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No Accountability for Torturers

by Marjorie Cohn
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The Obama administration has closed the books on prosecutions of those who violated our laws by authorizing and conducting the torture and abuse of prisoners in U.S. custody. Last year, Attorney General Eric Holder announced that his office would investigate only two incidents, in which CIA interrogations ended in deaths. He said the Justice Department “has determined that an expanded criminal investigation of the remaining matters is not warranted.” With that decision, Holder conferred amnesty on countless Bush officials, lawyers and interrogators who set and carried out a policy of cruel treatment.

Now the attorney general has given a free pass to those responsible for the deaths of Gul Rahman and Manadel al-Jamadi. Rahman froze to death in 2002 after being stripped and shackled to a cold cement floor in the secret Afghan prison known as the Salt Pit. Al-Jamadi died after he was suspended from the ceiling by his wrists which were bound behind his back. MP Tony Diaz, who witnessed al-Jamadi’s torture, said that blood gushed from his mouth like “a faucet had turned on” when he was lowered to the ground. A military autopsy concluded that al-Jamadi’s death was a homicide.

Nevertheless, Holder said that “based on the fully developed factual record concerning the two deaths, the department has declined prosecution because the admissible evidence would not be sufficient to obtain and sustain a conviction beyond a reasonable doubt.”

Amnesty for torturers is unacceptable. General Barry McCaffrey declared, “We tortured people unmercifully. We probably murdered dozens of them during the course of that, both the armed

forces and the CIA.” Major General Anthony Taguba, who directed the Abu Ghraib investigation, wrote that “there is no longer any doubt as to whether the [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.” Holder has answered Taguba’s question with a resounding “no.”

Some have suggested that Holder’s decisions have been motivated by political considerations. For example, Kenneth Roth, director of Human Rights Watch, wrote that “dredging up the crimes of the previous administration was seen as too distracting and too antagonistic an enterprise when Republican votes were needed.” And closing the books on legal accountability for Bush officials may remove one more Republican attack on Obama in the next two months before the presidential election.

But the Obama administration’s decision to allow the lawbreakers to go free is itself a violation of the law. The Constitution says that the president “shall take Care that the Laws be faithfully executed.” When the United States ratified the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, we promised to extradite or prosecute those who commit, or are complicit in the commission, of torture. The Geneva Conventions also mandate that we prosecute or extradite those who commit, or are complicit in the commission of, torture.

There are two federal criminal statutes for torture prosecutions—the U.S. Torture Statute and the War Crimes Act; the latter punishes torture as a war crime. The Torture Convention is unequivocal: nothing, including a state of war, can be invoked as a justification for torture.

By letting American officials, lawyers and interrogators get away with torture – and indeed, murder – the United States sacrifices any right to scold or punish other countries for their human rights violations.