



The  
CENTER for  
VICTIMS of  
TORTURE

**THE CENTER FOR VICTIMS OF TORTURE POLICY  
REPORT:  
U.S. BI-PARTISAN LEADERSHIP AGAINST TORTURE**

**25TH ANNIVERSARY OF PRESIDENT RONALD REAGAN SIGNING THE CONVENTION  
AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT  
OR PUNISHMENT**

**APRIL 2013**

The Center for Victims of Torture is an international non-governmental organization  
with offices in Minnesota, Washington, D.C., Africa and the Middle East

*“It is my sincerest hope that we Americans, for all of our many disagreements, can nonetheless manage to agree that torture ... is unworthy of our national honor and should no longer be a matter for discussion. It is my hope that we can reach a consensus in this country that we will never again engage in these horrific abuses, and that the mere suggestion of doing so should be ruled out of our political discourse, regardless of which party holds power.”*

– Senator John McCain. December 2012

## INTRODUCTION

On April 18, 1988, the United States signed the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“Convention Against Torture” or “Convention” or “CAT”). President Ronald Reagan, upon transmitting the Convention to the Senate for advice and consent, stated that the Convention “marks a significant step in the development during this century of international measures against torture and other inhuman treatment or punishment.... Ratification of the Convention by the United States will clearly express United States opposition to torture, an abhorrent practice unfortunately still prevalent in the world today.”<sup>1</sup>

Twenty-five years later, this strong, public opposition in the United States to torture has been clouded by U.S. policies that authorized the use of torture and cruelty in counterterrorism operations following the terrorist attacks on September 11, 2001.

These policies have severely damaged U.S. national security and foreign policy interests – compromising international cooperation and support from allied nations. The country’s credibility as a human rights leader was also seriously harmed. Government officials, human

rights advocates and defenders, who were part of the international movement to end torture, felt that they lost a critical ally. As a Republican Senator in 2008, Secretary of Defense Chuck Hagel warned, “[I]n our effort to protect the nation, we must remember our greatest strength: the principles of human rights that we have upheld throughout our country’s wars and conflicts. It is vital that the world can trust what we say and have confidence in what we do. There must be no doubt that this great nation does not torture.”<sup>2</sup>

*“Ratification of the Convention by the United States will clearly express United States opposition to torture, an abhorrent practice unfortunately still prevalent in the world today.”*

– President Ronald Reagan

Damage was also done at home as fear and misinformation began dominating public discourse. The public perception of torture and its horrors began to shift and that “clear opposition to torture,” President Reagan spoke of in 1988, dwindled. Today, U.S. public polling shows a majority of Americans are in favor of torture.<sup>3</sup> It also shows that Americans are

“more pro-waterboarding, pro-threatening prisoners with dogs, pro-religious humiliation, and pro-forcing prisoners to remain naked and chained in uncomfortable positions in cold rooms.”<sup>4</sup> Moreover, when the U.S. media uses misleading euphemisms for torture, like “enhanced interrogation,” public opposition to torture decreases.<sup>5</sup>

Torture’s efficacy continues to be debated, oftentimes in partisan terms. Despite evidence to the contrary, some policymakers and politicians argue that the [past illegal] policies of torture and abuse employed under the Bush Administration were necessary to save lives and that the discontinuance of those harsh tactics has made the United States less safe. This on-going political debate has eroded the once unified, non-partisan opposition to torture that existed before 9/11.

As an international rehabilitation center that has extended care to nearly 24,000 survivors of torture and severe war-related atrocities from around the world, the Center for Victims of Torture (CVT) has a unique, first-hand insight into the ways in which the U.S. decision to engage in torture and abuse had serious ramifications for the anti-torture movement and survivors’ healing worldwide.

When U.S. attention became gripped by counterterrorism concerns, the obligations to which our nation committed itself in decades past faded into the background of our leaders’ consciousness. But the duties to which the United States pledged itself—and the enduring significance of those duties—did not vanish. Departure from these obligations during moments of supposed necessity is not permitted.

Article 2 of the CAT plainly reads: “No exceptional circumstances whatsoever, whether a state of war or a threat or war, internal political instability or any other public emergency, may be invoked as a justification of torture.”

On January 22, 2009, the United States turned a page when President Obama signed an Executive Order banning torture and cruelty. We took a step away from the brutal tactics that had marked the nation’s counterterrorism practices over the previous eight years. But significant work remains.

*“No exceptional circumstances whatsoever, whether a state of war or a threat or war, internal political instability or any other public emergency, may be invoked as a justification of torture.”*

*– Convention Against Torture,  
Article 2.*

If the United States is to regain global leadership against torture, a full and public accounting of how U.S. government policies and practices failed to conform to our legal and moral obligations underpinning the Convention Against Torture – a Convention championed by the United States twenty-five years ago with strong bi-partisan support - is required.

