



DOSSIER

THE US TORTURE PROGRAM – APPROVED AT THE HIGHEST LEVELS

1 Introduction	1
1.1 Note from Manfred Nowak, former UN Special Rapporteur on Torture	2
2 The “architects” of the US torture program: Criminal complaints in Europe.....	2
3 “Bush Six:” Investigations in Spain.....	3
4 Guantánamo: Investigations in France	4
5 The El Masri case	4
6 The case of Maher Arar	5
7 Guantánamo: Complaint in Belgium	5
8 CIA torture: Why Germany should investigate Gina Haspel and others.....	6
9 Next steps	7
10 Glossary	8
11 Publications (selection)	9

1 INTRODUCTION

Guantánamo, Abu Ghraib, Bagram, European blacksites, waterboarding, sleep deprivation and electric shocks: these are all parts of the system of US torture introduced in the months and years after 11 September 2001.

Article 5 of the Universal Declaration of Human Rights states that no one shall be subject to torture or to cruel, inhuman or degrading treatment. This principle is also reflected in international law – e.g. in the **UN Convention against Torture (CAT)** – and in domestic laws in many states. Yet people are tortured all over the world. This occurs not only in dictatorships and repressive regimes, but also in partially democratic states and in democracies like the United States.

In response to the 9/11 attacks in 2001, the CIA and US military – with approval at the highest levels – kidnapped, unlawfully detained and tortured hundreds of people.

On 11 January 2002, the first detainees were brought to the US military base at

Guantánamo Bay in Cuba. Over the following years, in the name of “counter-terrorism,” the US government subjected detainees to various forms of torture and abuse by CIA and US military officials. Many other countries condoned or quietly tolerated this system.

The US torture program, initiated under then President George W. Bush and members of his administration, violates international and human rights law. No one has been held criminally liable for these policies. ECCHR is taking legal action to seek justice for survivors, and act as a deterrent, thus helping prevent torture in the future.

ECCHR has worked together with former Guantánamo detainees, the Center for Constitutional Rights (CCR) in New York, and partner lawyers from Europe (Gonzalo Boye, William Bourdon, Apolline Cagnat, Walter van Steenbrugge and Christophe Marchand) since 2004. The legal work focus mainly on the system’s “architects” – high-ranking politicians, officials, intelligence agents and military personnel.

ECCHR is financed solely through the support of foundations and donations in order to remain financially and politically independent.

If you value the work we do, please support us: ecchr.eu/en/donate

1.1 NOTE FROM MANFRED NOWAK, FORMER UN SPECIAL RAPPORTEUR ON TORTURE

In their so-called “war on terror” the US government under George W. Bush violated binding international law standards – international humanitarian law, human rights and the international rule of law – in a manner that was unprecedented for a democratic state that purports to uphold the rule of law. Individuals suspected of involvement in terrorism were arbitrarily detained, interned and tortured over several years at CIA secret prisons and military prisons like Guantánamo Bay, and transported around the globe by means of secret rendition flights in inhumane and degrading conditions. Prisons were specially set up outside US territory in an effort to evade guarantees for prisoners in the US constitution and under international law. Using the fiction of the “war on terror”, the Bush administration tried to convince the rest of the world that in the fight against terrorism, criminal law standards and fundamental human rights standards do not apply, that only the exceptional provisions of international humanitarian law apply. By creating a new category of “illegal enemy combatants”, the Bush administration sought to get around even those bare minimum standards under humanitarian law, leaving them free to see terrorism suspects as being beyond any legal protection. Finally, they tried to sidestep the absolute prohibition on torture through adventurous “legal memos” and unlawful considerations of national security interests on the basis of the “ticking time bomb” scenario.

This text was first published in German in *Folter und die Verwertung von Informationen bei der Terrorismusbekämpfung (Torture and the Use of Information in Countering Terrorism)*, published by ECCHR in 2011.

