

Resolution to Amend the 2006 and 2013 Council Resolutions to Clarify the Roles of Psychologists Related to Interrogation and Detainee Welfare in National Security Settings, to Further Implement the 2008 Petition Resolution, and to Safeguard Against Acts of Torture and Cruel, Inhuman, or Degrading Treatment or Punishment in All Settings

WHEREAS the American Psychological Association (APA) is an accredited non-governmental organization (NGO) at the United Nations (UN) and is committed to promoting and protecting human rights in accordance with the UN Charter and the Universal Declaration of Human Rights;

WHEREAS APA policy dating back to 1985 “condemns torture wherever it occurs” and supports the UN Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (UN Convention Against Torture);

WHEREAS psychologists in organizational settings, including those in military and national security contexts, may be faced with challenges to ethical behavior as set forth in APA policy, most notably in the *Ethical Principles of Psychologists and Code of Conduct* (Ethics Code);

WHEREAS the United States ratified the UN Convention Against Torture in 1994 with an “understanding” (i.e., interpretation of a provision’s terms) regarding the definition of “torture”¹ and a “reservation” (i.e., modification of a provision’s legal effects) to place the term “cruel, inhuman, or degrading treatment or punishment” in the context of the U.S. Constitution, which has limited, if any, applicability to detainees at facilities outside the U.S.²;

WHEREAS the 2006 APA policy “Resolution Against Torture and Other Cruel, Inhuman, and Degrading Treatment or Punishment” defines “torture” according to the UN Convention Against Torture³ but invokes the U.S. reservation to define “cruel, inhuman or degrading treatment or punishment” in the absence of a clear definition in the UN Convention Against Torture;

WHEREAS the 2013 consolidated and reconciled APA resolution entitled, “Policy Related to Psychologists’ Work in National Security Settings and Reaffirmation of the APA Position Against Torture and Other Cruel, Inhuman, or Degrading Treatment of

¹ The definition of the term “torture” in the U.S. Reservations, Declarations and Understandings to the UN Convention Against Torture can be found at: <http://www1.umn.edu/humanrts/usdocs/tortres.html>

² The definition of the term “cruel, human or degrading treatment or punishment” in the U.S. Reservations, Declarations and Understandings to the UN Convention Against Torture can be found at: <http://www1.umn.edu/humanrts/usdocs/tortres.html>

³ In Article 1 of the UN Convention Against Torture, the term “torture” is defined as “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted upon a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.”

Punishment,” retains the reference to the U.S. reservation related to “cruel, inhuman, or degrading treatment or punishment,” while stipulating that for the purposes of APA policy, the definition broadly applies to “any person” -- thereby intending to include detainees in national security settings;

WHEREAS the George W. Bush administration relied on its treaty understanding regarding torture to provide a legal justification for the use of “enhanced interrogation techniques” with national security detainees during the Global War on Terror;

WHEREAS APA policy should clearly and consistently reflect the highest standard of human rights and should not be dependent upon a given statute (e.g., The Detainee Welfare Act of 2005) or Presidential Executive Order (e.g., the 2009 Executive Order 13,491 “Ensuring Lawful Interrogations” of the Obama administration), which could be rescinded at the will of a given Congress or President (even by the original author);

WHEREAS the UN Committee Against Torture (the body that adjudicates complaints alleging violations of the convention) and numerous human rights organizations have called upon the U.S. to rescind its understandings and reservations to the treaty related to the definitions of torture and cruel, inhuman, or degrading treatment or punishment; BE IT RESOLVED that the *2013 APA Policy Related to Psychologists' Work in National Security Settings and Reaffirmation of the APA Position Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment* will be revised as follows:

Fifth and Sixth Paragraphs of Statement 3 to be Rescinded

APA defines the term "cruel, inhuman, or degrading treatment or punishment" to mean treatment or punishment of any person in accordance with the United States Reservation I.1 of the Reservations, Declarations and Understandings to the United Nations Convention Against Torture, which defines this term as "the cruel, unusual and inhumane treatment or punishment prohibited by the Fifth, Eighth, and/or Fourteenth Amendments to the Constitution of the United States."^{vi}

APA further unequivocally condemns all techniques considered torture or cruel, inhuman or degrading treatment or punishment under the United Nations Convention Against Torture; the Geneva Conventions; the Principles of Medical Ethics Relevant to the Role of Health Personnel, Particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment; the Basic Principles for the Treatment of Prisoners; or the World Medical Association Declaration of Tokyo.

