

Human Rights Watch

Torture, Former Combatants, Political Prisoners, Terror Suspects, & Terrorists

<https://www.hrw.org/news/2014/12/13/cia-torturers-should-be-prosecuted>

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The primary international treaty against torture, the [Convention against Torture](#), which the United States [ratified in 1994](#), contains two key requirements. First, it bans torture, without exception, as well as other inhumane treatment. Second, it requires that torturers be prosecuted.

President Obama has been firm in stopping torture. On his second day in office, [he ordered](#) an end to the Bush administrations enhanced interrogation techniques a euphemism for torture and the closure of the secret CIA detention centers where torture was carried out.

But Obama has utterly failed in the second requirement. He has flatly refused to investigate the torture, let alone prosecute those responsible. The sole exception was a limited inquiry into any CIA interrogations that exceeded what was authorized, but even then the investigators didnt interview victims or recommend charges. The [Senate intelligence committee report](#) should lead the president to reexamine this refusal.

The explanation that Obama has offered for this lack of accountability is his desire to be [looking forward, not back](#). But the past inevitably informs the future. If Obama lets stand a precedent of impunity for so serious a crime as torture, he encourages future presidents to treat torture as a policy option when the next serious security threat inevitably arises. And he makes it far more difficult for the United States to use its influence around the world to seek prosecution of other torturers.

Part of Obamas reluctance was undoubtedly fear of how divisive prosecutions could be. Because prosecutions would likely include the senior Bush administration officials who approved the torture, their allies in Congress predictably would object and might raise obstacles to Obamas legislative agenda.

Obamas disinclination, however, has hardly won him a cooperative Congress. In other areas, such as immigration reform and environmental protection, the president has largely given up on finding common ground across the aisle and has started doing what he thinks is right whenever he has authority to act on his own. That same approach should lead him to stand on principle, U.S. law and the requirements of the Convention against Torture, and allow the investigation and prosecution of the Bush-era torturers.

Obama no doubt appreciates the difficulty of prosecuting torturers, given that the Bush Justice Departments Office of Legal Counsel had pronounced the abusive interrogations legal. The CIA argues that it would be unfair to prosecute its agents because it relied in good faith on this ruling.

But the Senate intelligence committee report showed that there was no good-faith reliance on counsel. It found that senior CIA officials knew from the start that they were torturing suspects and went shopping for legal protection. When the Justice Departments criminal division refused to rule out prosecution, the CIA went to more amenable officials in the White House and the Office of Legal Counsel to secure the notorious torture memos and a ruling that the enhanced interrogation techniques were not torture. Obama himself has recognized that they were. To make matters worse, the [CIA lied even to the lawyers preparing those memos](#), making arguments of good faith reliance all the more difficult to sustain.

As for the lawyers who opined in the torture memos, they were straining to justify the unjustifiable. In effect, they abused their office to provide legal cover for blatant illegality. While the front-line torturers may not have known about these legal shenanigans, senior officials at the CIA and White House clearly did. The American people have a strong interest in repudiating this kind of legal whitewashing of a crime.

Finally, Obama may be reluctant because he recalls the panic that many Americans felt after Sept. 11, 2001, and doesnt want to fault the CIA for its efforts to protect against further attacks. But as Obama himself has noted, people will say anything under torture. The Senate

report shows that, despite the CIAs desperate efforts to portray the torture as valuable, it produced little, if any, actionable intelligence while distracting investigators with false information. Meanwhile, as Obama has recognized, the torture tarnished the United States reputation, endangered U.S. troops overseas, undermined the rule of law and became a rallying cry for terrorist recruiters. Prosecuting the torturers is in Americas interest.

It is not too late for Obama to change his mind. Under federal law, there is no statute of limitations when torture foreseeably results in death or serious injury, as the CIAs brutal methods often did. The Senate intelligence committee report has offered all of us a chance to reassess this sorry chapter in U.S. history. The president should use it to reconsider, and reverse, his refusal to allow prosecution of these crimes.

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