



**Accountability for Torture:  
Questions and Answers  
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## Introduction

After the attacks of September 11, 2001, US officials approved various interrogation methods that were illegal under both US and international law. These included such brutal practices as painful “stress positions,” prolonged exposure to cold, and “waterboarding” (near drowning), which the United States has long prosecuted as a war crime. These techniques were used on detainees in Guantanamo, Iraq, and Afghanistan and in secret CIA prisons. Yet no senior official has been held accountable for these crimes. If the United States is to restore its credibility as a nation committed to the rule of law and respect for fundamental rights, it should promptly, impartially, and thoroughly investigate and prosecute those officials, regardless of position or rank, who authorized or ordered torture and other mistreatment.

At the same time, it is crucial to understand how the United States came to employ such barbaric methods of interrogation. The American public deserves a full and public accounting of the scale of post-9/11 abuses, why and how they occurred, and who was responsible for them. An independent, nonpartisan commission should be established to examine the actions of the executive branch, the CIA, the military, and Congress, and to make recommendations to ensure that such acts are not repeated.

Some have expressed objections to the prosecution of US government officials for their role in abusive interrogation methods and to the creation of commission of inquiry. We address those objections below.

### **By prosecuting those who believed that they were acting in the US’s best interests, aren’t we “criminalizing policy differences”?**

The use of torture can never be an appropriate policy option. Since the time of George Washington, the United States has rejected torture of prisoners of war. During the American Civil War, Abraham Lincoln endorsed the Lieber Code for the conduct of Union soldiers, which prohibited the use of “torture to extort confessions.” In the twentieth century, the United States became party to a number of international treaties that ban torture and other ill-treatment, including the International Covenant on Civil and Political Rights and the Geneva Conventions. Under the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, which the United States has ratified and codified under US law, “no exceptional circumstances whatsoever, whether a state of war or a threat of war,

internal political instability or any other public emergency, may be invoked as a justification of torture.”

### **President Barack Obama has banned the use of torture, so why dig up the past and open old wounds?**

Prosecuting those responsible for torture not only brings justice for past abuses, but also is the best way of ensuring that such crimes don't happen again.

President Obama took the important step of repudiating torture as an interrogation technique. On his second full day in office, he issued an executive order that closed the CIA's secret detention program, barred the agency from using coercive techniques, and required it to abide by the same interrogation standards as the US military. The order also revoked past presidential directives and other orders and regulations that authorized the abusive treatment of detainees, and repudiated previous Justice Department legal memos relating to interrogation.

But simply changing the rules without prosecuting past abuses as the crimes that they are leaves open the possibility that the rules could be changed again. Unless those responsible for authorizing and ordering torture are prosecuted, a future administration might be tempted to use such abusive practices again.

### **Won't prosecutions impede future counterterrorism operations by making officials fearful that their actions may later be judged illegal?**

Torture is never a legitimate practice. One reason US interrogators were willing to engage in torture is that the message from the top was that it was acceptable, even expected, despite the longstanding prohibitions against such practices. Government interrogators should never again be placed in such a conflicting position. Prosecuting those responsible for the torture program will re-affirm the prohibition so that interrogators and others involved in counterterrorism operations will clearly understand what is and what is not permissible.

## **Why is a commission of inquiry necessary when we already know what happened?**

While much is known about the interrogation methods used after 9/11, there are still many unanswered questions. The Bush administration went to great lengths to keep its actions in the “global war on terror” a state secret. The investigations conducted so far either have been limited in scope—looking at violations by military personnel at a particular place in a limited time frame, for example—or have lacked independence, with the military investigating itself. Congressional investigations have been limited to looking at a single agency or department. Individuals who planned or participated in the programs have yet to speak for the record. Many of the key documents relating to the use of abusive techniques remain secret. Many of the dots remain unconnected.

To date, there has not been a comprehensive public inquiry into the actions of the CIA, the military, Congress, and senior executive branch officials. Such an inquiry could provide a fuller picture of how the system allowed these abuses to take place, as well as the human, legal and political consequences of the policy of torture. Even prosecutions won’t bring the full range of information to light. If the American public is truly to learn the lessons of this period, there needs to be a full public accounting.