2 THE “ARCHITECTS” OF THE US TORTURE PROGRAM: CRIMINAL COMPLAINTS IN EUROPE

In November 2004, ECCHR founder General Secretary Wolfgang Kaleck filed a [criminal complaint](#) in Germany on behalf of four Iraqi survivors and the Center for Constitutional Rights concerning the US torture program.

The complaint was directed against former Secretary of Defense Donald Rumsfeld,

former CIA Director George Tenet, and a number of high-ranking military personnel, among others, in relation to breaches of the UN Convention against Torture and the German Code of Crimes against International Law.

The crimes alleged were: **war crimes**, torture, and other crimes committed in the US military detention facilities at Guantánamo and Abu Ghraib. The complaints were based on the **principle of universal jurisdiction**, which is enshrined

in German law. Under this principle, it is possible to pursue legal action in national courts in cases of so called “core crimes,” such as war crimes or crimes against humanity, even if the criminal acts in question took place in another country.

Further legal interventions directed against the “architects” of US torture followed in Germany (2006) and France (2007). In every case, however, the relevant court authorities refused to initiate investigations and rejected appeals of these decisions.

ECCHR submitted a [criminal complaint](#) in 2011 in Geneva against George W. Bush himself. The complaint accuses Bush of a number of crimes, including violations of the UN Convention against Torture. The possibility of immunity for former heads of state does not apply in the case of torture.

3 “BUSH SIX:” INVESTIGATIONS IN SPAIN

In March 2009, a [criminal complaint](#) was filed in Spain against six former US officials concerning their responsibility for violations of international law, including war crimes and torture. The six US officials became known as the “Bush Six.” The Bush Six are accused of having aided and abetted crimes of torture, cruel, inhuman or degrading treatment, and grave breaches of the **Geneva Conventions** of 1949. The crimes in question were committed at US detention facilities in Guantánamo and other locations. The investigation was later extended to include the system in Guantánamo as a whole.

ECCHR initiated the proceedings with partner lawyers from Madrid and New

The Convention against Torture obliges member states to investigate suspected instances of torture, even if allegations relate to former presidents or members of the government, secret services, the army or police forces.

The comprehensive complaints were supported by more than 50 organizations from around the world, as well as by Nobel Peace Prize winners Shirin Ebadi and Pérez Esquivel, and former UN Special Rapporteurs Theo van Boven and Leandro Despouy.

Following the announcement of the criminal complaint, George W. Bush cancelled a planned trip to Geneva.

York, and represents the German citizen Murat Kurnaz who was detained – and tortured – in Guantánamo between January 2002 and August 2006.

When these proceedings were due to be closed in 2015 after a change in universal jurisdiction laws in Spain, ECCHR and CCR submitted a constitutional complaint to challenge the decision.

The complaint was rejected in April 2019. In the decision, which is final, the court ignored evidence that indicated the involvement of Spanish suspects. With this decision, Spain missed its opportunity to take a leading role in the fight against US torture.

4 GUANTÁNAMO: INVESTIGATIONS IN FRANCE

For nearly three years, French citizens Mourad Benchellali and Nizar Sassi were detained and tortured at Guantánamo. Since 2002, Benchellali and Sassi, together with their families and ECCHR partner lawyers, have been fighting to ensure those responsible are held accountable. The French judiciary has been [investigating](#) the US torture program since then.

In March 2016, retired US General Geoffrey Miller, the former Guantánamo prison chief, failed to appear in a French court. Miller had been summoned as an “accused witness” to answer questions stemming from accusations that he oversaw the torture of three French nationals at Guantánamo prison.

ECCHR and CCR submitted briefs to the court in 2015, arguing that the cruel treatment in Guantánamo constitutes torture under international law, and detailed Miller’s criminal responsibility.

Miller – as expected – did not appear in court. For Benchellali and Sassi, however, the summons was an important step.

