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June 16, 2016

President Barack Obama
The White House
1600 Pennsylvania Avenue, NW
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HRW.org

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Re: New CIA Torture Revelations

Dear President Obama:

I write on behalf of Human Rights Watch to urge you to take action before the end of your term in office to further accountability for the grave abuses committed as part of the Central Intelligence Agency's detention and interrogation program. Documents that the CIA recently released about the program in response to Freedom of Information Act requests¹ disclose new information that underscores the brutality and illegality of the program. Failure to take concrete action to address these crimes will leave a stain on your legacy, undermine respect for the rule of law, encourage a future president to use abusive interrogation techniques again, and weaken the effectiveness of the United States in advocating against torture globally.

The Senate Intelligence Committee's executive summary of its 2014 report on the CIA program ("Senate Summary") and recent reporting have exposed a great deal about the CIA's use of torture, but the newly released documents add excruciating details. For example, it was known that Afghan detainee Gul Rahman died of hypothermia in his cell after the CIA tortured him, left him half naked on a concrete floor in freezing temperatures, and deprived him of food. But a just-released internal document about an investigation into Rahman's death attempts to blame Rahman for what happened to him, underscoring the program's depravity: "Rahman's actions contributed to his own death. By throwing his own meal he was unable to provide his body with a source of fuel to keep him warm."

¹ Central Intelligence Agency, Electronic Reading Room, "Documents Related to the Former Detention and Interrogation Program," <https://www.cia.gov/library/readingroom/collection/documents-related-former-detention-and-interrogation-program>. The Freedom of Information Act request was brought by the American Civil Liberties Union and *Vice News*.

Similarly, the CIA's use of diapers in its program had been reported, but one new document unreservedly states that humiliating detainees was the "sole purpose" for their use. It goes on to state that:

when the prisoner soils a diaper, they are changed by the guards. Sometimes the guards run out of diapers and the prisoners are placed back in their cells in a handcrafted diaper secured by duct tape. If the guards don't have any available diapers, the prisoners are rendered to their cell nude.

The Bureau of Prisons (BOP) was known to have visited CIA detention facilities, but the new documents reveal that the BOP appears to have played a significant role in training CIA personnel.

One of the released documents gets to the heart of CIA awareness as to the lawfulness of their actions. A draft request to the US Attorney General for an advance declination of prosecution demonstrates that senior CIA officials knew that techniques they planned to employ as part of the CIA program would likely violate US laws before they actually used them, and sought to secure legal cover for actions that were patently criminal. The CIA then went on to employ tactics that exceeded even the illegal authorizations it had obtained.

As one 2003 email from the CIA's chief of interrogations released in the trove reveals, the CIA program was a "train wreck [sic] waiting to happen." The email continues, "I intend to get the hell off the train before it happens."

Numerous media reports have detailed and explained the significance of other revelations in the recent document release.²

While the release of these documents, albeit through Freedom of Information Act requests, is a step toward increased transparency, it also highlights the fact that a number of important documents remain classified. For example, the CIA released one document titled "Proposed Response to Letter from Human Rights Watch," but all three pages of the document were redacted. Similarly, the agency released at least one 34-page document related to the role the CIA's Office of Medical Services

² Jason Leopold, "Barbaric Conditions That Led to a Detainee's Death Are Laid Bare in CIA Reports," *Vice News*, June 14, 2016, <https://news.vice.com/article/cia-black-site-conditions-that-led-to-detainee-death-laid-bare-by-report>; 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; Brian Bennett and David Cloud, "Newly released CIA documents detail torture tactics after Sept. 11; Bush voiced unease about treatment of detainees," *Los Angeles Times*, June 14, 2016, <http://www.latimes.com/nation/la-fg-cia-torture-20160614-snap-story.html>; Josh Gerstein, "CIA releases declassified documents on interrogations," *Politico*, June 14, 2016, <http://www.politico.com/blogs/under-the-radar/2016/06/cia-releases-declassified-documents-on-interrogation-224346>.

(OMS) played in the CIA program with minimal redactions, but another 89-page document from OMS was released almost entirely redacted with only one paragraph, taking up one quarter of one page, left legible. Indeed, available evidence raises serious questions about the role medical professionals, many of whom would have undertaken to uphold the ethical principle to “do no harm,” played in the CIA program.³

It remains common for some public figures—including candidates for office—to support the use of torture, and former senior CIA officials continue to defend its use. Legal prohibitions against torture have been bolstered during your administration. However, in the absence of concrete actions to enforce such prohibitions, you will only encourage future policymakers or other US government officials again to resort to torture by giving them reason to believe they will not be prosecuted for it.