### **BI-PARTISAN OPPOSITION OF TORTURE AND SUPPORT FOR CAT**

A 1984 bipartisan joint resolution in Congress states, “The United States Government opposes acts of torture wherever they occur, without regard to ideological or regional considerations, and will make every effort to work cooperatively with other governments and with nongovernmental organizations to combat the practice of torture worldwide.”<sup>6</sup> Critical to combating torture—as recognized by President Reagan in his CAT signing statement and reaffirmed by President Clinton when he signed legislation criminalizing torture into U.S. law—are domestic and international efforts to ban

torture and hold perpetrators accountable. From the years of the Reagan Administration to those of the George H.W. Bush and Clinton Administrations, U.S. Presidential and Congressional leadership shared a unified opposition to torture and bipartisan support for the CAT.

### **NEGOTIATION AND SIGNING OF CAT: REAGAN ADMINISTRATION**

The United States actively participated in the preparation and negotiation of the Convention. During 1978-1984, the United States was one of 53 members of the UN Commission tasked with preparing the treaty.<sup>7</sup> The preparatory work of the Convention shows the United States' active role in submitting proposals and negotiating text for the Convention.<sup>8</sup> **President Reagan** celebrated the active and effective role of the United States in the Convention's negotiations.<sup>9</sup>

*“The core provisions of the Convention establish a regime for international cooperation in the criminal prosecution of torturers relying on so-called ‘universal jurisdiction.’”*

*– President Ronald Reagan*

Similarly, **U.S. Secretary of State George Schultz** noted that the United States “contributed significantly to the development of the final Convention, especially in proposing that [it] focus on torture, rather than on other relatively less abhorrent practices.”<sup>10</sup> According to the Senate Foreign Relations Committee report, the United States also “strengthen[ed] the effectiveness of the Convention by pressing for provisions that would ensure that torture is a punishable offense.”<sup>11</sup>

In fact, the United States was a strong supporter of the principle of universal jurisdiction – which requires each State Party either to prosecute torturers who are found in its territory or to extradite them to other countries for prosecution. In his transmission to the Senate, **President Reagan** emphasized, “The core provisions of the Convention establish a regime for international cooperation in the criminal prosecution of torturers relying on so-called ‘universal jurisdiction.’”<sup>12</sup> As **Secretary of State Schultz** noted, the purpose of this provision was “to prevent a loophole that would create potential safe-havens for torturers.”<sup>13</sup>

Three years after the Convention was adopted by the United Nations, **John C. Whitehead**, Deputy Secretary of State in the Reagan Administration, signed the Convention on April 18, 1988.<sup>14</sup> One month later, **President Reagan** transmitted the Convention to the Senate for ratification stating, “By giving its advice and consent to ratification of this Convention, the Senate of the United States will demonstrate unequivocally our desire to bring an end to the abhorrent practice of torture.”<sup>15</sup>

### **RATIFICATION OF CAT: GEORGE H.W. BUSH ADMINISTRATION AND BI-PARTISAN CONGRESSIONAL SUPPORT**

While the Convention was submitted to the Senate under the Reagan Administration, it was under the leadership of **George H.W. Bush** that the Convention was ratified in 1990. Upon taking office, the Bush Administration declared that the Convention Against Torture was a matter for which there is an “urgent need for Senate approval.”<sup>16</sup>

To that end, the Bush Administration worked with interested stakeholders and critics of the original proposed package to strengthen the protections provided individuals under the Convention and to solidify the absolute ban on torture by ensuring the United States would not

accept any justifications for torture. Specifically, the Bush Administration substantially reduced and revised the reservations, understandings, and declarations in order to address concerns that the original package could be interpreted to raise “the threshold of pain that an individual must suffer” and permit “certain circumstances and justifications for torture.”<sup>17</sup>

On January 30, 1990, the **Senate Foreign Relations Committee**, including then **Senators Joe Biden and John Kerry**, voted 10 to 0 (all Democratic Senators) to recommend approval of the Convention by the entire Senate.<sup>18</sup> In the Committee report on the Convention, the Senators noted that the Convention is a “major step forward in the international community’s efforts to eliminate torture and other cruel, inhuman or degrading treatment or punishment.” It “...takes a comprehensive approach to the problem of combating torture. ... and that “[t]he strength of the Convention lies in the obligation of States Parties to make torture a crime and to prosecute or extradite alleged torturers found in their territory.”<sup>19</sup>

