



LAWYERS COMMITTEE
FOR HUMAN RIGHTS

Washington, D.C. Office:
499 S. Capitol Street S.W., Suite 508
Washington, D.C. 20003-4004

Telephone (202) 547 5692
Facsimile (202) 543 5999
E-mail WDC@lchr.org

Headquarters:
333 Seventh Avenue, 13th Floor
New York, New York 10001-5004

Telephone (212) 845 5200
Facsimile (212) 845 5299
E-mail NYC@lchr.org
<http://www.lchr.org>

January 5, 1999

Harlan Gerard
International Committee on
Microwave Weapons
P.O. Box 58700
Philadelphia, PA 19102

Dear Mr. Gerard:

As I mentioned during the meeting at the Ford Foundation, we have drafted federal legislation that would criminalize torture when committed in the United States. The language is written to amend current US law, specifically 18 U.S.C. §2340A (which criminalizes torture when committed outside the United States). In order to adapt this language for a state law proposal, one would begin with the language of §2340A and alter it to reflect the changes we propose in the attached document.

I hope you find this useful. I apologize for the delay in getting it to you.

Sincerely,

Elisa Massimino
Elisa Massimino

enclosure

Board of Directors

Chair, Norman Dorsen
President, Tom A. Bernstein
Chair Emeritus, Marvin E. Frankel

Executive Director, Michael Posner

Washington, D.C. Council
Chair, Joseph L. Brand

Washington, D.C. Director, Elisa Massimino

M. Bernard Aidenoff
Joseph L. Brand
Craig Cogut
Michael J. Davis
Mitchell F. Dolin

Donald Francis Donovan
A. Whitney Ellsworth
Kenneth R. Feinberg
R. Scott Gresham
Rita Hauser

National Council Chair: Talbot D'Alemberte

Patrick J. Carome
Bertram W. Carp
Lynda M. Clarizio
Mitchell F. Dolin
Father Robert F. Drinan

Joseph Eldridge
Bruce J. Ennis
Kenneth R. Feinberg
William T. Garcia
Daryl Libow

Louis Henkin
Robert D. Joffe
Lewis B. Kaden
Kerry Kennedy Cuomo
Nancy Kuhn

Laurel Pyke Malson
Ronald I. Meltzer
Frank H. Menaker, Jr.
Thomas H. Milch
Joan E. Neal

Philip A. Lacovara
Jo Backer Laird
R. Todd Lang
Ronald K. Noble
Barbara A. Schulz
Marcia Lynn Sells

Diane F. Orentlicher
Jerold Ostinsky
Raymond Paretzky
Susan Rappaport
Margaret Ellen Roggensack

Steven R. Shapiro
Warren R. Stern
Robert Van Lierop
George A. Vradenburg, III
Sigourney Weaver
William D. Zabel

James C. Snipes
Roxane N. Sokolove
Ralph Steinhart
Donald B. Verrilli, Jr.
Philip J. Ward
Burton V. Wides

International Rule of Law Council Co-Chairs: Roberto Karp, George A. Vradenburg, III

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. FINDINGS.

The Congress makes the following findings:

(a) In 1994, the President, having previously obtained the advice and consent of the Senate, ratified the Convention Against Torture And Other Forms Of Cruel, Inhuman Or Degrading Treatment Or Punishment (the "Torture Convention").

(b) In recognition of the status of torture as a crime against the law of nations, the Torture Convention requires each State Party to proscribe acts of torture, whether committed within or without the territory of the State Party. The Torture Convention also requires each State Party to ensure that no order from a superior officer, public emergency or other exceptional circumstance be recognized as a justification for torture, and to ensure that acts of torture are "punishable by appropriate penalties which take into account their grave nature."

(c) Public Law 103-236, Title V, § 506(a), Apr. 30, 1994, 108 Stat. 463, added new sections 2340, 2340A and 2340B to Title 18 of the United States Code, proscribing torture when committed outside the United States. Congress did not at that time criminalize torture as such when committed within the United States, because it believed that most acts that would constitute torture were already proscribed under state laws of assault and under federal civil rights laws.

(d) Further study indicates that state laws of assault and other relevant crimes vary in content from one state to another. The laws of some states might be interpreted to permit torturers to assert affirmative defenses barred by the Torture Convention. The penalties for assault and other relevant crimes vary from one state to another.

(e) Federal civil rights law, by contrast, is uniform throughout the country. The content of that law, however, derives principally from judicial interpretations of the Constitution. Many forms of torture have been recognized by the courts to constitute criminal deprivations of constitutional rights. It is unclear, however, that all acts of torture are proscribed by the federal civil rights laws, given the current state of judicial decisions on the subject.

(f) The penalty prescribed for acts of torture committed outside the United States is imprisonment for a term not exceeding twenty years. The federal civil rights laws, however, provide a maximum penalty for violations not resulting in death of only ten years' imprisonment.

(g) To reaffirm the commitment of the United States to the Torture Convention and its goal of abolishing acts of torture wherever committed in the world, and to ensure that any act of torture committed in the United States is clearly and unequivocally prohibited by law, Congress deems it appropriate to supplement the various criminal proscriptions of acts of torture within the United States with a specific and clear proscription of torture that can serve as an example to the other nations of the world.

(g) Article I, section 8, clause 10 of the Constitution empowers Congress to "define and punish . . . Offences against the Law of Nations" such as torture.

SECTION 2. TORTURE TO BE PROSCRIBED WITHIN THE UNITED STATES.

(a) Subparagraph (a) of section 2340A of Title 18 of the United States Code is hereby amended as follows: the words "or within" shall be inserted between the words "outside" and "the United States".

(b) Subparagraph (b) of section 2340A of Title 18 of the United States Code is hereby amended as follows: the following clause shall be inserted before the clause numbered (1) and clauses (1) and (2) shall be renumbered consecutively:

"(1) the offense takes place within the United States;"

(c) The following subparagraph shall be inserted after subparagraph (b) of section 2340A of Title 18 of the United States Code:

" (c) The following shall not be defenses or justifications to subsection (a):

" (1) A state of war, a threat of war, internal political instability, any public emergency or any other exceptional circumstance whatsoever; or

" (2) An order from a superior officer or a public authority,."