



## SUMMARY

# USA: CRIMES AND IMPUNITY

## NEW AMNESTY INTERNATIONAL REPORT REVISITS SENATE INTELLIGENCE COMMITTEE SUMMARY ON CIA DETENTIONS, CALLS FOR ACCOUNTABILITY

More than four months after publication of the Senate Select Committee on Intelligence's summary report on the secret detention programme operated by the Central Intelligence Agency (CIA), the US administration has done nothing to end impunity for the torture and enforced disappearances committed in the programme. Indeed, it has failed to meaningfully respond to the report in any way whatsoever.

Major US agencies implicated in the Senate summary, including the Departments of Justice and State, have even kept the full report in sealed envelopes, and locked away.

The Obama administration is attempting to sweep the report – and the crimes committed in the programme – under the carpet. Instead of scrutinizing the report, examining the failures that led to the systematic abuse of detainees, and holding perpetrators accountable, the Obama administration is continuing on a course charted by its predecessors in the Bush administration and engaging in a de facto amnesty for the crimes under international law of torture and enforced disappearance.

In a new report revisiting the Senate committee's summary and the administration's failure to act on it in the four months since it was issued, Amnesty International pieces together information provided in the declassified version of the summary with some of what was already known about the detention programme. While the full Senate intelligence committee report, running to some 6,700 pages, remains classified Top Secret, the cumulative evidence now in the public domain is already damning. The summary has reminded the world again that this was not some rogue operation, but one involving many administration officials up to and including the President.

The Senate committee does not address the fact that most or all those held in the programme were subjected to enforced disappearance, a crime under international law. On another crime under international law, torture, its collective findings avoid the word torture, agreeing only that interrogations were "brutal and far worse", and conditions of confinement "harsher", than the CIA had "represented to policymakers and others.

Amnesty International's report fills in such gaps – and makes clear that the USA remains squarely and seriously on the wrong side of its international legal obligations in relation to truth, accountability and remedy.

## DE FACTO AMNESTY FOR CRIMES UNDER INTERNATIONAL LAW

On 6 September 2006, four and a half years into the secret detention programme operated under his authority and after countless acts of torture or other ill-treatment committed in it, President Bush publicly confirmed the programme's existence the first time. He did so in order to seek legislation allowing it to continue and to prevent the "unacceptable" outcome that individuals involved could face prosecution under the USA's War Crimes Act. It was of little surprise, then, when the Bush administration left office in January 2009 having not prosecuted anyone for the crimes under international law committed in the programme.

Over six years later, however, we are in the same place. The administration of President Barack Obama took up where its predecessor left off, differentiating between "unauthorized" and "authorized" interrogation techniques while failing to recognize that techniques from both categories were unlawful and conducted against individuals who had been or were being subjected to conditions of transfer or detention also incompatible with the prohibition of torture or other ill-treatment and of enforced disappearance.

In 2009, President Obama wrote to CIA employees to assure them that anyone who followed Department of Justice (DOJ) advice in using "enhanced" interrogation techniques would not face prosecution. Attorney General Eric

Holder gave similar assurances: “the Department of Justice will not prosecute anyone who acted in good faith and within the scope of the legal guidance given by the Office of Legal Counsel regarding the interrogation of detainees.”

In Amnesty International’s view, the Obama administration is effectively granting a de facto amnesty for crimes under international law. Its conduct also constitutes an executive encroachment on judicial power, in contravention of basic principles guaranteeing independence of the judiciary. This arrogation of judicial function by the Obama administration can be seen as a continuation of the Bush administration’s deliberate and calculated removal of the judiciary from any oversight over the secret detentions in question, during the course of which multiple crimes under international law were committed, crimes which the Obama administration is now effectively insulating from judicial determination of individual criminal responsibility.

Granting immunity for crimes under international law, or any other measure that prevents the emergence of truth, a final judicial determination of guilt or innocence before an ordinary civilian court and full reparation for victims, by design or effect, by legislation or by executive policy, violates international law.

No one has been charged for the crimes under international law committed in the CIA programme. The Justice Department’s review into some CIA interrogations, which in the end resulted in “full criminal investigation” into *only two* cases (involving deaths in custody), was closed down in 2012 with no charges referred against anyone. Likewise no-one was charged in relation to the destruction of CIA videotapes of interrogations in secret detention, which apparently contained evidence of crimes under international law.

“America is a nation of law”, President Bush asserted in his 6 September 2006 speech confirming that the CIA had been operating a secret detention programme. As long as the USA fails to ensure accountability and remedy for the crimes under international law committed in this covert programme, whether those acts were “authorized” or “unauthorized”, or whether they were committed in “good faith” or not, it could legitimately be branded as a “nation of law unto itself”.

## KEY RECOMMENDATIONS

- The US Department of Justice (DoJ) must without further delay reopen and expand its investigation into CIA secret detention, rendition and interrogation programmes and practices, ensure that its scope and conduct meet international law and standards, and bring to justice in fair trials all the persons, regardless of their level of office or former level of office, suspected of being involved in the commission of crimes under international law, such as torture and enforced disappearance.
- The DoJ Office of Inspector General (OIG) should conduct an inquiry into the “preliminary review” into CIA interrogations ended in 2011, disclose the scope, methodology and findings of that review, and do the same with the criminal investigation into two death in custody cases closed in 2012 without any charges being referred, and assess these investigations against international law and standards. The OIG should also examine the DoJ’s response to the full Senate Select Committee on Intelligence report, including its apparent failure even to have any DoJ officials read it.
- In accordance with its obligations under international human rights law and taking into consideration the Global Principles on National Security and the Right to Information (Tshwane Principles)<sup>1</sup>, the White House should ensure that all information of which there is an overriding public interest in disclosure is disclosed without further delay. Among other information, the White House and agencies should disclose:
  - The names, locations, and precise dates of operation of all secret detention sites operated by the CIA between 2001 and 2009, and disclose which detainees were held, where and when, in such sites and at the behest of the USA during this period in secret detention by other governments.
  - Information on the DoJ preliminary review into CIA interrogations, and the investigation into CIA videotape destruction, including whether the mandate included examining the role of high-level officials in the authorization and implementation of measures related to the treatment of detainees in violation of the international prohibition of enforced disappearance, torture and other cruel, inhuman or degrading treatment.
  - Information on the DoJ’s review and assessment of the full Senate Select Committee on Intelligence report and the reasons for not reopening and expanding investigations into torture, enforced disappearances and other human rights violations committed in the course of the CIA secret detention programme.

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For more information see Amnesty International report, ***USA: CRIMES AND IMPUNITY. FULL SENATE COMMITTEE REPORT ON CIA SECRET DETENTIONS MUST BE RELEASED, AND ACCOUNTABILITY FOR CRIMES UNDER INTERNATIONAL LAW ENSURED***, 21 April 2015,

<https://www.amnesty.org/en/documents/amr51/1432/2015/en>

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<sup>1</sup> <http://www.opensocietyfoundations.org/publications/global-principles-national-security-and-freedom-information-tshwane-principles>