

**Inter-American Commission on Human Rights
Thematic Hearing on the
Human Rights Situation of People Affected by the United States’
Rendition, Detention, and Interrogation Program**

156th Ordinary Period of Sessions

October 23, 2015

**Oral Submission: Criminal and Civil Accountability for Victims and
Survivors of the CIA Torture Program
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Introduction

Between 2001 and 2008, the United States Central Intelligence Agency (“CIA”) and its contractors designed and implemented an experimental program of forced disappearances, secret detention, torture and cruel, inhuman and degrading treatment. That program, the so-called Rendition, Detention and Interrogation program (“CIA torture program”), was sanctioned and authorized at the highest level of the Bush administration. Within days of taking office, President Obama effectively brought an end to the CIA torture program in Executive Order 13491- Ensuring Lawful Interrogations¹, but, to date, has failed to hold anyone to account or to provide remedies or any form of reparation to victims and survivors.

The creation and development of the CIA torture program, those government officials and contractors responsible, the nature and scope of the human rights violations perpetrated, and the names of at least 119 victims and survivors of these abuses and the physical and psychological harms caused to them are detailed in the Executive Summary of the Senate Select Committee on Intelligence (“SSCI”) *Study of the CIA’s Detention and Interrogation Program* (“SSCI Report”), which was publicly released on December 9, 2014. Other official government documents confirm and elaborate on the SSCI Report’s findings.²

Despite this public record of egregious human rights violations, to date, no government official or government contractor has been held criminally or civilly accountable for their role in the CIA torture program and no victim or survivor has been provided with redress, including apologies or compensation for their rehabilitation. Although the U.S. Department of Justice initiated a

¹ See Exec. Order No. 13,491, 3 C.F.R. (2009)

² See e.g., The CIA’s June 2013 Response to the Senate Select Committee on Intelligence’s Study on the Former Detention and Interrogation Program (June 27, 2013) (“CIA June 2013 Response”); CIA Office of Inspector General Special Review of Counterterrorism Detention and Interrogation Activities (Sept. 2001 – Oct. 2003) (May 7, 2004) (“CIA OIG Report”); the Senate Committee on Armed Services Inquiry into the Treatment of Detainees in U.S. Custody (Nov. 20, 2008) (“SASC Report”); and the report of the Department of Justice’s Office of Professional Responsibility Investigation into the Office of Legal Counsel’s Memoranda Concerning Issues Relating to the Central Intelligence Agency’s Use of “Enhanced Interrogation Techniques” on Suspected Terrorists (July 2009).

criminal investigation in 2009, that investigation failed to comport with international standards and was formally closed three years later. Efforts by victims and survivors of the RDI program to obtain redress in civil courts have been repeatedly blocked or limited by the Bush and Obama administrations and the U.S. Congress.

1. Inadequate and Ineffective Criminal Investigation into the CIA Torture Program

In 2009, shortly after President Obama assumed office, the U.S. Department of Justice began a very limited criminal investigation into specific abuses committed against specific detainees held in the CIA torture program.³ Assistant U.S. Attorney John Durham of the District of Connecticut was tasked with conducting an investigation into whether any federal laws were violated in connection with the program.⁴ The investigation was later limited to the deaths of two terrorism suspects in CIA custody and whether the methods used against them—their torture—had been authorized.⁵

This investigation failed to comport with international human rights standards in numerous ways. For example, at the outset, Attorney General Holder placed significant limitations on the scope of the investigation. Excluded from the inquiry was the use of any method sanctioned for the CIA torture program by the Office of Legal Counsel, including the most coercive methods (the so-called “enhanced interrogation techniques”), provided their application complied with that authorization.⁶ Attorney General Holder also shielded those who, “acted in good faith and within the scope of the legal guidance given by the Office of Legal Counsel regarding the interrogation of detainees.” Senior governmental officials were also excluded from the investigation and not a single survivor was interviewed.

In August 2012, the investigation was closed because, according to Attorney General Holder, “the admissible evidence would not be sufficient to obtain and sustain a conviction beyond a reasonable doubt.” The Department of Justice declined to prosecute. No one has been held accountable for the deaths.⁷

The family of one of the deceased, Gul Rahman, was never informed of the investigation. Indeed, the family has never even been officially notified of his death, and his body was never returned to them for a dignified burial.⁸

Following the publication of the SSCI Report, the ACLU, Human Rights Watch and Amnesty International renewed their earlier calls for the appointment of a special prosecutor, setting out

³ See Attorney General Eric Holder Regarding a Preliminary Review into the Interrogation of Certain Detainees, DEP’T JUST. NEWS (Aug. 24, 2009), <http://www.justice.gov/opa/speech/attorney-general-eric-holder-regarding-preliminary-review-interrogation-certain-detainees> .

⁴ See D.O.J. Office of Public Affairs, ‘Statement of the Attorney General Regarding Investigation into the Interrogation of Certain Detainees’ (June 30, 2011).

