



## The US Must Prosecute Torture

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Torture has been a topic of public dispute for several years. We've debated its definition, whether American agents have tortured prisoners, whether it is justified, and whether we should prosecute the people who authorized and committed it.

On January 22, President Obama issued three executive orders. The first ordered the closing of the prison at Guantanamo Bay, Cuba, and restored the prisoners' constitutional rights. The second ordered a review of US options in dealing with prisoners. The third revoked all Bush orders that permitted torture and ordered US personnel to follow American and international law on the subject. Those are important and commendable actions. But it's not good enough.

So far, Obama has refused to investigate or prosecute claims that former President George W. Bush, former Vice President Dick Cheney, and other Bush administration officials authorized and ordered the torture of US prisoners of war at Guantanamo, Abu Ghraib, and other hidden facilities throughout the world. This violates his oath of office, US law, and international law. Obama can't refuse to prosecute torture any more than you or I can refuse to pay our taxes.

The US Constitution states that the constitution and all treaties made under it are the supreme law of the land. In 1994, the US Senate ratified the 1985 United Nations *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*. That treaty defines and forbids torture. It requires every nation to prevent torture and to investigate and prosecute all allegations of torture in any territory under its command, promptly and thoroughly. There are no exceptions. War, public emergency, value of the information received, and the orders of superior officers do not justify torture.

The constitution says that the treaty is US law. The treaty forbids torture and requires us to prosecute. Therefore, even if it produces useable information, torture is illegal, no matter how many people say otherwise. The US government has no excuse and no choice. Waterboarding has been classified as torture since the Spanish Inquisition more than 500 years ago.

Five Spanish citizens claim that American agents tortured them at Guantanamo. The Convention Against Torture requires all nations to investigate such claims by their citizens. The Spanish government has taken steps to open two separate investigations of six former Bush administration officials for permitting torture. The six are former Attorney General Alberto Gonzales, Assistant Attorney General Jay Bybee; Deputy Assistant Attorney General John Yoo; Defense Department General Counsel William J. Haynes II, Undersecretary of Defense Douglas J. Feith and ex-Vice President Dick Cheney's legal counsel, David S. Addington.

The investigations could lead to arrest warrants. Then, if any of the six leave the US, any nation in the world could arrest them and turn them over to Spanish authorities.

Under the Convention and its founding charter, the United Nations also has legal authority to prosecute those responsible. The UN has prosecuted officials of the former Yugoslavia, Rwanda, Sierra Leone, Cambodia, and Lebanon for torture and other war crimes in the past. UN Special Rapporteur on Torture Manfred Nowak said that the UN might act if the US does not do so. The UN General Assembly would have to vote to take such action.

The Senate Judiciary Committee's Subcommittee on Administrative Oversight and the Courts began hearing testimony about our torture last week. There's too much information to describe here, but you can see it yourself at <http://judiciary.senate.gov/hearings>.

Justice is often inconvenient, costly, time-consuming, and messy. It is always necessary. Either we follow the law or we don't. If you think torture is acceptable, then you won't mind if I steal your car tonight. Even John McCain said, "It's not about what kind of people they are. It's about what kind of people we are." Torture is a crime. The people who order, commit, and excuse it are criminals.

Obama must prosecute everyone from former President Bush to the guys who poured the water. If not, then he's an accessory to the crime and he's no better than they are. If we don't act soon, the world community may do it for us. We can't have it both ways.

For more information, go to the United Nations – <http://treaties.un.org>,  
The White House – [http://www.whitehouse.gov/briefing\\_room/PresidentialActions](http://www.whitehouse.gov/briefing_room/PresidentialActions), and  
Amnesty International at [www.amnestyusa.org/torture](http://www.amnestyusa.org/torture).

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