

# Human Rights Watch

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

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Submission to the United Nations Committee against Torture

List of Issues Prior to Reporting United States

59<sup>th</sup> session (November-December 2016)

Human Rights Watch welcomes the opportunity to contribute to the *List of Issues Prior to Reporting* of the United States in preparation for its sixth periodic review. The issues raised below focus on US National Security.

### Investigation into Allegations of Torture

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Since the Committee issued its Concluding Observations on the combined third to fifth periodic reports of the United States of America on November 28, 2014 (Concluding Observations),<sup>[1]</sup> the United States released a redacted summary of a long-awaited Senate Intelligence Committee Study of the Central Intelligence Agency's detention and interrogation program (Senate Summary).<sup>[2]</sup> The Senate Summary corroborated information that nongovernmental organizations and the media had been reporting for years about the CIA program and disclosed new information about the programs brutality and illegality.<sup>[3]</sup> Though release of the Senate Summary was an important step toward increasing transparency regarding the US use of torture and other ill-treatment since the September 11, 2001 attacks, it also underscored the degree to which the US has failed to comply with central obligations under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

The US has not carried out adequate investigations into those responsible for authorizing or implementing the CIA program or into those who engaged in acts even beyond the illegal enhanced interrogation techniques that were authorized. In December 2015, Human Rights Watch extensively documented and analyzed the inadequacies of prior US investigations into CIA torture, challenging claims that that it was not legally possible for the Justice Department to prosecute.<sup>[4]</sup> We incorporated that analysis into our March 1, 2016 submission to the Committee assessing the US response to the Committee's request for follow-up information pertaining to several recommendations in the Concluding Observations.<sup>[5]</sup> Since then, in response to Freedom of Information Act requests, the CIA released more information about the CIA program that disclosed further details about the programs cruelty and illegality.<sup>[6]</sup>

### Recommended Questions to the US

#### Redress

The United States is under an obligation to provide victims of torture with the ability to obtain redress, compensation and rehabilitation. In its last periodic report, the United States stated that a wide range of civil remedies exist for victims of torture to obtain rights relevant to the Convention.<sup>[7]</sup> Yet, not one former detainee who was in CIA custody has been able to enforce this right to a remedy in US court.<sup>[8]</sup> In April, the Justice Department did not invoke the state secrets privilege for the first time in a suit brought by former detainees for harm suffered while held by CIA.<sup>[9]</sup> But that suit involves only three plaintiffs, while scores of men held in the CIA program were tortured and ill-treated. Some of these men remain in US custody and are allegedly not receiving adequate medical and psychological care.<sup>[10]</sup> Many others are now out of US custody, were never charged by the US with any crime, and are trying with great difficulty due to the trauma and injuries sustained in prolonged CIA incommunicado detention to rebuild their lives.

### Recommended Questions to the US:

#### Renditions to Torture

The CIA Rendition, Detention and Interrogation (RDI) program was not fully addressed in the Senate Summary. The Summary lists only the names of 119 individuals it considers to be detainees in that there was clear evidence of detention in CIA custody.<sup>[11]</sup> Left off the list are an unknown number of individuals whom the CIA unlawfully rendered to countries where it was known or recognized as likely that they would be tortured, whether as part of as part of their interrogation or as punishment.<sup>[12]</sup> Many of those rendered described being held by the CIA or by another government with the CIA's cooperation, either before or after their transfer.

### Recommended Questions to the US:

#### Accountability for Military Abuses

The US government provided information to the Committee that the United States has conducted thousands of investigations since 2001, and prosecuted or disciplined hundreds of service members for mistreatment of detainees and other misconduct.<sup>[13]</sup> In its Follow-up Report to the Committee in November 2015, the US stated that the US Armed Forces conduct prompt and independent investigations into all credible allegations concerning mistreatment of detainees and that courts martial are a matter of public record.<sup>[14]</sup> It states that the records can be viewed at a website provided. However, the website listed does not provide any information about courts martial that have taken place. Rather it is a 2008 document that lays out the procedures for determining when the Justice Department will have jurisdiction over certain matters.<sup>[15]</sup>

