



October 21, 2014

Via U.S. Mail

Ambassador Samantha Power
U.S. Permanent Representative to the United Nations
799 United Nations Plaza
New York, NY 10017

Re: White House Position on the U.N. Convention Against Torture

Dear Ambassador Power:

We are deeply concerned about recent reports in *The New York Times* indicating that lawyers in President Obama's administration maintain that the Convention Against Torture (CAT) applies only to acts of torture and cruel, inhuman or degrading treatment or punishment (CIDT) committed *within* the United States. The treaty explicitly prohibits torture and CIDT everywhere. Adopting a different position undermines our nation's efforts to prevent atrocity crimes and exposes U.S. servicemembers around the world to the reciprocal threat of torture. As the United States sends delegates to the Committee Against Torture next month, we urge this government to maintain the only legally available position: that torture and cruel treatment are illegal everywhere.

In the words of U.N. Secretary-General Ban Ki-moon earlier this year, "The prohibition of torture is absolute. The Convention Against Torture states unequivocally that the use of torture is illegal under any circumstances, including armed conflict, the fight against terrorism, political instability or other emergency conditions."

Our government lost its way during those dark days after September 11, 2001, abandoning our nation's historic opposition to torture and CIDT. Authorized at the highest levels in the Bush Administration, a program of cruel psychological and physical abuse was applied to detainees in U.S. custody at Guantánamo Bay, Abu Ghraib, Bagram, and secret CIA "black sites" beyond U.S. borders. In 2009, President Obama's Executive Order 13491 ended this unlawful practice and prohibited torture and cruel treatment in U.S. interrogations wherever they may occur. This brought the United States' policy and practices back into line with the specific, obligatory, and universally recognized prohibition against torture and the cruel treatment of detainees.

The CAT codified this universal prohibition against torture – now well-established under customary international law. The notion that U.S. obligations under the treaty are limited to U.S. territorial borders is nonsense. It relies upon a flawed interpretation of a Senate reservation that the treaty's CIDT provision refers to the same cruel and unusual treatment prohibited by the Constitution. The Bush Administration argued that, because the Constitution does not apply to non-citizens abroad, neither does the treaty. This strained and artificial logic has been discredited by Abraham D. Sofaer, the top State Department lawyer who negotiated the treaty for President Ronald Reagan and presented it to the Senate for President George H.W. Bush. Mr. Sofaer has publicly clarified that the Senate reservation was intended to ensure uniform standards, not to limit the treaty's geographic applicability. And now, based on this reservation,

administration officials apparently maintain that while President Obama's opposition to torture and cruel interrogations anywhere in the world is clear, it remains a separate legal question whether the treaty applies to U.S. conduct overseas. This short-sighted and intellectually dishonest analysis is both unacceptable and dangerous. A 2010 State Department memo warned, "A perception that the United States is continuing to preserve its 'freedom' to commit or condone mistreatment would severely undermine our reputation for a commitment to international law in general, and our efforts to restore the United States' international reputation with respect to humane treatment." We wholeheartedly agree.

This administration must aspire to higher goals. As President Obama recently noted, "[A]ll of us — big nations and small — must meet our responsibility to observe and enforce international norms."

Yours sincerely,



Kathy Roberts
Legal Director
The Center for Justice & Accountability

cc: Stevan E. Bunnell, General Counsel, U.S. Department of Homeland Security
Eric Holder, Attorney General, U.S. Department of Justice
Mary McLeod, Principal Deputy Legal Adviser, U.S. Department of State
Stephen Pomper, Senior Director for Multilateral Affairs and Human Rights on the
National Security Council
Stephen W. Preston, General Counsel, U.S. Department of Defense
Sarah Sewall, Under Secretary of State for Civilian Security, Democracy, and Human
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