

Prof. Philip Alston
Faculty Director, Chair

Prof. Smita Narula
Faculty Director

Prof. Margaret Satterthwaite
Faculty Director

Prof. Paul van Zyl
Director, Transitional Justice Program

Sarah Knuckey
Director, Project on Extrajudicial Executions

Patricia Armstrong
Fellowship Coordinator

Jayne Huckerby
Research Director

Veerle Opgenhaffen
Program Director

THE RIGHT TO TRUTH AND JUSTICE: ACCOUNTABILITY FOR U.S. ABUSES IN ITS “WAR ON TERROR”

The Right to Justice: Pursue Prosecutions of Those Responsible for Torture and other Abuse of Detainees

The Department of Justice should initiate criminal investigations and prosecutions of individuals believed to be responsible for the abuse of detainees. Such investigations should focus on those who sought to authorize or who ordered illegal detention, extraordinary rendition, and torture. Investigations into criminal conduct should begin immediately and can operate simultaneous to other accountability mechanisms, such as a commission of inquiry.

Victims have a right to redress, including criminal justice. An unknown number of people were subjected to enforced disappearance, countless individuals were tortured, and many were sent to other countries where they were interrogated under torture or other cruel treatment. Those victims and their families have a basic right to the truth and to forms of redress, an apology, and pursuit of criminal justice for those responsible. These rights are unchanged by the fact that the majority of victims are non-U.S. citizens and that many crimes were committed overseas.

International law requires countries to investigate and punish crimes involving the abuse of detainees. There is abundant evidence in the public domain—including admissions from U.S. government officials—that the United States committed violations of U.S. and international law prohibiting the abuse of detainees. This evidence imposes duties on the United States to investigate, prosecute and punish those responsible. A commission of inquiry alone will not meet these duties.

We need both prosecutions and a commission of inquiry to deliver a full spectrum of justice for the abuses committed. When torture and enforced disappearance have been adopted as a matter of policy, criminal prosecutions are necessary but not sufficient to satisfy the full range of demands for justice. Because criminal prosecutions are aimed at establishing the culpability of individuals, a broader strategy is necessary to expose the systematic nature of the crimes and augment criminal prosecutions.

The Right to Truth: Establish an Independent Commission of Inquiry

President Obama and Congress should take immediate steps to establish a non-partisan, independent commission of inquiry with adequate powers to thoroughly investigate abuses committed as part of the U.S. “War on Terror,” in particular to examine policies that led to the torture, enforced disappearance, and extraordinary rendition of detainees after 9/11.

This Commission should not be seen as a substitute for criminal investigations and prosecution of secret detention, extraordinary rendition, and coercive interrogation practices. The CHR&GJ, which represents two former CIA “black site” detainees, supports a commission as one of several components of a comprehensive transitional justice agenda.

Victims have a right to know the truth about what was done to them—including where and by whom—and to see those responsible held to account. A commission of inquiry can identify the victims of abusive policies and what has happened to them; establish responsibility for abuses; propose institutional reforms to ensure abuses do not recur; and recommend tangible programs of redress for victims, including reparations to compensate them for the physical, mental, and material damages they suffered.

The American public has a right to know what violations were committed in the name of defending its “national security.” As evidence about past abuses continues to mount, public demand for the truth grows by the day. Yet there remain more questions than answers about past abuses.