*“We believe that prompt ratification of the convention will demonstrate the abhorrence of our Nation toward torture, and encourage more widespread prompt ratification of the convention among the community of nations.”*

*– Republican Senators of Foreign Relations Committee*

Although the nine **Republican members of the Committee** were not present for the vote and criticized the chairman for taking a vote in their absence, they also went out of their way to issue a written statement expressing their strong support for the Convention. They stated,

“We believe that prompt ratification of the convention will demonstrate the abhorrence of our Nation toward torture, and encourage more widespread prompt ratification of the convention among the community of nations.” They went on to say, “The absence of Republican members in no way reflects a lack of support for the convention. Indeed, the Convention Against Torture was negotiated with bipartisan support.”<sup>20</sup>

Working with **Republican Senator Jesse Helms**, **Democratic Senator Claiborne Pell** introduced the Convention with four amendments to the full Senate. On October 27, 1990, the Senate approved the Convention for ratification.

### **IMPLEMENTING LEGISLATION: CLINTON ADMINISTRATION AND BI-PARTISAN SUPPORT OF CONGRESS**

Before U.S. ratification of the Convention could be submitted to the United Nations, the United States had to adopt implementing legislation. **President George H.W. Bush** proposed implementing legislation that he said “would provide a tougher and more effective response to the problem, putting in place for torturers the same international ‘extradite or prosecute’ regime we have for terrorists.”<sup>21</sup>

On April 30, 1994, the required implementing legislation passed Congress with bi-partisan support and was signed into law by **President Clinton**.<sup>22</sup>

### **AFTERMATH OF 9/11 ATTACKS: BREAK IN AND DAMAGE TO U.S. LEADERSHIP AGAINST TORTURE**

Given the firm and non-partisan opposition to torture, the history of true bi-partisan support of the Convention Against Torture and U.S. leadership in combatting torture globally, the decision made under the administration of

George W. Bush to authorize and implement a policy of torture and cruelty in its counter-terrorism efforts post-9/11 was an uncharacteristic break with long-standing U.S. commitments.

In the aftermath of the 9/11 attacks, the U.S. government made a range of illegal and unwise decisions that led to the widespread and systematic use of torture and cruelty in U.S. detention facilities in Iraq, Guantanamo, Afghanistan and secret prisons around the world. From the decision that the Geneva Conventions – which require humane treatment of detainees in times of war – did not apply to al Qaeda and Taliban prisoners in Guantanamo or Afghanistan, to the decision to authorize the CIA to employ interrogation tactics constituting torture and cruelty in so-called “black sites,” to the message given to U.S. troops by then Secretary of Defense Donald Rumsfeld to “take the gloves off,” senior officials of U.S. government sanctioned detention and interrogation policies that violated U.S. law and international legal obligations prohibiting torture and cruelty.

Moreover, a series of legal memoranda contorted the law and ignored well-established legal precedent- “failing to provide ‘thorough, candid, and objective’ analysis” – in order to provide a legal cover to tactics constituting torture and cruelty.<sup>23</sup>

The **Senate Armed Services Committee** found: “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.”<sup>24</sup> The results were costly. U.S. actions damaged relationships with close allies. U.S. standing with world leaders and with citizens of strategically important nations plummeted. As the Senate Armed Services Committee stated, “Those efforts

damaged our ability to collect accurate intelligence that could save lives, strengthened the hand of our enemies, and compromised our moral authority.”<sup>25</sup>

### WHY U.S. GLOBAL LEADERSHIP TO COMBAT TORTURE MATTERS

The United States, as a democratic society that respects the rule of law, has an interest in abiding by its legal obligation under both international and domestic law to uphold the absolute prohibition against torture. Additionally, the United States has both a foreign policy and national security interest in being a global leader on human rights generally, and a leader in combatting torture specifically. Generally, U.S. global leadership on human rights promotes good will and cooperation from allies and world citizens in furtherance of U.S. interests. More specifically, U.S. leadership on combatting torture helps to build democratic societies and institutions abroad – where often, torture is used to repress and destroy democratic freedoms. Additionally, because of the U.S. economic, military and political power on the world stage, U.S. global leadership against torture has serious ramifications for the torture movement and survivors’ healing worldwide.

