

Evidence of the criminal activities of the Bush administration is exceedingly well documented. It is apparent in Bush administration memos, FOIA documents, congressional hearings, court documents, the testimony of victims, innumerable investigative news articles and books and direct admissions by intelligence, military and administration officials. The evidence shows that officials at the very highest level including Bush himself, Vice President Dick Cheney, Defense Secretary Donald Rumsfeld, Secretary of State Condoleezza Rice, and CIA Director George Tenet were directly involved in illegal activities, including torture and war crimes.

In the face of this blatant lawbreaking and institutionalized torture and war crimes committed by the Bush administration, now is the time for accountability. The mechanism exists to hold these officials accountable for their criminal behavior and dissuade future government officials from engaging in torture, war crimes, warrantless surveillance of Americans, and other lawbreaking activities – criminal prosecution of those responsible.

A full investigation and prosecution of these actions by the Bush administration is necessary for the Obama administration to meaningfully reassert the rule of law in the United States. Government officials are not above the law, and their actions impact the lives of millions of people around the world. Prosecuting these officials for their activities is, in fact, a meaningful mechanism for securing justice for the victims and the survivors of torture and war crimes, as well as for deterring future government officials from repeating this conduct.

While the Bush administration hardly represented the first foray of the U.S. government into torture, its brazen conduct has set an example that must be repudiated – as strongly as it was asserted – through full investigation and criminal prosecution.

### What crimes were committed?

The lawbreaking of the Bush administration is monumental in scope. Buoyed by an interpretation of the centuries-old theory of a “unitary executive” that granted kinglike powers to a president acting as a Commander-in-Chief, the administration violated or evaded the law repeatedly and refused to recognize limits on its power legitimately imposed by the other branches of government. It spied on

Americans engaged in legal free speech activities – from church groups to anti-war activists to free trade protestors – creating massive databases of information about ordinary Americans, simply for expressing political views. It created a program of warrantless wiretapping and surveillance of Americans’ telephone calls that blatantly violated the Foreign Intelligence Surveillance Act. It engaged in an illegal war in Iraq, and in war crimes during that war.

Perhaps most well-known and symbolic of all of the crimes of the administration is torture. The so-called “Principals Committee”, which included Vice President Dick Cheney, Attorney General John Ashcroft, Secretary of State Colin Powell, CIA Director George Tenet and national security advisor Condoleezza Rice, authorized the use of torture, including waterboarding, which it labeled “enhanced interrogation techniques.” Secretary of Defense Donald Rumsfeld also signed off on these techniques in December 2002. A recent bipartisan report by the Senate Armed Services Committee, in fact, held Rumsfeld responsible for the abuses committed against detainees at Abu Ghraib and elsewhere. Moreover, administration lawyers, such as David Addington, John Yoo, Alberto Gonzales and Jim Haynes, constructed fallacious legal rationales to support and justify the torture and abuse program.

Military officials, such as Maj. Gen. Antonio M. Taguba, who investigated the Abu Ghraib scandal, and Susan J. Crawford, the retired judge that headed the Guantanamo Bay military commissions, have clearly acknowledged that torture and war crimes were committed by government officials. The anti-torture statute and the war crimes statute mandate prosecution and lay out penalties for these crimes.

### What can be done?

Maj. Gen. Taguba said, “There is no longer any doubt as to whether the current [Bush] administration has committed war crimes. The only question that remains to be answered is whether those who ordered the use of torture will be held to account.” That question must receive an affirmative answer. That is the what the law requires.

Article 4 of the Convention Against Torture requires the new Obama administration convene a *criminal* investiga-

tion into the illegal acts and those responsible for them. As a treaty ratified by the United States, the Convention is binding on the the government as "supreme law," under the U.S. Constitution. No exceptional circumstances, including a state of war or public emergency, may be invoked as a justification of torture, nor may an order from a superior officer or a public authority.

The initiation of a full investigation by the Department of Justice, including the appointment of a special prosecutor, is necessary. The scope of these crimes is vast, spans continents and occurred over years. The many victims - and the Constitution and the people of the United States - deserve a full investigation and the exposure of the facts. However, an investigation that does not produce accountability is insufficient. Government officials who break the nation's highest laws are not, and must not become, exempt from those laws. To do otherwise is to send a message of impunity.

### **Why prosecutions?**

It is important to send a message to future officials, to the world, and to the victims of these policies, that the United States will not condone or accept torture and war crimes committed by its highest authorities.

While some, including President Obama, have said that the end of the Bush administration presents an opportunity to "look forward, and not back" the United States as a nation should not - and the victims of its policies cannot - move forward without holding those responsible for torture, war crimes and other abuses accountable. Prosecutions can provide a measure of justice for the survivors and victims of torture and abuse. Moreover, as we learned from Nuremberg, prosecutions will provide a meaningful disincentive for future government officials to abuse the law. No executive order, policy change or corrective legislation will provide such a lasting deterrence.

### **What about a truth commission?**

Some, including those who have played a leading role in exposing the lawbreaking of the Bush administration, have proposed a "Truth Commission" as a means of addressing these crimes and moving forward. However, such a commission - which often requires immunity for those who testify, and which likely would consist of members of Congress or other political appointees - has neither the independence nor the authority required to insure we will not be a country of torture in the future. It is unlikely to lead to real accountability, and while it may be an easier political path for the Obama administration, it will not put an end to torture and abuse, secure justice for the victims and survivors of torture, uphold U.S. treaty obligations or restore the Constitution and the rule of law.

While such a commission could further publicly expose the torture and other illegal programs, the facts have already come to light, through numerous independent investigations and congressional reports, including the Senate Armed Services Committee report released in December 2008. What is needed now is accountability. We need trials to send a message, to future government officials, the victims and survivors of torture, the people of the United States and the world, that torture and war crimes will not be tolerated, and that government officials' lawlessness will not be taken lightly.

### **Take action!**

The Center for Constitutional Rights and many others are calling for prosecutions. We are asking for the Attorney General to appoint a special prosecutor to initiate a criminal investigation of former Bush administration officials who authorized and ordered the use of torture.

This is part of CCR's 100 Days campaign, calling for immediate action by President Obama and the new administration to end the abuses of prior administrations and restore the Constitution. The 100 Days campaign calls for an end to torture, extraordinary rendition and arbitrary detention; abolishing preventive detention; limiting the state secrets privilege; reining in presidential war powers; protecting the right to dissent; ending warrantless wiretapping; and rolling back the abuse of executive power.

In order to not only end these dangerous and illegal actions by the government, but also to ensure they are not repeated in the future and to seek justice for those wronged by these actions, a full investigation and prosecution is necessary - and something that should begin within the first 100 Days of the new administration.

Prosecutions themselves won't be enough - victims and survivors of U.S. torture need reparations as well, to be compensated for their suffering, and new laws and new executive orders must be passed undoing the damage that has been done. Also, we cannot forget that U.S. involvement in torture did not begin with the Bush administration, nor does it stop at the borders of the United States - policing and prisons within the U.S. are far too often sites of torture themselves.

Join us to write to Attorney General Eric Holder at [ask-doj@usdoj.gov](mailto:ask-doj@usdoj.gov) and call for investigation and prosecution of the Bush administration's torturers. Hold events about torture and accountability and encourage the discussion of prosecutions for war criminals. And visit our website, [www.ccrjustice.org](http://www.ccrjustice.org), regularly for updates on the 100 Days campaign and accountability for torture and war crimes.