

William C. Hubbard
President

AMERICAN BAR ASSOCIATION

321 North Clark Street
Chicago, IL 60654-7598
(312) 988-5109
Fax: (312) 988-5100
abapresident@americanbar.org

June 23, 2015

The Honorable Loretta E. Lynch
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Attorney General Lynch:

The American Bar Association (ABA) is the national representative of the legal profession in the United States, with nearly 400,000 members worldwide. Consistent with domestic and international law, the ABA has long condemned the use of torture in all circumstances. In August 2004, the ABA adopted a policy resolution that states in pertinent part:

RESOLVED, That the American Bar Association condemns any use of torture or other cruel, inhuman or degrading treatment or punishment upon persons within the custody or under the physical control of the United States government (including its contractors) and any endorsement or authorization of such measures by government lawyers, officials and agents;

....

FURTHER RESOLVED, That the American Bar Association urges the United States government to pursue vigorously (1) the investigation of violations of law, including the War Crimes Act and the Uniform Code of Military Justice, with respect to the mistreatment or rendition of persons within the custody or under the physical control of the United States government, and (2) appropriate proceedings against persons who may have committed, assisted, authorized, condoned, had command responsibility for, or otherwise participated in such violations;

....

FURTHER RESOLVED, That the American Bar Association urges the United States government to comply fully and in a timely manner with its reporting obligations as a State Party to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment[.]

The importance of ensuring the international community that the United States will not resort to the use of torture was affirmed last week when the Senate approved an amendment to the National Defense Authorization Act of 2016 that would require all U.S. government interrogations that occur outside a law enforcement context to abide by the Army Field Manual on Interrogations. Enactment of this amendment would be a vital and important step in clarifying U.S. policy and restoring our nation's reputation as a leader in promoting human rights and the international rule of law, but more still needs to be done; we therefore urge your attention to two pending matters that deserve your review.

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The ABA remains concerned that the United States has not fulfilled its obligation to ensure full accountability for those alleged to be responsible for conducting and authorizing illegal and inhumane interrogations.

The Department took an important first step in 2009 when it expanded the mandate of an ongoing special criminal investigation of the Central Intelligence Agency (CIA) to include a preliminary investigation of allegations of CIA mistreatment of detainees held at overseas locations. However, based on the information available at the time of the preliminary investigation, only two incidents of alleged abuse were fully investigated and neither resulted in prosecution because the Department determined that it had insufficient admissible evidence to secure a conviction.

The conclusions of the 2009 special investigation and subsequent decision not to pursue any prosecutions for allegations of torture have been called into question by the extensive documentation collected on the CIA's interrogation program by the Senate Select Committee on Intelligence. In addition, we are concerned by the questions raised by the U.N. Committee Against Torture about whether a complete and impartial investigation has been conducted.

In light of these developments, the ABA therefore calls on the administration to undertake a new, comprehensive review and accounting of all available evidence and, if warranted, to initiate "appropriate proceedings against any persons who ... committed, assisted, authorized, condoned, had command responsibility for, or otherwise participated in such violations."

The second matter deserving discussion involves the administration's interpretation of the extraterritorial application of the Convention Against Torture. The ABA appreciates that administration officials stated during the November 2014 hearing before the U. N. Committee Against Torture that the Convention Against Torture applies to conduct outside the United States under certain circumstances. However, we remain concerned that the United States has not stated clearly that the Convention Against Torture applies wherever the United States exercises *de jure* or *de facto* control.

The ABA, therefore, also respectfully urges the administration to provide this clarification and acknowledge that the Convention Against Torture applies wherever the United States exercises *de jure* or *de facto* control.

Taking these steps will affirm to the international community that the United States is committed to upholding its obligations under international conventions and treaties to which it is a party and that our nation is committed to ensuring that individuals within the custody or control of the United States will not be subjected to torture or other acts of cruel, inhuman or degrading treatment or punishment, no matter where detained.

Sincerely,

A handwritten signature in black ink that reads "William C. Hubbard". The signature is written in a cursive, flowing style.

William C. Hubbard