### INTERNATIONAL AND U.S. DOMESTIC LEGAL OBLIGATIONS

The absolute prohibition against torture is a universally recognized legal obligation under international law from which no exception is ever permitted. In addition to the Convention Against Torture, torture is unequivocally banned under the Universal Declaration of Human Rights,<sup>26</sup> International Covenant on Civil and Political Rights,<sup>27</sup> Geneva Conventions,<sup>28</sup> and in every regional human rights treaty.<sup>29</sup> Indeed, the prohibition against torture is well established under customary international law



as a legal norm in which no country can derogate.<sup>30</sup>

Torture is also banned under U.S. law under the federal Anti-Torture Act,<sup>31</sup> the War Crimes Act,<sup>32</sup> and the Detainee Treatment Act.<sup>33</sup> Torture also violates rights established under the U.S. Constitution, including the Eighth Amendment's right to be free of cruel or unusual punishment.<sup>34</sup>

As the U.S. Assistant Secretary of State for Democracy, Human Rights, and Labor, **Harold Koh**, testified to a United Nations committee: "Torture is prohibited by law throughout the United States. It is categorically denounced as a matter of policy and as a tool of state authority. In every instance, torture is a criminal offense. No official of the government—federal, state, or local, civilian or military—is authorized to commit or to instruct anyone else to commit torture. Nor may any official condone or tolerate torture in any form. No exceptional circumstances may be invoked as a justification for torture."<sup>35</sup>

The United States has long embraced the principles and values underpinning democratic societies such as justice, fairness and individual rights. Enforcing and upholding the rule of law is an essential pillar of democracy. The U.S., therefore, should embrace its international and domestic obligations to prohibit torture. As **Koh** wrote in 2008, "Official cruelty has long been considered both illegal and abhorrent to our values and constitutional traditions. The commitment to due process and the ban against cruel and unusual punishment are legal principles of the highest significance in American life."<sup>36</sup>

Furthermore, international treaties are a practical step toward creating international cooperation and consensus toward a more stable world. Reducing risk and creating a more manageable global community are in the United States' interest. **William H. Taft, IV**, Legal Adviser for the U.S. State Department, under

President George W. Bush, warned "A decision that the [Geneva] Conventions do not apply to the conflict in Afghanistan in which our armed forces are engaged deprives our troops there of any claim to the protection of the Convention in the event they are captured and weakens the protections afforded by the Conventions to our troops in future conflicts."<sup>37</sup>

## **U.S. FOREIGN POLICY**

The **U.S. State Department** has repeatedly acknowledged that U.S. funding to the UN Voluntary Fund for Victims of Torture "supports the U.S. foreign policy goal of promoting democracy and human rights."<sup>38</sup> In 2002, the U.S. State Department affirmed, "The use of torture presents a formidable obstacle to establishing and developing accountable democratic governmental institutions. Assisting torture victims helps establish and reinforce a climate of respect for the rule of law, good governance and respect for human rights."<sup>39</sup>

Moreover, the United States needs to engage the international community on many complex issues requiring multilateral cooperation. U.S. leadership to promote and protect human rights encourages political, military, and intelligence cooperation from our allies. By contrast, U.S. engagement in torture and abuse discourages cooperation from allies and international partners critical to furthering interests abroad.

Prior to the Bush Administration deciding that the Geneva Conventions did not apply to the conflict in Afghanistan, **Secretary of State Colin L. Powell** argued that the advantages of applying the Geneva Conventions to the conflict in Afghanistan far outweighed their rejection because declaring the conventions inapplicable "has a high cost in terms of negative international reaction, with immediate adverse consequences for our conduct of foreign policy."<sup>40</sup>

He also said it would "undermine public support among critical allies"<sup>41</sup> and that "Europeans and others will likely have legal problems with extradition or other forms of cooperation in law enforcement, including in bringing terrorists to justice."<sup>42</sup>

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*-U.S. State Department, 2002*

Indeed, in testimony before the Senate Armed Services, **U.S. Navy General Counsel Alberto Mora** (who served in this capacity during the first George W. Bush Administration) recounted that the U.S.'s decision "to adopt cruelty has had devastating foreign policy consequences" that would "inevitably damage [U.S.] national security strategy and [U.S.] operational effectiveness in the War on Terror."<sup>43</sup> He added, "International cooperation, including in the military, intelligence, and law enforcements arenas, diminished as foreign officials became concerned that assisting the U.S. in detainee matters could constitute aiding and abetting criminal conduct in their own countries."<sup>44</sup>

### **U.S. NATIONAL SECURITY**

U.S. national security interests are also furthered when the United States leads on human rights and combatting torture by promoting good will and winning hearts and minds of local populations – efforts that are critical to counter-insurgency and counterterrorism efforts. Likewise, these efforts

are essential to building and sustaining international support and cooperation with allied nations.

