

Responding to U.S. Abuses in the “War on Terror”

Since September 11, 2001, the United States government has authorized and carried out policies in pursuit of its “war on terror” that have led to the systematic abuse of human rights. Abuses include torture, arbitrary detention, secret movement of prisoners, widespread domestic surveillance and unlawful attacks on civilians in Iraq and Afghanistan. In defending those actions, government and military officials have reinterpreted and ignored applicable legal standards, and shielded themselves from responsibility for their actions. To ensure that such abuses cease, restore the rule of law and rescue U.S. credibility as a rights-respecting nation, the United States must create a culture of accountability for the past.

ACCOUNTABILITY MEASURES

The International Center for Transitional Justice (ICTJ) has helped governments and civil society in over 30 countries pursue accountability for past human rights abuse. Our experience is that understanding and dealing with the past are necessary steps toward establishing accountability and guaranteeing the respect for rights in the future.

A range of complementary measures will be needed to address the complex consequences of abuses committed during the U.S. “war on terror.” They should include independent investigations, public disclosure of the truth, prosecutions of those responsible for abuses, and redress for victims of serious harms. Without this attention to the past, the United States will be haunted by a legacy of impunity for decades to come. A policy that respects the rule of law will enhance, not inhibit, the effectiveness of the U.S. fight against terror, and will demonstrate that no one is above the law.

Ending abuses: The administration of President Barack Obama should disavow the policies that promote or allow human rights abuses and dismantle the apparatus that made the abuses possible. Important steps include:

- Ordering an end to policies that allowed torture and cruel, inhuman and degrading treatment; closing secret detention centers and ending detainee transfers to countries where torture is practiced.
- Providing the International Committee of the Red Cross immediate access to all detainees.
- Closing the Guantanamo Bay prison and making safe, secure and fair arrangements for the trial or release and resettlement of remaining detainees.
- Rejecting legal opinions that do not uphold domestic laws and international treaties.

ABU GHRAIB: THE TIP OF THE ICEBERG

After photographs of detainee abuse at Abu Ghraib prison in Iraq were made public in 2004, the U.S. Department of Defense and other government agencies commissioned 13 investigations, none of them by independent agencies. Eleven lower-ranking soldiers who worked in the prison were tried in military courts. Only a few received greater than nominal sentences, and the only commanding officer who faced prosecution was acquitted. The prosecutions focused on soldiers depicted in the publicized photographs, while the full extent of abuses at Abu Ghraib and other prisons throughout Iraq and Afghanistan has yet to be brought to light. Despite ample evidence, no one has been prosecuted for mistreatment of prisoners held at Guantánamo Bay, Cuba. The U.S. government has vigorously opposed civil lawsuits on behalf of victims of U.S. policies. Only after seven years of litigation did the Supreme Court force the U.S. government to allow habeas corpus cases on behalf of prisoners held without charge.

Protecting evidence: Evidence of abuses and the policies that led to them must be safeguarded, declassified and disclosed.

- Government agencies involved in counter-terrorism should review and declassify their files to the maximum extent possible.
- Legal opinions justifying abusive practices should be declassified immediately.

Truth-seeking: The new administration should launch a full inquiry into the nature and extent of abuses in the “war on terror,” identifying their causes and consequences and the individuals and institutions responsible for them.

- The inquiry must be timely, transparent, comprehensive and objective, and its findings must be made public.
- Victims of abuse, family members and witnesses should be heard.
- A commission of inquiry could make recommendations for further investigation; criminal prosecutions; policy, legal and institutional reforms; and reparations for victims of serious abuse.

Criminal prosecutions: The Attorney General should review ongoing investigations, as well as past and present allegations of serious crimes. Prosecutions should be initiated where there is sufficient evidence of serious criminal conduct. An independent prosecutor may be required in order to avoid potential conflicts of interest.

- Criminal charges should be explored not only in connection with detention and interrogation policy, but with the wider range of actions involved in counter-terrorism.
- Crimes should be dealt with by domestic courts as appropriate.
- The government should cooperate with other nations or international bodies investigating related crimes.

Protecting victims: Victims of serious violations should have equal and effective access to justice, appropriate remedies and information about what happened.

- Reparations may involve compensation, rehabilitation, acknowledgment of violations and harm caused, and other forms of redress.
- Condolence or Foreign Claims Act payments may be used to provide immediate assistance to victims, but must not be used to silence victims or suppress facts about abuses.
- Victims of abuses should not be neglected during prosecutions or investigations.

The abuse of detainees in U.S. custody cannot simply be attributed to the actions of ‘a few bad apples’ acting on their own. The fact is that senior officials in the United States government solicited information on how to use aggressive techniques, redefined the law to create the appearance of their legality, and authorized their use against detainees.

– Senate Armed Services
Committee Inquiry into the
Treatment of Detainees in
U.S. Custody, Dec. 11, 2008

THE U.S. ACCOUNTABILITY PROJECT

In 2007 ICTJ initiated its U.S. Accountability Project. ICTJ first reviewed the range of serious violations of human rights and international humanitarian law that had been reported and then assessed the existence and extent of an “accountability gap.”

Since June 2008 ICTJ has developed policy advice on accountability that is grounded in practical experience and international standards and attuned to the political realities of the United States. The advice is focused

on a series of measures—commissions of inquiry, prosecutions, reparations, and security system reform—that are important mechanisms for instituting accountability.

ICTJ’s research and policy advice is aimed at giving the incoming administration and U.S. advocacy groups a greater understanding of possible policy choices, including their benefits and risks. ICTJ continues to work with key colleague organizations to advocate for appropriate accountability policies.

2009