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Lauren Carasik

Western New England University School of Law, lcarasik@law.wne.edu

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France should fully investigate Guantánamo torture claims

Challenging US intransigence could erode impunity for torturers

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by [Lauren Carasik](#) [@LCarasik](#)

On March 5, the New York–based Center for Constitutional Rights (CCR) and the European Center for Constitutional and Human Rights (ECCHR) [urged](#) a French Appeals Court to fully investigate claims by three French nationals that they were sexually and physically tortured during their detention at the Guantánamo Bay prison in 2002. But a lack of cooperation from U.S. authorities has stymied the French investigation.

Three months after the release of the Senate Select Intelligence Committee’s summary of its report on torture, the furor over the Central Intelligence Agency’s detention and interrogation program has largely subsided. President Barack Obama has reaffirmed his commitment not to pursue prosecutions, ignoring the chorus of calls for accountability. Unless international courts step in to ensure accountability that the U.S. justice system failed to uphold, the torture program’s chief architects will walk away unscathed.

The three Frenchmen — Nizar Sassi, Mourad Benchellali and Khaled Ben Mustaph — were arrested on the border of Afghanistan and Pakistan in 2001 and transported to Guantánamo, where they were detained for up to 17 months. The case has been winding through the French courts for years. It stalled last April when a two-judge panel declined to issue a subpoena for former Guantánamo Commander Geoffrey Miller, on the assumption that the U.S. would not cooperate with the request.

In February 2014, the CCR and the ECCHR submitted an [expert opinion](#) detailing Miller’s role at Guantánamo. The group is now pressing the court to issue a subpoena for Miller’s testimony.

“That the United States is wholly unwilling to investigate and prosecute the very serious claims of torture involving high-level U.S. officials is the very reason for France to thoroughly investigate this case — not shelve it, thereby extending impunity across borders,” CCR [senior staff attorney Katherine Gallagher](#) said in a statement on March 5.

The U.S. has ratified the Convention Against Torture and the Geneva Conventions, which impose binding obligations to investigate and prosecute acts of torture. In January 2012, French Judge Sophie Clement [issued a formal request](#) for information from the U.S., including access to documents justifying the detention of the three men. Yet Washington has ignored Clement’s requests, [apparently over concerns](#) of potential fallout from the investigation. Advocates hope that the release of the Senate report would provide increased fodder and pressure for prosecutions.

“As a matter of international law, the U.S. is legally obliged to bring those responsible to justice,” Ben Emmerson, the United Nations special rapporteur on counterterrorism and human rights, said [in a statement](#) on the Senate report. “The U.S. attorney general is under a legal duty to bring criminal charges against those responsible.” The U.N. [special rapporteur on torture](#) has echoed Emmerson’s comments on the United States’ treaty obligations.

Obama banned torture within few weeks of his inauguration. But he has done little to repudiate Bush-era practices.

U.S. prosecutions are clearly not in the cards. But Washington’s steadfast allegiance to impunity is exactly why others should step in. In recent years, the CCR and its international partners have lodged complaints in Canada, [Germany](#), France and [Spain](#) against former President George W. Bush and several high-ranking officials in his administration, including former CIA director George Tenet and former Defense Secretary Donald Rumsfeld. In 2011, Bush canceled a trip to Switzerland at the eleventh hour when it became public that advocates were preparing to file a similar complaint.

But the cases have been a tough sell. States continue to selectively enforce their obligations under international law. For example, the CCR [filed a complaint](#) in the [U.N. Committee Against Torture against Canada](#) after it refused to pursue legal action against Bush during a 2011 visit. And most of the information necessary to support the suits is still zealously guarded as [state secrets](#).

Advocates hope the Senate report clears the path for international prosecutions. “Other countries have all the information they need, should they wish to exercise universal jurisdiction and prosecute these officials should they appear in their borders,” [Andrea Prasow](#), the deputy Washington director at Human Rights Watch, told The Guardian in December. The CCR [is looking to revive old claims or bring new ones](#) under the theory of universal jurisdiction, which promotes international justice and undermines impunity by allowing and, under certain circumstances, requiring national courts to prosecute grave offenses even when the crimes are committed abroad.

There have been a few hopeful signs of accountability, at least for those complicit in torture. Last month the [European Court of Human Rights](#) refused to reverse a [July 2014 decision](#) that mandated [Poland](#) to [pay reparations](#) to detainees held in a CIA black site in that country. The court held that Poland [enabled the U.S. to commit torture](#) and was complicit in the infliction of inhumane and degrading treatment. [Swiss Federal Assembly member Dick Marty](#) and investigative journalists have identified other countries that hosted CIA sites. The latest decision will likely increase calls for other nations to reckon with their involvement.

The Senate report has put the perpetrators on notice. For example, former CIA general counsel John Rizzo, whose name was frequently mentioned in the report, recently said he [might think twice](#) about traveling to Europe. [The International Criminal Court](#) is reviewing reports of torture in Afghanistan for a possible investigation into U.S. actors for crimes committed in member states’ territory.

Obama [banned](#) torture within few weeks of his inauguration. But he has done little to repudiate Bush-era practices. For one, Obama's executive order is revocable by his successors. And while U.S. laws prohibit torture, including by American citizens overseas, there is no political will to enforce them. Impunity for perpetrators and architects of torture fails to prevent future violations. Responding to the outrage over the report, former Vice President Dick Cheney, defiantly unrepentant, said he would "[do it again in a minute.](#)"

International conventions on torture were forged on a consensus that civilized countries should not commit the grave crime of torture, no matter how threatened they feel. These prohibitions apply regardless of the geopolitical power of the nations who violate them. Since Washington will not support a reckoning for torture, the principle of universal jurisdiction requires France to ensure that impunity does not prevail.

Lauren Carasik is a clinical professor of law and the director of the international human rights clinic at the Western New England University School of Law.

The views expressed in this article are the author's own and do not necessarily reflect Al Jazeera America's editorial policy.