## **Didn’t the “enhanced interrogation techniques” elicit valuable information that helped keep the country safe?**

There are competing, unresolved claims about whether torture yielded actionable intelligence that couldn’t have been obtained any other way. Bush administration officials, including former Vice President Dick Cheney and former CIA Director Porter Goss, have contended that the CIA’s interrogation program provided critical intelligence that helped thwart terrorist attacks. However, a number of former CIA interrogators have contested those claims, saying that detainees revealed actionable intelligence during “rapport building” interrogations, before they were subjected to abusive methods.

Critics also point out that torture elicits unreliable information or answers that the interrogator wants, even if untrue. The case of Ibn al-Shaykh al-Libi, one of the first top al Qaeda suspects held by the CIA, is instructive. Under “enhanced interrogation,” al-Libi reportedly told interrogators that Iraq had provided chemical and biological weapons training to al Qaeda. This information—which turned out to be entirely wrong—was used in

then Secretary of State Colin Powell's 2003 speech to the United Nations to justify war with Iraq. It was later revealed that al-Libi had no knowledge of training or weapons and fabricated the statements because he was terrified of further harsh treatment. Moreover, as President Obama and many others have recognized, the United States' routine mistreatment of Muslim prisoners at Guantanamo and the photographed abuse at Abu Ghraib have actually been a boon for al Qaeda, helping draw new recruits to its ranks and making the United States less safe. A commission of inquiry needs to examine all of these claims.

### **Won't a commission of inquiry or prosecutions divide the country and distract from President Obama's agenda to reform health care and revive the economy?**

Some who say they would like to see accountability for the use of torture are opposed to both a commission of inquiry and prosecutions because they believe any kind of investigation would alienate Republicans who are needed to help President Obama implement his domestic agenda. But establishing what laws were violated and prosecuting those who violated them is not a partisan issue. Waterboarding has been prosecuted as a crime in the United States for more than 100 years. The Reagan Justice Department prosecuted a Texas sheriff and three of his deputies for waterboarding in 1983. Notably, in recent years, a group of Republican senators have been among the most persistent congressional opponents of torture.

The rule of law is undermined when government officials responsible for serious crimes are not prosecuted because it may be politically inconvenient. And the way for a commission of inquiry to avoid the taint of politics or the appearance of political motivations is to create a non-partisan body insulated from congressional or executive branch pressure, consisting of individuals of high moral standing who are not closely associated with either political party.

### **Why is it necessary to have both a commission of inquiry and prosecutions? Isn't one or the other enough?**

A commission of inquiry and prosecutions fulfill different but complementary roles. A commission of inquiry is important for broadly establishing what happened and providing a public accounting. It should examine questions such as how widespread torture and abuse was; why and how it occurred; who was responsible for planning and implementing the interrogation program; what information or misinformation the methods uncovered; and

what has become of detainees who were once in secret CIA custody. While commissions of inquiry can make beneficial use of information that would not be admissible in a court of law, rules would have to be put into place so that a commission would not inhibit future prosecutions or undermine the rights of possible criminal suspects.

Prosecutions, on the other hand, address individual accountability and uphold the rule of law. In order to repudiate torture fully, those responsible for planning and authorizing it should be held accountable. As a party to the Convention against Torture the United States is legally obligated to prosecute those responsible for torture. If there is no real accountability for these crimes, for years to come the perpetrators of atrocities around the world will point to the US's mistreatment of prisoners to deflect criticism of their own conduct. Indeed, there is no question that the credibility of the United States as a proponent of human rights has been severely damaged by its use of torture. Washington can resurrect much of that credibility through a meaningful accountability process.

### **Who should be prosecuted?**

Human Rights Watch believes that at a minimum US officials who authorized or ordered torture or other mistreatment—regardless of rank or position—should be criminally investigated and appropriately prosecuted. This could also include Justice Department lawyers if they were part of a criminal conspiracy to protect officials from prosecution for known unlawful acts of torture and abuse. Lower level officials who participated in torture and other mistreatment should be subject to prosecution as determined by the Attorney General.