To the best of our knowledge, credible allegations of torture against detainees in US military custody abroad have not been sufficiently investigated, prosecuted or punished. In 2006 Human Rights Watch, The Center for Human Rights and Global Justice at New York University Law School, and Human Rights First jointly published *By the Numbers: Findings of the Detainee Abuse and Accountability Project*.<sup>[16]</sup> The report assessed that, as of April 10, 2006, approximately 600 US personnel were implicated in detainee abuse. Of these, 79 were recommended for courts martial and 64 appeared to actually have been court martialled. Ten courts martial were pending and five appeared to have been dropped at the time the report was published. Of the 64 courts martial, 54 resulted in guilty verdicts on at least one charge.<sup>[17]</sup>

A more recent summary assembled by the Constitution Projects Task Force on Detainee Treatment includes some of the same information on detainee abuse cases handled by the US military but also includes information on roughly 10 new cases completed since 2006.[\[18\]](#)

#### **Recommended Questions for the US:**

[\[1\]](#) UN Committee against Torture, Concluding observations on the third to fifth periodic reports of United States of

America, November 20, 2014, (CAT/C/SR. 1276 and 1277), <http://justsecurity.org/wp-content/uploads/2014/11/UNCommittee-Against-Torture-Concluding-Observations-United-States.pdf> (accessed June 24, 2016).

[\[2\]](#) US Senate, Select Committee on Intelligence, Committee Study of the Central Intelligence Agency's Detention and Interrogation Program, December 13, 2012, updated April 3, 2014, released December 9, 2014, [http://fas.org/irp/congress/2014\\_rpt/ssci-rdi.pdf](http://fas.org/irp/congress/2014_rpt/ssci-rdi.pdf) (accessed June 24, 2016).

[\[3\]](#) US: Senate Report Slams CIA Torture, Lies, Human Rights Watch news release, December 10, 2014 <https://www.hrw.org/news/2014/12/10/us-senate-report-slams-cia-torture-lies>.

[\[4\]](#) Human Rights Watch, *No More Excuses: A Roadmap to Justice for CIA Torture*, December 1, 2015, <https://www.hrw.org/report/2015/12/01/nomoreexcuses/roadmapjusticeciatorture>.

[\[5\]](#) Submission to the United Nations Committee against Torture: Follow-up Assessment Report, March 1, 2016, Human Rights Watch and the American Civil Liberties Union, <https://www.hrw.org/news/2016/03/01/submission-united-nations-committee-against-torture>.

[\[6\]](#) Greg Miller, Karen DeYoung and Julie Tate, Newly Released CIA Files Expose Grim Details of Agency Interrogation program, *Washington Post*, June 14, 2016, [https://www.washingtonpost.com/world/national-security/newly-released-cia-files-expose-grim-details-of-agency-interrogation-program/2016/06/14/6d04a01e-326a-11e6-95c0-2a6873031302\\_story.html](https://www.washingtonpost.com/world/national-security/newly-released-cia-files-expose-grim-details-of-agency-interrogation-program/2016/06/14/6d04a01e-326a-11e6-95c0-2a6873031302_story.html) (accessed June 24, 2016); Charlie Savage, Detainees Describe C.I.A. Torture in Declassified Transcripts, *New York Times*, June 15, 2016, <http://www.nytimes.com/2016/06/16/world/detainees-describe-cia-torture-in-declassified-transcripts.html?ref=topics&r=0> (accessed June 24, 2016); Human Rights Watch, Letter to President Obama re: CIA Torture, June 16, 2016, <https://www.hrw.org/news/2016/06/16/letter-president-obama-re-cia-torture>

[\[7\]](#) US State Department, US Government, Consideration of reports submitted by States parties under article 19 of the Convention pursuant to the optional reporting procedure, Third to fifth periodic reports of States parties due in 2011, CAT/C/USA/3-5, <http://www.state.gov/documents/organization/213267.pdf> (accessed June 27, 2016), para. 147.

[\[8\]](#) *No More Excuses*, pp. 100-104.

[\[9\]](#) Laura Pitter (Human Rights Watch), Dispatches: An Opening for Justice for CIA Torture, April 27, 2016, <https://www.hrw.org/news/2016/04/27/dispatches-opening-justice-cia-torture>.