The **Senate Armed Services Committee** found that: "The collection of timely and accurate intelligence is critical to the safety of U.S. personnel deployed abroad and to the security of the American people here at home. The methods by which we elicit intelligence information from detainees in our custody affect not only the reliability of that information, but our broader efforts to win hearts and minds and attract allies to our side."<sup>45</sup>

In fact, in testifying before Congress that U.S. mistreatment caused damaged to U.S. national security interest at an operational level, **U.S. Navy General Counsel Alberto Mora** cited specific examples in which allies "hesitated on occasion to participate in combat operations" and "refused on occasion to train with [the U.S.] in joint detainee capture and handling operations" because of concerns with U.S. treatment of detainees and detention policies.<sup>46</sup> He also stated that senior NATO officers in Afghanistan reportedly "left the room when issues of detainee treatment [were] raised by U.S. officials out of fear that they may become complicit in detainee abuse."<sup>47</sup>

As stated by then **Senator John Kerry** in 2008, "Most of us can agree that sometimes, in the name of national security, it is necessary to make difficult ethical decisions to protect the American people. However, the administration's dangerous and counterproductive choice to employ torture has severely weakened our ability to win the struggle against extremism. It has also wasted our greatest asset: our moral authority."<sup>48</sup>

Moreover, engaging in practices of torture and cruelty serves as a recruitment tool for U.S. enemies and discourages enemies from surrendering.



The **Senate Armed Services Committee** found that “[t]reating detainees harshly only reinforces that distorted view, increases resistance to cooperation, and creates new enemies.”<sup>49</sup>

In testifying before Congress, **U.S. Navy General Counsel Alberto Mora** stated, “There are serving U.S. flag-rank officers who maintain that the first and second identifiable causes of U.S. combat deaths in Iraq -- as judged by their effectiveness in recruiting insurgent fighters into combat -- are, respectively the symbols of Abu Ghraib and Guantanamo.”<sup>50</sup>

Similarly, **General Raymond Odierno**, commander of U.S. troops in Iraq, stated, “The graphic revelations of detainee abuse motivated some terrorists including foreign fighters from Syria, Yemen and Saudi Arabia to join the jihad.”<sup>51</sup>

### **SPILL-OVER “JUSTIFICATIONS” AND DANGEROUS PRECEDENT**

When the United States engages in torture and abuse in the name of national security, it provides justifications for other governments and oppressive regimes to do the same against innocent civilians, journalists, democracy activists, people seeking to practice their own religion, and even puts U.S. troops in danger.

**CVT** has seen strikingly similar patterns worldwide among different leaders – left and right- who rationalize the use of torture by dehumanizing the victim, citing national emergencies and security as justification, and assuming an ability to produce a desired outcome through fear and violence. When crises arise that prove beyond the scope of leaders’ imaginations and/or resources, desperate measures are often supposed necessary.

Moreover, when the U.S. government openly violated its international legal obligations, it set a dangerous precedent not only on the issue of

torture, but for the broader notion that those duties are optional. U.S. government policies and practices weakened international human rights instruments designed to end torture (the CAT and the Geneva Conventions). Flagrant disregard for treaties and conventions that the U.S. has ratified has profound implications for the global community’s efforts to secure support for international norms. By flouting these obligations, the United States also delivered an implicit message that torture, once seen as the tool of despotic regimes, could be shaped to look like legitimate component of a democratic government’s national defense.

*By flouting its obligations under international law, the United States delivered an implicit message that torture, once seen as the tool of despotic regimes, could be shaped to look like legitimate component of a democratic government’s national defense.*

Furthermore, the United States’ practice of torture places U.S. troops in danger should they be captured. In remarks on the floor of the U.S. Senate, **Senator John McCain** cautioned, “... if America uses torture, it could someday result in the torture of American combatants.”<sup>52</sup> He went on to warn that the United States should “...be careful that we do not set a standard that another country could use to justify their mistreatment of our prisoners.”<sup>53</sup>

### **HEALING FOR TORTURE SURVIVORS AROUND THE WORLD**

Whenever laws banning torture are upheld, a message is transmitted to repressive governments and victims seeking an end to impunity wherever it exists. Leaders and ordinary citizens learn that, in some places,

those who violate human rights are held responsible.

By contrast, the cost of impunity for survivors is enormous. For **CVT clients**, accountability for perpetrators is intertwined with the healing process and their struggle to make sense of their suffering. The recovery process is made more challenging when the person who committed the violence against them still walks free.

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Any crack in the culture of impunity can bring victims tremendous strength. One **CVT client** told us about her reaction when she learned of the arrest in Atlanta of an Ethiopian man accused of murder and torture during a dictatorship in the 1970s. Despite the fact that this man was not her perpetrator, she felt empowered, remarking, "Now I know what to do should I come across the man who raped me."