New Replacement Clauses to be Added

APA defines the term "cruel, inhuman, or degrading treatment or punishment" in accordance with the UN Convention Against Torture as “other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity” or with the U.S Constitution or other domestic law.

This definition continues to evolve with international legal understandings of this term as defined by the UN Committee Against Torture, UN and regional human rights tribunals (e.g., the European Court of Human Rights and the Inter-American

Court of Human Rights), or other international legal bodies (e.g., the International Criminal Court) based on legal findings and jurisprudence. When legal standards conflict, APA members are held to the highest of the competing standards.

In addition, this definition extends to all techniques and conditions of confinement considered torture or cruel, inhuman or degrading treatment or punishment under the UN Convention Against Torture; the Geneva Conventions; the Principles of Medical Ethics Relevant to the Role of Health Personnel, Particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment; the Basic Principles for the Treatment of Prisoners; or the World Medical Association Declaration of Tokyo.

Accompanying Footnote VI to be Rescinded

Specifically, United States Reservation I.1 of the Reservations, Declarations, and Understandings to the UN Convention Against Torture stating, “the term ‘cruel, inhuman or degrading treatment or punishment’ means the cruel, unusual and inhumane treatment or punishment prohibited by the Fifth, Eighth, and/or Fourteenth Amendments to the Constitution of the United States.”

Amendment V.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself [sic], nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment VIII.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Amendment XIV.

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

BE IT RESOLVED that the *2006 APA Resolution Against Torture and Other Cruel, Inhuman, and Degrading Treatment or Punishment* will be revised as follows:

Fourth “Be It Resolved” Clause to be Rescinded

BE IT RESOLVED, that the term “cruel, inhuman, or degrading treatment or punishment” means treatment or punishment by a psychologist that, in accordance with the McCain Amendment 3, is of a kind that would be “prohibited by the Fifth, Eighth, and Fourteenth Amendments to the Constitution of the United States, as defined in the United States Reservations⁴, Declarations and Understandings to the United Nations Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment done at New York, December 10, 1984.”

New Fourth “Be it Resolved” Clause to be Added

BE IT RESOLVED that APA defines the term "cruel, inhuman, or degrading treatment or punishment" in accordance with the UN Convention Against Torture as “other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity" or with the U.S Constitution or other domestic law.

This definition continues to evolve with international legal understandings of this term as defined by the UN Committee Against Torture, UN and regional human rights tribunals (e.g., the European Court of Human Rights and the Inter-American Court of Human Rights), or other international legal bodies (e.g., the International Criminal Court) based on legal findings and jurisprudence. When legal standards conflict, APA members are held to the highest of the competing standards.

In addition, this definition extends to all techniques and conditions of confinement considered torture or cruel, inhuman or degrading treatment or punishment under the UN Convention Against Torture; the Geneva Conventions; the Principles of Medical Ethics Relevant to the Role of Health Personnel, Particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment; the Basic Principles for the Treatment of Prisoners; or the World Medical Association Declaration of Tokyo.

To be Rescinded Footnote 4 (with remaining three footnotes to be renumbered in text as well)

Specifically, U.S/ Reservation I.1 of the Reservations, Declarations and Understandings to the United Nations Convention Against Torture (<http://www.unhchr.ch/html/menu2/6/cat/treaties/convention-reserv.htm>) stating, "the term 'cruel, inhuman or degrading treatment or punishment' means the cruel, unusual and inhumane treatment or punishment prohibited by the Fifth, Eighth, and/or Fourteenth Amendments to the Constitution of the United States."

BE IT RESOLVED that APA will continue to serve as a supportive resource for psychologists in organizational settings, including in military and national contexts, to assist them in abiding by APA policy and the Ethics Code, while recognizing that APA members, including military and national security psychologists, strive to achieve and are responsible to uphold the highest levels of competence and ethics in their professional work.

BE IT RESOLVED that APA reaffirms the central themes of the 2006 and 2013 Council Resolutions and hereby clarifies that psychologists may not engage directly or indirectly in any act of torture or cruel, inhuman, or degrading treatment or punishment and that this prohibition applies to all persons (including foreign detainees) wherever they may be held.