The best way to clarify the illegality of the CIA’s use of torture would be to restart criminal investigations. The reasons behind the closure of prior investigations remain unclear. In our December 2015 report, *No More Excuses: A Roadmap to Justice for CIA Torture*, we provided extensive material and analysis challenging claims that it was not legally possible for the Justice Department to prosecute.⁴ For example, we noted that with many potential charges, statutes of limitations and jurisdictional hurdles can be overcome and should not be bars to prosecutions. We also noted that revelations in the Senate Summary and other documents undercut claims that senior officials relied in good faith on the advice of counsel that the interrogation techniques being used were legal, given that those officials went shopping for an opinion that would offer legal cover for their activities.

Prosecutions and redress are required by the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, a treaty that the US was instrumental in creating, that the US and 158 other countries have ratified, and that has been incorporated into US law.

Even if the Justice Department won’t open new investigations, it should at a minimum explain in detail why prior investigations were closed and work with other executive departments to provide redress and rehabilitation to victims. The US should also go much further in releasing information about the program than it has to date.

The administration appears more mindful of the harm suffered by those held under the CIA program. This year the Justice Department for the first time did not invoke the

³ Spencer Ackerman, “CIA medical staff gave specifications on how to torture post-9/11 detainees,” *The Guardian*, June 15, 2016, <https://www.theguardian.com/us-news/2016/jun/15/cia-torture-program-september-11-medical-staff-instructions-details>.

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/no-more-excuses/roadmap-justice-cia-torture>.

state secrets privilege in a suit brought by former detainees. But that suit involves only three plaintiffs, while scores of men in the CIA program were tortured and ill-treated. Some of these men remain in US custody and are not receiving adequate medical and psychological care. 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 they sustained in the CIA program and prolonged incommunicado detention, to rebuild their lives.

As International Day in Support of Victims of Torture approaches, on June 26, 2016, we urge you to acknowledge the wrongful treatment of victims of CIA torture and announce measures that would begin to account and provide redress for US actions. Our report, *No More Excuses*, includes a detailed list of recommendations to US government bodies for doing so, which we enclose with this letter.

Thank you for your attention to this important matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kenneth Roth', written over a light blue horizontal line.

Kenneth Roth
Executive Director
Human Rights Watch

CC: The Honorable Loretta Lynch, Attorney General of the United States

Recommendations

To the US President

- Support the Attorney General's appointment of a special prosecutor to conduct a thorough, independent, and credible criminal investigation into the CIA rendition, detention, and interrogation program that examines the conduct of those who authorized and implemented torture and other abuse by the CIA, including conduct that may have purportedly been authorized.
- Acknowledge wrongdoing and formally apologize to victims of torture conducted or authorized by the US. In the absence of congressional action, establish an independent body to administer claims and provide appropriate redress, including compensation and rehabilitation.
- Declassify the full Senate Intelligence Committee Report on the CIA's detention and interrogation program, redacting only what is strictly necessary to protect national security. Improve declassification procedures more generally to ensure that only truly sensitive sources and methods remain classified and that the declassification process proceeds more quickly.
- Declassify entirely the CIA rendition, detention, and interrogation program rather than selective aspects or elements of it as is the current practice.
- Support legislative initiatives to require all US government agencies, including the CIA, to use only interrogation techniques listed in the Army Field Manual on Intelligence Interrogations.
- Instruct all relevant government agencies to initiate a review of their role in the CIA program as described in the full Senate Intelligence Committee report to identify mistakes made, lessons learned, and best practices going forward.
- Institute reforms at the CIA that provide more open congressional hearings on CIA policy and practice, stronger CIA reporting requirements to Congress, greater oversight from other divisions of the executive branch, and a bolstered CIA Office of the Inspector General.

To the Department of Justice

- The Attorney General should appoint a special prosecutor to conduct a thorough, independent, and credible criminal investigation and bring charges where warranted concerning CIA torture and other crimes. The investigation should look into the conduct of those who authorized and implemented the CIA program as well as those

who went beyond what was authorized. In conducting such an investigation, ensure all relevant witnesses, including victims of the alleged torture and ill-treatment, are interviewed and all relevant physical evidence is collected and examined.

- Do not invoke the state secrets privilege in civil litigation concerning US torture except when absolutely necessary to prevent genuine harm to US national security and, even then, apply the privilege as narrowly as possible. Use of the privilege should not prevent the provision of appropriate redress to victims of US torture.

To the US Congress

- Enact legislation that would acknowledge wrongdoing, apologize, and provide redress, including compensation and rehabilitation, to victims of US torture and other abuse.
- Enact legislation that would prohibit the CIA from holding individuals in detention except immediately after a lawful arrest and ensuring their prompt transfer to an authorized detention authority.
- Revise Appendix M to the US Army Field Manual on Intelligence Interrogations to prohibit the use of abusive sleep and sensory deprivation techniques.