors. This proposal drew criticism from a large segment of the academic community because of the view that it was inappropriate for the government to issue regulations governing civilian research, and Article 16 was withdrawn.

AR 70-25 remained in place, however, and went through a number of transformations. By the early-1980s, these regulations were tightened considerably, and an equivalent to Article 16 had been successfully attached. Regulations similar to AR 70-25 and Article 16 were established for all federal agencies and outside contractors during the mid-1980s.

The ethical and scientific regulations currently in effect in federal government agencies are therefore much stricter than they were during the period in which most human

radiation testing took place. The fact that many of the abuses that occurred during this period seem to have resulted from the loose interpretation of admittedly vague guidelines, however, leaves open the question of whether such abuses could still occur today.

In addition to the tightening of experimentation guidelines, the U.S. government has attempted to address the issue of human radiation testing by establishing three major programs to provide compensation to those persons who may have been harmed. However, these programs deal with only a small segment of the radiation experiments that took place, and affect only a small fraction of the victims.

The Department of Veterans' Affairs administers a program designed for veterans who were exposed to radiation, with special provisions for those exposed at Hiroshima and Nagasaki and in atomic weapons tests. This program is administered under the Veterans Dioxin and Radiation Compensation Act of 1988. However, of over 15,000 claims for compensation filed under this Act, only 1,401 have been approved, despite the fact that it is estimated that 200,000 soldiers were exposed to nuclear bomb tests between 1946 and 1963.

The second program is the Nuclear Claims Trust Fund that was established under a 1986 agreement between the United States and the Marshall Islands to compensate inhabitants of the islands exposed to radiation from U.S. weapons testing of 67 nuclear explosions between 1946 and 1958. The third program is the Radiation Exposure Compensation Act of 1990, established to provide compensation to uranium miners, persons living downwind from the Nevada Test Site, and veterans and civilians who received radiation at the site of atmospheric weapons tests in Nevada and the Pacific.

Groups of uranium miners, test-site personnel, and civilians affected near test sites also have filed claims in federal courts seeking compensation. All these claims have been rejected, however, on the grounds that there is no legal authority to hold the government responsible. In some of these cases the court recognized that the claimants had, indeed, been harmed by the government's actions, and called on Congress to provide a legislative remedy in the absence of judicial remedy. The passage of legislation acknowledging the government's complicity in these events and compensating those who have been harmed is the first step that must be taken to achieve this result.

The overall assessment of compensation programs that have been established is that they are far too restrictive, and place too low a ceiling on the amount of compensation awarded.

Similar problems involving non-consensual human experimentation took place in the so-called Tuskegee experiments that needlessly subjected a number of African-Americans to the ravages of sexually transmitted diseases through purposeful withholding of appropriate medication that could have cured their disease but was not administered in order to continue to collect information on the disease's degenerative impacts. Beginning



in 1932, the “Tuskegee Study of Untreated Syphilis in the Negro Male” subjected 412 African-American sharecroppers who had contracted syphilis to 40 years of monitoring aimed at documenting the effects of the disease. All the victims were permitted to pass the various chronic stages of illness, suffering from long-term disabilities such as blindness, paralysis, dementia, and eventually premature death, even well after penicillin was found to be a highly effective treatment.

In summary, although the U.S. government has taken important steps to acknowledge some of the errors that occurred in the past involving improper human experimentation, very little has been done to properly compensate those adversely affected by these experiments, and courts have refused to hold the government financially responsible for what has occurred in many areas not presently covered by legislation. In addition, full disclosure of improper experimentation still has not taken place, and the adequacy of safeguards to guarantee that these types of unlawful practices do not occur is still very much open to dispute.

Similar concerns also are being raised about involuntary human experimentation involving new forms of classified research and testing of high technology military weaponry, including microwave and laser equipment. Groups working on these issues cite, among other evidence of the existence of these unauthorized testing procedures, a White House inter-governmental memorandum dated March 27, 1997, establishing stronger guidelines prohibiting non-consensual testing for classified research, but suggesting, by implication, that this type of human subject research may, in fact, be taking place. Because of the classified nature of these activities, it is very difficult to confirm or disprove that they are taking place. Given the serious negative impacts on non-consensual human subjects that classified research of this type is capable of producing, and given the past history of secret experimentation by the government, these allegations of continuing improprieties involving secret government sponsored human testing should not be dismissed without more thorough, impartial investigation.