

# IS THE US OUTSOURCING TORTURE, AGAIN?

As you may recall, one of the most explosive revelations from the Iraq War Logs released by WikiLeaks pertains to US forces ignoring Iraqi torture of other Iraqis.

The biggest headline from Friday's Wikileaks dump (everywhere but the NYT, anyway) is that the "US ignored torture." But the way in which an official policy ignoring torture was followed by collaboration with one of Iraq's torture squads raises the question whether the US involvement in Iraqi torture was more direct.

Did the US "ignore" torture, or "encourage" it?

The basis for the claim that the US ignored torture comes from references to Frago 242, which officially instituted a policy of looking the other way in cases of Iraqi on Iraqi abuse.

This is the impact of Frago 242. A frago is a "fragmentary order" which summarises a complex requirement. This one, issued in June 2004, about a year after the invasion of Iraq, orders coalition troops not to investigate any breach of the laws of armed conflict, such as the abuse of detainees, unless it directly involves members of the coalition. Where the alleged abuse is committed by Iraqi on Iraqi, "only an initial report will be made ... No further investigation will be required unless directed by HQ".

Another cable showed that US forces turned over detainees to an Iraqi unit known to torture.

By the end of 2004, according to the Wikileaks dump, the US was handing over detainees to a US trained group known to torture.

In Samarra, the series of log entries in 2004 and 2005 describe repeated raids by US infantry, who then handed their captives over to the Wolf Brigade for “further questioning”. Typical entries read: “All 5 detainees were turned over to Ministry of Interior for further questioning” (from 29 November 2004) and “The detainee was then turned over to the 2nd Ministry of Interior Commando Battalion for further questioning” (30 November 2004).

Which is why the following detail—from a UN report issued yesterday describing the systematic use of torture in Afghan prison interrogations—is so important.

[UN Assistance Mission in Afghanistan]’s detention observation included interviews with 89 detainees who reported the involvement of international military forces either alone or with Afghan security forces in their capture and transfer to [National Directorate of Security] or [Afghan National Police] custody. **UNAMA found compelling evidence that 19 of these 89 detainees were tortured in NDS facilities** namely, NDS Department 90/124 and NDS Laghman and three in ANP custody (ANP in Kunduz and Tirin Kot). This situation speaks to the need for robust oversight and monitoring of all

transfers of detainees to NDS and ANP custody and possible suspension of transfers where credible reports of torture exist.

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The US and other ISAF military forces, including Canada and the UK reportedly transferred approximately 2,000 individuals to Afghan custody in 2009 and 2010.<sup>166</sup> Judicial rulings in Canada and the UK resulted in suspension of transfers of detainees by those countries' military forces to various NDS facilities over different periods of time.<sup>167</sup> In both cases, the courts' decisions were based on the credibility of information that NDS abused and tortured detainees in selected locations (Kabul and Kandahar). The UK stopped transfers to NDS Kandahar and NDS facilities in Kabul. Canada ceased transfers to all NDS facilities in Kabul, but continued to transfer to Kandahar's MoJ Sarapoza prison. Canadian and the UK governments also implemented monitoring programmes in detention facilities where they handed over detainees to custody of Afghan authorities.

**The US has not yet put in place a monitoring programme to track detainees it hands over to Afghan authorities.** A US government official advised UNAMA that the US Embassy finalised plans for a post-transfer detainee monitoring programme and a proposal is with the Afghan government for its consideration. The Embassy stated that it regards the proposed programme as a positive way for the US to continue its work with the Afghan government to ensure its detention system is safe, secure, and humane.<sup>168</sup>

In early July 2011, US military forces

stopped transferring detainees to NDS and ANP authorities in Dai Kundi, Kandahar, Uruzgan and Zabul based on reports of a consistent practice of torture and mistreatment of detainees in NDS and ANP detention facilities in these areas.<sup>169</sup> ISAF advised UNAMA that it asked the Government to investigate these reports and indicates it will not resume transfers until the situation is satisfactorily addressed.

In early September 2011, in response to the findings in this report, ISAF stated that it stopped transferring detainees to certain installations as a precautionary measure.<sup>170</sup>

That is, even though our coalition partners had already stopped transferring detainees to Afghans known to use torture in interrogations, the US continued doing so until last month.

And this torture is happening almost exclusively to obtain confessions.

Out of 273 detainees interviewed, 125 (46 percent) reported they had been tortured while in NDS custody. The forms of abuse most commonly reported were suspension (being hung by the wrists from chains attached to the wall, iron bars or other fixtures for lengthy periods) and beating, especially with rubber hoses, electric cables and wires or wooden sticks and particularly on the soles of the feet. Other forms of abuse reported included electric shock, twisting of the detainee's penis and wrenching of the detainee's testicles, removal of toenails and forced prolonged standing. Detainees also reported blindfolding and hooding. **According to detainees, these abuses almost always took place during interrogations and were aimed at obtaining a confession. Only two percent of those detainees who reported abuse by NDS said that any**

**abuse took place at the time of arrest or in any other context.**

[snip]

Based on the interviews it conducted, UNAMA found compelling evidence that officials at Department 90/124 systematically tortured detainees for the purposes of obtaining information and confessions. According to UNAMA's findings, NDS officials in Department 90/124 used beating, suspension, and twisting and wrenching of genitals as means of torture. Two detainees also reported receiving electric shocks, two detainees reported their beards had been pulled, and three detainees reported having their heads banged against the wall.<sup>57</sup> **All of the abuse took place in the context of the interrogation process. In most cases, the detainee's account of the sequence of events makes it clear that NDS officials used abusive interrogation procedures to obtain information and formal confessions.**

It'd be nice if we did more than stop turning over detainees to prisons known to use torture now that the UN has formally put us on notice about it. It'd be nice if we reviewed when the US became aware of this practice and why we kept turning people over to the Afghans.

But I guess that would amount to looking backward.