⁵ *Id.*

⁶ *Id.*

⁷ See D.O.J. Office of Public Affairs, ‘Statement of Attorney General Eric Holder on Closure of Investigation into the Interrogation of Certain Detainees’ (Aug. 30, 2012).

⁸ See Complaint, *Salim v. Mitchell*, No. 1500286-JLQ (EDWA October 13, 2015), ECF No. 1 at 72-73

the reasons why a criminal investigation is both appropriate in light of the SSCI Report, and necessary.⁹ Those calls have gone unanswered.

2. United States' Efforts to Prevent Civil Redress for Victims and Survivors of the CIA Torture Program

Some victims and survivors of the CIA torture program and their family members have sought redress in civil courts. Their attempts, however, have been repeatedly blocked by both the Bush and Obama administrations and the U.S. Congress.

The Department of Justice under both administrations has repeatedly invoked “state secrets” and immunity doctrines to shield government officials and government contractors from civil liability for their claims of forced disappearances, torture and cruel, inhuman or degrading treatment. Lower U.S. courts have largely acceded to these arguments and the U.S. Supreme Court has declined to review these rulings.¹⁰ As a result, victims, survivors and their families have been unable to secure redress, including apologies, restitution, and compensation for their rehabilitation in civil courts. Indeed, Department of Justice legal arguments, sanctioned by U.S. courts, have prevented any consideration of the merits of their claims.

The U.S. Congress has also sought to limit the scope of civil liability for forced disappearances, torture and other cruel, inhuman or degrading treatment of government officials and their agents in the Military Commissions Act, 2006 (“MCA”)¹¹. The MCA, section 7, prevents any U.S. court from considering any civil claims brought “against the United States or its agents relating to any aspect of the detention, transfer, treatment, trial, or conditions of confinement of an alien who is or was detained by the United States” as an “enemy combatant or is awaiting such determination.” The Department of Justice has successfully raised this statutory defense to successfully defeat claims brought by torture victims and survivors.¹²

The United States has also prevented victims’ and survivors’ attempts to secure redress at the international level, including before this Commission. For example, after the U.S. Supreme Court declined to review a U.S. appellate court’s decision dismissing his case on state secrets grounds, Khaled El-Masri, a victim and survivor of the RDI program, filed a petition with this Commission, *El Masri v. United States*. The Commission transmitted the petition to the

⁹ See ACLU & HRW, Letter to The Honorable Eric Holder, *Request for Appointment of a Special Prosecutor for Torture* (Dec. 22, 2014) available at <https://www.aclu.org/aclu-and-hrw-letter-doj-calling-appointment-special-prosecutor-torture>; ACLU, HRW & AI, Letter to The Honorable Loretta Lynch, *Request for the Appointment of a Special Prosecutor for Torture* (June 23, 2015) available at <https://www.aclu.org/letter/letter-attorney-general-lynch-requesting-special-prosecutor-torture>.

¹⁰ See e.g., *El Masri v. United States*, 479 F. 3d 296 (4th Cir. 2007) (dismissing claims of arbitrary detention, torture and other cruel, inhuman or degrading treatment because litigation of the case would be harmful to U.S. national security interests); *Arar v. Ashcroft*, 585 F. 3d 559 (2d Cir. 2009) declining to recognize a remedy under the U.S. Constitution for plaintiff’s unlawful rendition from the United States to torture in Syria because of the impact of doing so on U.S. relations with other nations and other national security interests.); Dorothy Samuels, *Certiorari Denied: Remembering the Roberts Court’s Shameful Abandonment of Torture Victims*, available at <https://www.brennancenter.org/blog/certiorari-denied-remembering-roberts-courts-shameful-abandonment-torture-victims>

¹¹ Military Commissions Act of 2006, 10 U.S.C. § 948-949 (2014)

¹² See e.g., *Janko v. Gates*, 741 F. 3d. 136 (D.C. Cir. 2014).

government for its consideration over seven years ago. The United States is yet to respond, despite repeated calls by the Commission to do so, and despite both the Senate and the CIA confirming his “wrongful detention” and U.S. involvement in Mr. El Masri’s forced disappearance, torture and cruel, inhuman or degrading treatment.¹³

Conclusion

While the United States’ public confirmation of its role in the CIA’s torture program is a welcome first step in accounting for the egregious violations of victims’ and survivors’ fundamental human rights, transparency alone is not accountability. Without holding torturers accountable and providing remedies and reparations, victims and survivors of the program, and society as a whole, cannot heal and move forward. Impunity for torture further compounds the harm caused to victims and survivors and damages the integrity of the U.S. and international justice systems and U.S. credibility in the international community. It also sends a dangerous message that the CIA and its contractors are exempt from the rule of law, and that there will be no consequences for abusive conduct in the future. As this Commission has long recognized, without accountability for the CIA torture program today, history will repeat itself.

¹³ See SSCI Report, Executive Summary, at 128-129; CIA Response to SSCI Report, at 45, 52.