

HUMAN RIGHTS WATCH

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February 26, 2009

Leon Panetta
Director
Central Intelligence Agency
Washington, DC 20505

Dear Director Panetta:

We write to congratulate you on your confirmation as director of the Central Intelligence Agency. We welcome your commitment to set America's approach to fighting terror on an effective, humane, and lawful course.

To that end, we applaud your strong repudiation of torture, your assurances that CIA black sites will no longer operate, your commitment to ensure that the International Committee of the Red Cross is provided access to all detainees in US custody abroad, and your promise to end the practice of transferring detainees to face torture elsewhere.

That said, we are concerned about statements made during your Senate confirmation hearing that suggest that diplomatic assurances—promises of humane treatment—provide an adequate safeguard against transfers to torture or abuse. We would be deeply concerned were the Obama administration to continue the disingenuous practice of accepting unverifiable no-torture promises from countries where torture is standard practice, and outraged if it treated as reliable any intelligence obtained by trusting such promises.

As former CIA and other US officials have acknowledged, diplomatic assurances provide few if any safeguards against abuse. Recipient countries have a clear incentive to hide abuse or mistreatment of transferred detainees. Monitors fail to provide adequate safeguards, as many forms of torture—such as extended sleep deprivation, sexual violence, waterboarding, or prolonged forced standing—leave no physical marks and are therefore easy to hide. Moreover, detainees are often afraid to report abuse to outside monitors, due to a legitimate fear of reprisal.

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As former CIA Director Porter Goss told the Senate Select Committee on Intelligence in February 2005, the United States tries to ensure that suspects are properly treated after a rendition, but “of course once they’re out of our control, there’s only so much we can do.” In a March 2005 interview with the *International Herald Tribune*, Michael Scheuer, a former CIA officer involved with the renditions program since its inception, dismissed diplomatic assurances as “legal niceties,” intended to look good on paper but providing no real protection against abuse. Similarly, former Attorney General Alberto Gonzales acknowledged in testimony before the Senate Armed Services Committee that although the US seeks assurances that suspects will not be tortured, “we are not there in the jail cell in foreign countries where we render someone.”

There are countless examples of individuals who were transferred to foreign custody on the basis of diplomatic assurances and who faced torture or other abuse. One of the best known cases is that of Canadian-Syrian national Maher Arar, arrested at John F. Kennedy airport and ultimately rendered to Jordan and then Syria. A Canadian commission of inquiry concluded in September 2006 that Arar had been tortured and abused in Syria, despite diplomatic assurances to the contrary. Others include Ahmed Agiza and Mohammed al-Zari, transferred from Sweden to US custody in 2001, and then rendered to Egypt. Both men were tortured despite assurances of humane treatment from the Egyptian authorities and frequent visits to the men in prison by Swedish diplomats in Cairo. Two United Nations committees found in 2005 and 2006 that the procurement of diplomatic assurances in these cases was insufficient to protect against the risk of torture.

Similarly, any diplomatic assurances obtained prior to the transfer to Egypt of Ibn al-Shaykh al-Libi, a Libyan militant captured soon after the September 11 attacks, were clearly worthless. According to declassified CIA cables, al-Libi “confessed” to Egyptian interrogators that Saddam Hussein’s Iraq had provided chemical and biological weapons training to al Qaeda. Then-Secretary of State Colin Powell used this information—which turned out to be wrong—in his speech to the UN Security Council to justify war with Iraq. A bipartisan report by the Senate Select Committee on Intelligence found that that al-Libi “lied . . . to avoid torture.”

The practice has caused friction with allies and resulted in investigations of US personnel. Currently 25 CIA agents and a US air force colonel are being tried *in absentia* in Italy for their alleged role in the 2003 abduction of Hassan Mustafa Osama Nasr, also known as Abu Omar, and his subsequent transfer to Egypt, where he was reportedly tortured, despite whatever assurances were granted.

We should note that while the practice of rendition to torture became routine over the last eight years, it did not begin with the Bush administration. As Senator Kit Bond noted during your confirmation hearing, several terrorism suspects were rendered by the US to Egypt under President Clinton, also on the basis of diplomatic

assurances, and they were allegedly tortured and otherwise abused. For example, Abu Talal Al-Qasami was arrested in Croatia and transferred to Egypt in 1995, where he was held incommunicado and reportedly tortured before being executed on the basis of an earlier *in absentia* conviction. Similarly, in 1998, the US rendered five men accused of participating in a terrorist cell in Tirana, Albania, to Egypt, where they were held incommunicado for months and reportedly tortured.

In your testimony, you suggested that Clinton-era renditions were done for the purpose of prosecution and could therefore be justified. You also suggested that this practice would continue under your watch. But the fact that a prisoner may face a court process on return to his home country provides no justification for sending him to face a real risk of torture. We therefore ask that you entirely disavow the practice of rendition to torture, both as it was carried out during the Bush administration, and as it was carried out in previous years.

Finally, we understand that you are part of the review team evaluating the interrogation practices allowed by the Army Field Manual and recommending whether changes or variations are needed. We urge you to reject the illogical idea that the principles governing humane and effective treatment vary among US government agencies, or that some interrogation methods should be kept secret in an era when every conceivable method is already widely known and debated. It is essential that any revisions to the Field Manual adhere to a single, public, and exhaustive list of approved techniques that all follow the "Golden Rule" standard—that nothing should be done to enemy prisoners that the United States would consider unlawful if done to an American citizen.

As President Obama stated during his inauguration speech—and you repeated at your confirmation hearing—the choice between safety and ideals is a false one. We hope that the Central Intelligence Agency will reform its approach to fighting terror under your tenure, so that it both keeps the United States safe and respects basic human rights.

Sincerely yours,

A handwritten signature in black ink that reads "Kenneth Roth". The signature is written in a cursive, somewhat stylized font.

Kenneth Roth
Executive Director

CC:
Hillary Clinton, US Secretary of State
Eric Holder, US Attorney General