The ripple effect is felt widely. Any progress helps other victims to feel safer wherever they may be living.

### **STEPS NEEDED FOR THE U.S. TO RE-ESTABLISH ITSELF AS A GLOBAL LEADER AGAINST TORTURE**

The United States has begun to take significant steps in remedying its excursion into unlawful policies and practices of torture and official cruelty.

In response to reports that the United States was using torture and cruelty on detainees, an unprecedented number of retired military leaders spoke out publicly against these policies, and Congress held hearings and attempted to repair the damage by passing the McCain Amendment, requiring all Department of Defense personnel and facilities to use the guidelines set forth in the U.S. Army Field Manual as the minimum standards for the treatment of detainees.

Other important steps include the public release of the Senate Armed Services Committee's Inquiry into the Treatment of Detainees in U.S. Custody, the Office of Legal Counsel Memos authorizing torture, and the CIA Inspector General Report.

But perhaps the most significant step taken by the United States was on January 22, 2009, when President Obama signed an Executive Order banning torture and cruelty and closing CIA black sites.

*This is not a political question. We see both the compelling public policy reasons – ending impunity is a powerful deterrent—as well as the profound, far-reaching effects on the lives of our clients.*

Nevertheless, important work remains to be done. The U.S. national consensus against torture has been eroded. In a climate of extreme fear and deep anxiety about our national security, the need for, efficacy of and moral justifications for torture and cruelty were distorted. Many Americans have been led to believe that we must abide by torture and cruelty to keep our families safe.

Furthermore, the U.S. government has not, to date, conducted a thorough investigation into sound evidence of torture and cruelty as

required by the CAT. Article 12 of the CAT states: “Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.”

Accountability has been inaccurately framed as a divisive partisan battle. Recall, however, that it was President Reagan who noted in his transmission of the Convention to the Senate that its strength was in its provisions to criminally prosecute perpetrators under the principle of universal jurisdiction.

Moreover, from the perspective of those who provide care to torture survivors, this is not a political question. We see both the compelling public policy reasons – ending impunity is a powerful deterrent—as well as the profound, far-reaching effects on the lives of our clients.

Whenever atrocities are committed, there is often a desire to avoid unearthing the

uncomfortable and to instead move forward. Yet, in doing so, we allow the culture of impunity to persist and miss an opportunity to prevent future abuses.

In order for the United States to regain its historical commitment to supporting the international ban on torture and cruelty, it must fully examine and account for its recent past unlawful policies and practices of torture and official cruelty.

To this end, the United States must ensure it does not return to illegal policies of torture and cruelty; it must fully investigate credible allegations of abuse; it must prosecute those who authorize, order, or engage in acts of torture; it must provide torture survivors an effective right to a remedy; and it should continue to rehabilitate torture survivors worldwide. Until the United States comes to terms with its own use of torture post 9/11, it cannot be and will not be seen to be a credible force for human rights.

## RECOMMENDATIONS

1. **THE SENATE SELECT COMMITTEE ON INTELLIGENCE** *should make public its report on the past CIA detention and interrogation program post 9/11 with as few redactions as possible.*

On December 13, 2012, the Senate Select Committee on Intelligence (SSCI) adopted with a bi-partisan majority its study of the former CIA detention and interrogation program post-9/11. The review began in March 2009 and according to Senator Dianne Feinstein, Chair of the Committee, “is a comprehensive review of the CIA’s detention program that includes details of each detainee in CIA custody, the conditions under which they were detained, how they were interrogated, the intelligence they actually provided and the accuracy – or inaccuracy- of CIA descriptions about the program to the White House, Department of Justice, Congress and others.” The 6,000 plus page report, containing more than 35,000 footnotes, is based on a documentary review of more than 6 million pages of CIA and other records and includes 20 findings and conclusions.

The public release of the SSCI report with as few redactions as possible will be a significant step in establishing the full truth of the United States’ past policies of torture and cruelty and will openly examine the consequences of those actions in order to ensure the United States does not repeat the mistakes of the past.

2. **THE PRESIDENT AND CONGRESS** *should establish an independent, non-partisan commission to examine and report publicly the United States’ use of torture and cruel, inhuman and degrading treatment of detainees in the period since September 11, 2001.*

The United States has yet to meet its legal and moral obligations to fully investigate credible allegations of abuse as required under the Convention Against Torture. The commission should have subpoena power and be charged with looking into the facts and circumstances of interrogation, rendition and detention policy, identify lessons learned, recommend measures that would bring justice to victims and prevent any future abuses. Its findings should be made public.

Assessing how serious errors in judgment became U.S. policy will better position the United States in the future to firmly avoid this ignoble path.