[\[10\]](#) Letter from NYU Program for Survivors of Torture, Physicians for Human, and Center for Victims of Torture Rights to US Senators, June 6, 2016, [http://www.cvt.org/sites/cvt.org/files/attachments/u101/downloads/Indefinite%20Detention%20Medical%20Consequences%20Letter\\_June%206%202016%20%282%29.pdf](http://www.cvt.org/sites/cvt.org/files/attachments/u101/downloads/Indefinite%20Detention%20Medical%20Consequences%20Letter_June%206%202016%20%282%29.pdf); Vincent Iacopino, Stephen N. Xenakis, Neglect of Medical Evidence of Torture in Guantanamo Bay: A Case Series, *PLOS Medicine*, April 2011, Volume 8, Issue 4, e1001027, <http://journals.plos.org/plosmedicine/article?id=10.1371/journal.pmed.1001027> (accessed June 24, 2016); and Transcript of testimony in *US v. al-Nashiri*, April 27, 2014, pp. 4236, line 19 4238, line 11 wherein Dr. 97 testifies during Guantanamo Bay military commission proceedings that he had never asked Abd al Rahim al-Nashiri, who had been tortured by the CIA, about his past traumatic experiences, and that there was no evidence in al-Nashiri's medical records that anyone had ever taken a history, [http://www.mc.mil/Portals/0/pdfs/alNashiri2/AI%20Nashiri%20II%20\(TRANS27April2014-AM2\).pdf](http://www.mc.mil/Portals/0/pdfs/alNashiri2/AI%20Nashiri%20II%20(TRANS27April2014-AM2).pdf) (accessed June 24, 2016). Cite also to: [http://www.amnestyusa.org/pdfs/HawsawiLetter\\_Feb2016.pdf](http://www.amnestyusa.org/pdfs/HawsawiLetter_Feb2016.pdf)

[\[11\]](#) Senate Summary, p. 14, n. 26

[\[12\]](#) Globalizing Torture: CIA Secret Detention and Extraordinary Rendition, Open Society Justice Initiative, February 2013, <https://www.opensocietyfoundations.org/sites/default/files/globalizing-torture-20120205.pdf> (accessed June 27, 2016) (this report provides the names of a number of individuals subjected to unlawful renditions but not named in the Senate Summary). See also Human Rights Watch, *Delivered Into Enemy Hands: US-Led Abuse and Rendition of Opponents to Gaddafi's Libya*, September 2012, [https://www.hrw.org/sites/default/files/reports/libya0912webwcover\\_1.pdf](https://www.hrw.org/sites/default/files/reports/libya0912webwcover_1.pdf) (the report provides extensive detail on the cases of a number of Libyan nationals unlawfully rendered by the US who are not mentioned in the Senate Summary).

[\[13\]](#) UN Committee against Torture, Concluding observations on the third to fifth periodic reports of United States of America (Concluding Observations), November 20, 2014, (CAT/C/SR. 1276 and 1277) [http://www.ushrnetwork.org/sites/ushrnetwork.org/files/cat\\_us\\_concluding\\_observations\\_2014.pdf](http://www.ushrnetwork.org/sites/ushrnetwork.org/files/cat_us_concluding_observations_2014.pdf) (accessed June 16, 2016), para. 13.

[\[14\]](#) US State Department, One-Year Follow-up Response of the United States of America to Recommendations of the Committee against Torture on its Combined Third to Fifth Periodic Reports on Implementation of the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (US Follow-up Report), November 27, 2015, <http://www.state.gov/j/drl/rls/250342.htm> (accessed February 19, 2016), para 21 .

[\[15\]](#) US Follow-up Report, para. 21, citing to Memorandum for Secretaries of the Military Departments Chairman of the Joint Chiefs of Staff Undersecretaries of Defense Commanders of the Combatant Commands, March 10, 2008, <https://fas.org/irp/doddir/dod/dtm-08-009.pdf> (accessed February 20, 2016). Human Rights Watch placed numerous calls to the State Department February 16-19, 2016 to try to find out if this was the document it meant to cite. The response we received was that someone was looking into it. However, despite our follow-ups, we never received a response

[\[16\]](#) Human Rights Watch, *By the Numbers: Findings of the Detainee Abuse and Accountability Project, Volume 18, No. 2(G)*, April 2006, <https://www.hrw.org/sites/default/files/reports/ct0406webwcover.pdf>.

[\[17\]](#) *By the Numbers*, p. 9. (Forty of these verdicts resulted in prison time, 30 of which were for terms of less than one year. The remaining 10 individuals sentenced to prison times of more than one year received sentences ranging from one year to one instance of life imprisonment).

[\[18\]](#) See Constitution Projects Task Force on Detainee Treatment, April 2013, <http://detainee-taskforce.org/resources/alleged-wrongful-conduct-charges/> (accessed June 24, 2016).

United States Deportation Policies Expose Salvadorans to Death and Abuse

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