



## USA: TURNING A PAGE, BUT TORTURE CHAPTER FAR FROM CLOSED

*Release of Senate summary report on CIA detention programme must trigger full truth, remedy and accountability*

We have said it before. We will say it again.

What do we know about the secret detention programme operated by the Central Intelligence Agency (CIA) under authority granted by President George W. Bush on 17 September 2001?

- *We know that detainees in secret CIA custody were tortured. Torture is a crime under international law.*
- *We know that detainees were subjected to enforced disappearance, also a crime under international law.*
- *We know that no one has been prosecuted for authorizing or committing these crimes.*

This is what Amnesty International [wrote](#) in August 2009 following release of a (heavily redacted) version of a CIA Inspector General's 2004 report on the secret detention programme authorized as part of the USA's response to the crime against humanity committed in the USA on 11 September 2001 (President Barack Obama "de-authorized" this programme in January 2009).

It is a reminder of the USA's willingness to let the injustices associated with this programme fester that we find ourselves saying the same thing again, *more than five years later*, as we await publication of the [declassified summary](#) report on the same programme produced by the Senate Select Committee on Intelligence (SSCI), expected later today. Those responsible for the crimes committed in this programme continue to enjoy impunity, the victims continue to be denied access to remedy, and the truth continues to be hidden from public view, stamped Top Secret (the full SSCI report, running to 6,600 pages, is one of the documents that remain classified).

The question is, will publication of the 500-page summary prompt any substantive change in the USA's approach to the question of accountability? To date, the political will has been absent. Year after year, the [impunity and injustice](#) have persisted, despite the ever growing evidence of human rights violations.

It has been **more than a dozen years** since evidence began to [emerge](#) that the USA was resorting, among other things, to secret transfers and secret detention against individuals captured in what it then called the "war on terror", and **more than a decade** since Amnesty International and others [called](#) for a full independent commission to investigate the USA's [post-9/11 detention, interrogation and rendition](#) operations.

It has been **eight years** since reports by the European Parliament and the Council of Europe concluded that numerous European countries, including Macedonia, Poland, Romania, and UK, among others, actively assisted the US government in the illegal transfer, enforced disappearance, and torture and other ill-treatment of dozens of detainees – and five years since Lithuania was identified as hosting a secret CIA detention site.

It has been **more than seven years** since the International Committee of the Red Cross (ICRC) sent the US authorities its findings relating to the secret detention programme. Among other things, the ICRC concluded that US agents were responsible for enforced disappearance, torture and other ill-treatment, and called on the USA to bring the perpetrators to justice.

It has been **six and a half years** since the then CIA Director confirmed that the agency had used "waterboarding" against detainees held in secret detention. More than **four and a half years** have passed since President Obama and Attorney General Eric Holder acknowledged that waterboarding – effectively mock execution by interrupted drowning – constitutes torture. It has been **three and a half years** since former President George W. Bush asserted in his memoirs and on television that he had personally authorized the use of "enhanced interrogation techniques", including water-boarding.

It has been **two years** since the European Court of Human Rights found Macedonia responsible for complicity in torture and enforced disappearance committed against an individual in CIA custody. The ruling also noted that "the concept of 'State secrets' has often been invoked to obstruct the search for the truth".

Some **five months** have passed since the European Court of Human Rights found Poland complicit in the CIA

programme, the rationale behind which, the Court noted, was “specifically to remove those persons from any legal protection against torture and enforced disappearance and to strip them of any safeguards afforded by both the US Constitution and international law against arbitrary detention”. The Court further stated that “where allegations of serious human rights violations are involved in the investigation, the right to the truth regarding the relevant circumstances of the case does not belong solely to the victim of the crime and his or her family but also to other victims of similar violations and the general public, who have the right to know what has happened.”

It has been **four months** since President Obama said, in reference to the CIA secret detention programme, that “[we tortured some folks](#)”, and that “when we engaged in some of these enhanced interrogation techniques, techniques that I believe and I think any fair-minded person would believe were torture, we crossed a line.”

And just **last month**, the [UN Committee against Torture](#) issued its latest findings on the USA, including the following:

*The Committee expresses its grave concern over the extraordinary rendition, secret detention and interrogation programme operated by the US Central Intelligence Agency (CIA) between 2001 and 2008, which involved numerous human rights violations, including torture, ill-treatment and enforced disappearance of persons suspected of involvement in terrorism-related crimes... The Committee expresses concern over the ongoing failure to fully investigate allegations of torture and ill-treatment of suspects held in US custody abroad...*

The Committee called on the USA to:

*Carry out prompt, impartial and effective investigations wherever there is reasonable ground to believe that an act of torture and ill-treatment has been committed in any territory under its jurisdiction*

*Ensure that alleged perpetrators and accomplices are duly prosecuted, including persons in positions of command and those who provided legal cover to torture, and, if found guilty, handed down penalties commensurate with the grave nature of their acts*

*Provide effective remedies and redress to victims, including fair and adequate compensation, and as full rehabilitation as possible*

A few months earlier, in April 2014, the [UN Human Rights Committee](#), having scrutinized the USA’s compliance with its obligations under the International Covenant on Civil and Political Rights, expressed similar concerns. It called on the USA to ensure that all cases of

*Unlawful killing, torture or other ill-treatment, unlawful detention or enforced disappearance are effectively, independently and impartially investigated, that perpetrators, including, in particular, persons in positions of command, are prosecuted and sanctioned, and that victims are provided with effective remedies. The responsibility of those who provided legal pretexts for manifestly illegal behaviour should also be established.*

Perhaps some parts of US officialdom hope that this will [all just go away](#), that publication of the summary report will be enough to satisfy those seeking justice for the USA’s crimes under international law committed in the CIA programme. If so, they will be disappointed.

Some may seek to divert attention away from the question of accountability and redress by steering the focus to whether the CIA accurately portrayed the “effectiveness” of the programme, whether it had provided accurate information about the program to the Department of Justice when seeking legal approval for it, and whether it avoided or impeded oversight by the White House, Congress and the agency’s own Office of Inspector General.

These questions, of course, make entirely no difference to the programme’s compliance with international law. It was unlawful from day one. Whether the CIA engaged in deception about an already unlawful programme is of relevance to the effectiveness of the USA’s oversight mechanisms, but of more profound relevance is the question of why officials ever thought it was acceptable to institute, develop and operate a program of enforced disappearance, and to authorize interrogation techniques and detention conditions that “any fair minded person” should consider violated the absolute international prohibition of torture and other cruel, inhuman or degrading treatment.

And whether torture or other ill-treatment, or enforced disappearance, are effective or not in obtaining useful information has expressly been made irrelevant under international law to the question of whether they are lawful – they never are – or whether an individual responsible for these crimes is to be investigated – they always must be.

The release of the summary SSCI report should be seen as just one step, to be swiftly followed by declassification of the full report, and all steps necessary to ensuring full truth, remedy and accountability for the human rights violations that were committed in these secret detention, interrogation and rendition programmes.

Only then will we stop repeating ourselves.