3. **CONGRESS** *should increase funding for programs providing rehabilitation services to survivors of torture in the United States and around the world.*

The United States can begin to recommit itself to these duties by addressing the rehabilitation needs of torture survivors around the world. Article 14 of the CAT carves out a right to health care for survivors. Beyond the humanitarian mission, rehabilitation centers contribute to efforts to prevent torture and build democratic societies. Rehabilitation programs provide specialized services to torture survivors that improve their social and economic functions while promoting self-sufficiency and integration. Additionally, rehabilitation programs document evidence of torture. Their expertise in treating the wounds of torture enables them to testify to the scale and scope of political brutality.

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- <sup>1</sup> *Message to the Senate Transmitting the Convention Against Torture and Inhuman Treatment or Punishment*, The American Presidency Project, May 20, 1988 available at <http://www.presidency.ucsb.edu/ws/?pid=35858>
- <sup>2</sup> Chuck Hagel, Washington Monthly, Jan.- Mar. 2008, available at <http://www.washingtonmonthly.com/features/2008/0801.hagel.html>.
- <sup>3</sup> Amy Zegart, *Torture Creep: Why are more Americans accepting Bush-era policies than ever before?*, Foreign Policy, Sept. 25, 2012 available at [http://www.foreignpolicy.com/articles/2012/09/25/torture\\_creep?wp\\_login\\_redirect=0](http://www.foreignpolicy.com/articles/2012/09/25/torture_creep?wp_login_redirect=0).
- <sup>4</sup> *Id.*
- <sup>5</sup> *Torture v. Torture Euphemisms*, Covering Torture, 2012, available at <http://www.coveringtorture.org/>.
- <sup>6</sup> Joint resolution regarding the implementation of the policy of the United States Government in opposition to the practice of torture by any foreign government, Pub. L. No. 98-447, 98 Stat. 1721 (1984).
- <sup>7</sup> *Comm'n on Hmn. Rts. – Membership, 1947-2005*, Office of the U.N. High Comm'ner for Hmn. Rts., <http://www2.ohchr.org/english/bodies/chr/membership.htm>.
- <sup>8</sup> U.N. Eco. And Soc. C., Report of the Working Group on a draft convention against torture and other cruel, inhuman or degrading treatment or punishment (Mar. 9, 1984), E/CN.4/1984/72 ¶ 24, 47-48 available at [http://www.un.org/ga/search/view\\_doc.asp?symbol=E/CN.4/1984/72](http://www.un.org/ga/search/view_doc.asp?symbol=E/CN.4/1984/72).
- <sup>9</sup> See *Message to the Senate*, supra note 1.
- <sup>10</sup> *Letter of Submittal from George P. Shultz, Secretary of State, to President Ronald Reagan* (May 10, 1988), in S. Treaty Doc. No. 100-20, at v; see also S. Exec. Rep. No. 101-30, at 2-3.
- <sup>11</sup> Exec. Rep. 101-30, 101st Cong. 2d Sess., 23-24 (Aug. 30, 1990) Senate Foreign Relations Committee Report).
- <sup>12</sup> See *Message to the Senate*, supra note 1.
- <sup>13</sup> See *Letter of Submittal*, supra note 10.
- <sup>14</sup> Reuters, *U.S. Signs a U.N. Document That Seeks an End to Torture*, N.Y. Times (Apr. 19, 1988).
- <sup>15</sup> See *Message to the Senate*, supra note 1.
- <sup>16</sup> See Exec. Rep. 101-30, supra note 11 at 2.
- <sup>17</sup> *Id.* Appendix A.
- <sup>18</sup> *Id.* at 3.
- <sup>19</sup> *Id.*
- <sup>20</sup> See *Id.* Additional Views of Republican Senators on the Convention Against Torture.
- <sup>21</sup> *Statement on Signing the Torture Victim Protection Act of 1991*, The American Presidency, Mar. 12, 1992 available at <http://www.presidency.ucsb.edu/ws/index.php?pid=20715>.
- <sup>22</sup> 18 U.S.C. § 2340A (1994) (Federal anti-torture statute makes it a crime for a U.S. national or foreigner who is present in the U.S. to have committed torture outside the U.S.).
- <sup>23</sup> *Memorandum of Decision Regarding the Objections to the Findings on Professional Misconduct in the Office of Professional Responsibility's Report of 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*, Office of Professional Responsibility Report, (Jan. 5, 2010) available at <http://graphics8.nytimes.com/packages/pdf/politics/20100220JUSTICE/20100220JUSTICE-DAGMargolisMemo.pdf>.
- <sup>24</sup> Exec. Rep. 110-54, 110th Cong. 2d Sess., (Nov. 20, 2008) (Senate Armed Services Committee) available at [http://www.armed-services.senate.gov/Publications/Detainee%20Report%20Final\\_April%2022%202009.pdf](http://www.armed-services.senate.gov/Publications/Detainee%20Report%20Final_April%2022%202009.pdf).
- <sup>25</sup> *Id.*
- <sup>26</sup> Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/810 at art. 5 (1948).
- <sup>27</sup> International Covenant on Civil and Political Rights, art. 7, Dec. 16, 1966, 6 ILM 638, 993 U.N.T.S. 3.
- <sup>28</sup> Geneva Convention Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, 6 U.S.T. 3516, 75 U.N.T.S. 287, art. 3(a).
- <sup>29</sup> See e.g., The African Charter on Human and Peoples' Rights, OAU Doc. CAB/LEG/67/3/Rev.5 (1981), reprinted in 21 I.L.M. 58 (1982), American Convention on Human Rights, Nov. 21, 1969, 1144 U.N.T.S. 143; Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, Europ.T.S. No. 5; 213 U.N.T.S. 221