BE IT FURTHER RESOLVED that, in keeping with Principle A (Beneficence and Nonmaleficence) of the Ethics Code to “take care to do no harm,”⁴ psychologists shall not conduct, supervise, be in the presence of, or otherwise assist any national security interrogations⁵ for any military or intelligence entities, including private contractors working on their behalf, nor advise on conditions of confinement insofar as these might facilitate such an interrogation⁶. This prohibition does not apply to domestic law enforcement interrogations or domestic detention settings where detainees are afforded all of the protections of the United States Constitution, including the 5th Amendment rights against self-incrimination (“Miranda” rights) and 6th Amendment rights to “effective assistance” of legal counsel.

BE IT FURTHER RESOLVED, that in keeping with the “Actions to be Undertaken by APA” as stipulated in the 2013 Council Resolution, APA shall send official correspondence to the appropriate officers of the U.S. government, including the President, Secretary of Defense, Attorney General, CIA Director, and Congress, to inform them that APA has adopted policy changes to expand its human rights protections to safeguard detainees in national security settings against torture and cruel, inhuman, or degrading treatment or punishment.⁷

- 1) The first of these communications will be sent as soon as possible after this amended policy is passed, and will state – It is a violation of APA policy for psychologists to conduct, supervise, be in the presence of, or otherwise assist any individual national security interrogation, nor may a psychologist advise on conditions of confinement insofar as those might facilitate such an interrogation. Furthermore, based on current reports of the UN Committee Against Torture and

⁴ Ethical Principles of Psychologists and Code of Conduct. (2002, as amended in 2010), *American Psychologist*, 57, 12, pp. 1060-1073.

⁵ For the purposes of this policy statement, “national security interrogations” refer to the interrogation of any detainee in the custody of any agency or subsidiary agency that reports to the Director of National Intelligence, the Secretary of Defense, the Director of Homeland Security, or the National Security Council, including joint elements such as the High-Value Detainee Interrogation Group. This also includes any operations by those agencies with any allied governments or non-state actors, including private contractors. This does not include those detainees held under domestic law enforcement where Miranda Rights and the U.S. Constitution apply.

⁶ Psychologists may provide consultation with regard to policy pertaining to information gathering methods which are humane so long as they do not violate the prohibitions of this Resolution and are not related to any specific national security interrogation or detention conditions.

⁷ This prohibition includes interrogation techniques related to “separation,” e.g., solitary confinement and sleep deprivation, as authorized in Appendix M of the Army Field Manual, which can be accessed at: <http://fas.org/irp/doddir/army/fm2-22-3.pdf>

the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, it is also a violation of APA policy for psychologists to work at the Guantánamo Bay detention facility, “black sites,” vessels in international waters, or sites where detainees are interrogated under foreign jurisdiction “unless they are working directly for the persons being detained or for an independent third party working to protect human rights” or providing treatment to military personnel. To protect these psychologists from the consequences of violating their obligations under the APA Ethics Code, APA requests that psychologists be withdrawn from any role in individual national security interrogations or conditions of confinement that might facilitate such an interrogation. Furthermore, APA requests that psychologists working at prohibited sites, as described above, be offered deployment elsewhere.

- 2) Subsequent letters shall be sent whenever the APA becomes aware of the existence of detention sites determined by the UN Committee Against Torture and/or the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment to be utilizing practices that are considered unlawful by the UN Convention Against Torture or the Geneva Conventions and therefore in violation of APA policy.
- 3) APA shall also write to appropriate federal officials to urge the U.S. government to give further consideration to withdrawing its understandings and reservations to the UN Convention Against Torture, in keeping with the recent recommendation of the UN Committee Against Torture.

Suggested citation:

American Psychological Association. (2015). *Resolution to Amend the 2006 and 2013 Council Resolutions to Clarify the Roles of Psychologists Related to Interrogation and Detainee Welfare in National Security Settings, to Further Implement the 2008 Petition Resolution, and to Safeguard Against Acts of Torture and Cruel, Inhuman, or Degrading Treatment or Punishment in All Settings*. Retrieved from: <http://www.apa.org/independent-review/psychologists-interrogation.pdf>