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Attorney General Loretta E. Lynch  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530-0001  
USA

11 May 2015

Dear Attorney General Lynch

### **SENATE SELECT COMMITTEE ON INTELLIGENCE REVIEW OF CIA DETENTION PROGRAMME**

Amnesty International is concerned that, more than four months after the Senate Select Committee on Intelligence (SSCI) published the executive summary of its report on the Detention and Interrogation Program operated by the Central Intelligence Agency (CIA), no steps have been taken by the Department of Justice towards ending the impunity enjoyed by those responsible for the crimes under international law committed in this programme.

As the new Attorney General you have a critical responsibility to ensure the USA complies with its international human rights obligations to effectively investigate evidence of crimes under international law and to bring the suspected perpetrators to justice. We urge you to personally examine the full SSCI report and to immediately order a "preliminary review" into violations of federal and international laws, with a view to bringing an end to the impunity that has become the hallmark of this unlawful programme, and to unblocking access for the victims and their families to genuine and meaningful remedy.

The preliminary review conducted by US Attorney John Durham, which resulted in "full criminal investigation" into only two cases, was closed in 2012 with no charges referred. Likewise no one was charged in relation to the destruction of CIA interrogation videotapes, which may have contained evidence of crimes under international law.

Amnesty International considers that the USA is effectively granting a de facto amnesty for crimes under international law committed in the course of the CIA programme, and remains in breach of its international legal obligations on accountability, justice and remedy.

#### **REOPENING AND EXPANDING THE INVESTIGATION**

The Department of Justice should promptly re-open its investigation into CIA interrogations and expand its scope to ensure that it fully complies with international law and standards, covering all CIA interrogations, detentions and renditions. The Department must ensure that it brings to justice in fair trials all the persons, regardless of their level of office or former level of office, suspected of being involved in the commission of crimes under international law, such as torture and enforced disappearance. It should look into the precise role and involvement of the US personnel referenced in the SSCI report and other materials in these programmes and practices, proceed to a prompt, thorough and impartial investigation wherever sufficient grounds exist and prosecute those who are suspected of being involved in crimes under international law.

#### **INSUFFICIENCY OF PREVIOUS REVIEWS AND INVESTIGATION**

When the administration of President George W. Bush left office in January 2009, no one had been prosecuted for the crimes under international law committed in the CIA secret detention programme.

**AMNESTY  
INTERNATIONAL**



**AMNESTY INTERNATIONAL INTERNATIONAL SECRETARIAT**

Peter Benenson House, 1 Easton Street  
London WC1X 0DW, United Kingdom

T: +44 (0)20 7413 5500

F: +44 (0)20 7956 1157

E: [amnestyis@amnesty.org](mailto:amnestyis@amnesty.org)

W: [www.amnesty.org](http://www.amnesty.org)

More than six years later, little has changed. The administration of President Barack Obama effectively took up where its predecessor left off, differentiating between “unauthorized” and “authorized” interrogation techniques while failing to recognize that there were techniques from both categories which were unlawful. Moreover the techniques were conducted against individuals being subjected to enforced disappearance and to conditions of detention which violated the prohibition of torture and other cruel, inhuman or degrading treatment.

In 2011 Attorney General Eric Holder announced that he was in agreement with US Attorney John Durham that apart from two deaths in custody there was no need for a full criminal investigation into any cases. He expressed confidence that this preliminary review had “thoroughly examine[d] the detainee treatment issue.” Given what we know about the programme, Amnesty International does not share his confidence. In November 2014, the UN Committee against Torture noted that the USA had failed to describe “the investigative methods employed by Mr Durham or the identities of any witnesses his team may have interviewed”. The Committee said that it remained concerned that former CIA detainees were not interviewed, “which casts doubts as to whether that high profile inquiry was properly conducted.”

In fact, the administration has not revealed which, if any, officials, former officials, detainees or former detainees, officials of other governments, or non-government sources, international or national, were interviewed for the Durham review. In any event, this initial review was into “the interrogation of specific detainees”, leaving aside the fact that most if not all CIA detainees were subjected to unlawful conditions of detention, and to enforced disappearance, regardless of any interrogation techniques they faced. Moreover, the preliminary review focussed on fewer than 100 detainees. The SSCI has determined that there were at least 119 detainees in CIA custody. In other words, the cases of at least 20 detainees were not even considered in the preliminary review.

#### DE FACTO AMNESTY FOR CRIMES UNDER INTERNATIONAL LAW

In April 2009, President Obama wrote to CIA employees to assure them that anyone who followed Department of Justice advice in using “enhanced” interrogation techniques would not face prosecution. Attorney General Holder subsequently gave assurances that: “the Department of Justice will not prosecute anyone who acted in good faith and within the scope of the legal guidance given by the Office of Legal Counsel regarding the interrogation of detainees.”

In Amnesty International’s view, the USA is granting what amounts to a de facto amnesty for crimes under international law and has effectively engaged in an executive encroachment on judicial power. This arrogation of judicial function can be seen as a continuation of the Bush administration’s deliberate and calculated removal of the judiciary from any oversight over the secret detentions in question. During the course of these detentions multiple crimes under international law were committed, crimes which the Obama administration continues to insulate from judicial determination of individual criminal responsibility.

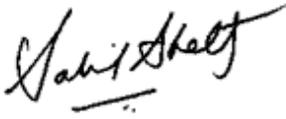
Granting immunity for crimes under international law, or introducing any other measure that prevents the emergence of truth, a final judicial determination of guilt or innocence before an ordinary civilian court and full reparation for victims, by design or effect, by legislation or by executive policy, violates international law. An amnesty for torture would violate express provisions of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and an amnesty for enforced disappearances would be incompatible with that treaty and others such as the International Covenant on Civil and Political Rights.

Amnesty International urges you to reopen investigations into the CIA programme and to ensure that its scope and methods comply with international standards, with the aim of bringing to justice anyone responsible for violations of US and international law. As the new head of the Department of Justice and chief law enforcement officer of the Federal Government, we believe that you have the opportunity to show the world that the USA is serious when it talks about accountability for human rights violations. We urge you to seize it.

I am also sending you a copy of our new report, *USA: Crimes and Impunity*, which details the organization's response to and recommendations on the Senate Select Committee on Intelligence's summary report.

I thank you for your serious consideration of our concerns and look forward to your response.

Yours sincerely

A handwritten signature in black ink, appearing to read "Salil Shetty". The signature is written in a cursive style with a horizontal line underneath the name.

Salil Shetty  
Secretary General