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U.N.T.S. 123.

<sup>30</sup> *Jus Cogens*, Cornell University Law School: Legal Information Institute, Aug. 19, 2010 *available at* [http://www.law.cornell.edu/wex/jus\\_cogens](http://www.law.cornell.edu/wex/jus_cogens).

<sup>31</sup> 18 U.S.C. § 2340A, *supra* note 22.

<sup>32</sup> 18 U.S.C. § 2441(a) (1996) (War Crimes Act).

<sup>33</sup> 42 U.S.C. § 2000dd (2005) (The Detainee Treatment Act of 2005).

<sup>34</sup> U.S. Const. amend. VIII.

<sup>35</sup> Harold Hongju Koh, *Washington Monthly*, Jan. – Mar. 2008 *available at* <http://www.washingtonmonthly.com/features/2008/0801.koh.html>.

<sup>36</sup> *Id.*

<sup>37</sup> *Comments on Your Paper on the Geneva Conventions*, Department of State Office of the Legal Advisor (Feb. 2, 2002) *available at* [http://www.nytimes.com/packages/html/politics/20040608\\_DOC.pdf](http://www.nytimes.com/packages/html/politics/20040608_DOC.pdf).

<sup>38</sup> *See e.g. Congressional Budget Justification*, U.S. Department of State, 2008 *available at* <http://www.state.gov/s/d/rm/rls/statecbj/index.htm>.

<sup>39</sup> *Military Assistance: International Military Education and Training Foreign Military Financing and Peacekeeping Operations*, U.S. Department of State, at 27, *available at* <http://www.state.gov/documents/organization/3961.pdf>.

<sup>40</sup> *Draft Decision Memorandum for the President on the Applicability of the Geneva Convention to the Conflict in Afghanistan*, Secretary of State (Jan. 26, 2002) *available at* <http://www.torturingdemocracy.org/documents/20020126.pdf>.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> U.S. Senate, Committee on Armed Services, *Treatment of Detainees in U.S. Custody*, Hearing, Jun. 17, 2008, Statement of Alberto J. Mora, at 4 *available at* <http://www.armed-services.senate.gov/statemnt/2008/June/Mora%2006-17-08.pdf>.

<sup>44</sup> *Id.* at 4-5.

<sup>45</sup> *See* Exec. Rep. 110-54, *supra* note 24.

<sup>46</sup> *See* Mora Statement, *supra* note 43 at 5.

<sup>47</sup> *Id.*

<sup>48</sup> John Kerry, *Washington Monthly*, Jan.- Mar. 2008, *available at* <http://www.washingtonmonthly.com/features/2008/0801.kerry.html>.

<sup>49</sup> *See* Exec. Rep. 110-54, *supra* note 24.

<sup>50</sup> *See* Mora Statement, *supra* note 43.

<sup>51</sup> AMERICAN CIVIL LIBERTIES UNION, ET AL. v. DEPARTMENT OF DEFENSE, ET AL. (No. 06-3140).

<sup>52</sup> 157 Cong. Rec. S2897 (statement of Sen. McCain) *available at* [http://www.mccain.senate.gov/public/index.cfm?FuseAction=PressOffice.FloorStatements&ContentRecord\\_id=e496acf5-a37f-1136-f1be-f15d5e3d93e9](http://www.mccain.senate.gov/public/index.cfm?FuseAction=PressOffice.FloorStatements&ContentRecord_id=e496acf5-a37f-1136-f1be-f15d5e3d93e9).

<sup>53</sup> *Id.*