

# Human Rights Watch

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

<https://www.hrw.org/news/2010/12/03/time-clean-house-torture>

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In the already sordid annals of US torture in the name of countering terrorism, November proved to be an unusually embarrassing month - not just for the Bush administration, which sanctioned the abuses, but also for the Obama administration, which has failed to hold its predecessors accountable.

First, former President George W Bush boasted in his new memoir and on talkshows how he had authorised waterboarding, a form of torture. Then, a US special prosecutor announced that he will not pursue criminal charges against CIA officers for intentional destruction of videotapes that reportedly show two terrorism suspects being waterboarded in one of its secret prisons in Thailand in 2002. Now, classified diplomatic cables newly released by WikiLeaks confirm that both the Obama and Bush administrations sought to quash criminal investigations in Europe into illegal counterterrorism activities such as kidnapping and torture by Bush-era officials.

In Spain, US diplomats in April 2009 joined with a pair of Republican members of the US Congress to urge a Spanish prosecutor, as well as officials with Spain's justice ministry and foreign affairs ministry, to drop a potentially landmark investigation against six top Bush administration officials, the cables show. The Spanish probe sought to indict former Attorney General Alberto Gonzalez and five other Bush administration officials for creating the legal framework to justify the use of torture and other coercive interrogation techniques. The case "would have an enormous impact on the bilateral relationship" between Spain and the US, the Americans warned, according to one cable. Immediately following those meetings, Spain's attorney general recommended dropping the investigation, which has foundered ever since.

In Germany, other classified cables show, a US diplomat in 2007 warned Berlin that issuing international arrest warrants for CIA agents involved in the abduction and mistreatment of an innocent German citizen "would have a negative impact" on US-German relations. In 2003, the CIA abducted Khaled el-Masri, an unemployed German car salesman who was vacationing in Macedonia, and allegedly beat him and secretly flew him to a prison in Afghanistan. There, he was again beaten, he said, and held for months in solitary confinement. The CIA thought el-Masri was a similarly named al-Qaida member.

Nearly two months after determining they were holding the wrong man, and five months after his abduction, US officials arranged to have el-Masri dumped on a remote road in Albania. A German prosecutor issued arrest warrants for the suspected CIA agents in 2007, but the country's justice ministry did not pursue them.

These cables made few headlines in the US. Nearly a decade after President Bush launched his "war on terror", acts such as a former chief executive's unrepentant admission of torture, the CIA's destruction of evidence with impunity, and diplomatic efforts to subvert justice no longer hold much shock value. The humiliating snapshots from Abu Ghraib are already part of the nation's collective memory. The public has read of fatal beatings of suspects in Afghanistan and questionable detainee deaths at Guantanamo. It has been inundated with the so-called "torture memos", in which President Bush's top justice department officials justified waterboarding and other coercive interrogation methods that had long been prohibited under US and international law.

But public weariness does not make the legal case against Bush administration officials less compelling. Indeed, every new piece of evidence underscores the need for the Obama administration to conduct a full-scale criminal investigation into senior-level responsibility for planning, authorising and ordering torture and other abuses committed in the aftermath of 11 September 2001. In the case of the CIA-linked abduction and ill-treatment of el-Masri, and the probe into the architects of President Bush's torture policy, Germany and Spain should do the same.

Despite his welcome ban on torture and secret prisons, President Obama has shown scant enthusiasm for prosecuting such crimes. John Durham - the same special prosecutor who declined to pursue charges for the destruction of the CIA tapes - is conducting a broader investigation into abusive interrogation methods. But the Obama administration has made clear that the scope is limited to "unauthorised" acts. That means it will not prosecute CIA agents who committed abuses authorised by Bush's top justice department lawyers, even if the abuses violated domestic and international law. It also means there is little hope that these former justice department

officials will be investigated, let alone prosecuted, for concocting a legal rationale for these blatantly illegal acts, or that President Bush and other senior officials will be held accountable for criminal offences justified by this dubious legal advice.

While the Obama administration buries its head in the sand and pressures Europe to do the same, some European countries have, nevertheless, taken a few important steps towards accountability for abusive counterterrorism actions. In 2009, Italy convicted 23 Americans in absentia, most of them CIA agents, for kidnapping a Muslim cleric from the streets of Milan in 2003. (The Obama administration criticised the ruling.) In Spain, in addition to prosecutors seeking indictments against the six legal architects of President Bush's torture policy, they also asked a judge last spring to issue an arrest warrant for the 13 CIA agents implicated in the kidnapping and rendition of el-Masri. The agents allegedly entered Spain using false documents.

President Obama justifies his reluctance to investigate Bush administration officials by saying that the country needs to "look forward and not backwards". Yet, he admitted the fallacy of that attitude during an interview in March 2010 in a reference to Indonesia, a country with its own history of abuses. "We have to acknowledge that those past human rights abuses existed," President Obama said of the regime of former Indonesian President Suharto, a US ally. "We can't go forward without looking backwards."

If the US hopes to exert any moral authority over abusive regimes past and present, it is incumbent on President Obama to heed his own advice, rather than merely preach it to the rest of the world.

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