In October 2016, on behalf of Sassi and Benchellali, ECCHR and CCR requested that the investigative judge of the High Court of Paris (*Cour d’Appel de Paris* –

Tribunal de Grande Instance de Paris) also question William “Jim” Haynes on his role in the torture. Haynes was General Counsel (chief legal advisor) in the US Department of Defense from 2001-2008 and worked closely with former Secretary of Defense Donald Rumsfeld between 2001 and 2006.

In a 26-page dossier submitted to the French authorities, CCR and ECCHR detail Haynes’ involvement in the policies of torture and war crimes. The information presented shows that Haynes was one of the primary architects of the Bush administration’s interrogation and detention policies. It sets out the role Haynes played in, e.g. formulating and approving the list of interrogation techniques that led directly to torture and abuse at Guantánamo, and in allowing the torture and abuse to continue by silencing military and other government departments’ objections to the interrogation techniques.

In November 2019, ECCHR and CCR submitted an expert opinion on Donald Rumsfeld’s criminal liability and demanded that he be summoned. In December 2019, the Paris Court of Appeals (*Chambre de l’instruction de la Cour d’appel*) nevertheless decided to close the investigations. Benchellali and Sassi appealed this decision.

5 THE EL MASRI CASE

German citizen Khaled El Masri was abducted by CIA officials at the Serbian-Macedonian border in December 2003. El

Masri spent nearly four months in a secret CIA prison in Afghanistan where he was regularly subjected to physical abuse and degradation. Eventually, the CIA released

him on a roadside in Albania. He arrived back in Germany in May 2004.

El Masri's case is one of the best documented CIA rendition operations. Several inquiry commissions examined this case, and legal actions were brought before various national and regional courts.

ECCHR filed a [complaint](#) in Germany with the administrative court in Cologne,

seeking to enforce 13 arrest warrants against former CIA officials who were involved in El Masri's abduction in Skopje and rendition to Kabul. The German government, however, refused to officially ask the US to extradite those indicted. The Cologne administrative court rejected the lawsuit on its merits.

6 THE CASE OF MAHER ARAR

Maher Arar, a Canadian citizen, was arrested and abducted by US officials in 2002, and brought to Syria. During his one-year detention in Syria, he was subjected to torture, and was imprisoned in inhumane and degrading conditions. After his return to Canada, a commission of inquiry, established by the Canadian government, brought the circumstances of his case to light.

Arar sought compensation before US courts for his rendition to Syria. The lower

courts dismissed the claim on the basis that it concerned state secrecy issues, arguing that the case posed a risk to foreign relations and national security.

In association with the Human Rights Committee of the Bar of England and Wales, ECCHR filed an amicus curiae brief in March 2010 supporting the Center for Constitutional Rights' petition in Maher Arar's [civil action](#).

In June 2010, the US Supreme Court, issued a decision refusing to review the case.

7 GUANTÁNAMO: COMPLAINT IN BELGIUM

Belgian citizen Mosa Zemmouri was detained at the US military base in Guantánamo Bay from 2002 to 2005, where he was subjected to brutal beatings, sensory deprivation, exposure to extreme temperatures, and other severe forms of physical and psychological abuse.

In March 2017, the UN Committee against Torture in Geneva accepted a [complaint](#)

(individual communication) against Belgium filed by Zemmouri. ECCHR and its cooperating lawyers in Belgium – Walter van Steenbrugge and Christophe Marchand – submitted the complaint on behalf of Zemmouri in January 2017.

In their submission, Zemmouri, his lawyers and ECCHR argue that Belgian officials were complicit in the abuse, that Belgium knew about the torture but failed to prevent it, and that Belgian authorities

subsequently failed to carry out adequate investigations into the crimes. Belgium was obliged under the UN Convention against Torture to do so.

The complaint was filed on the 15th anniversary of the first detainees' arrival in Guantánamo Bay.

8 CIA TORTURE: WHY GERMANY SHOULD INVESTIGATE GINA HASPEL AND OTHERS

In February 2017, US President Donald Trump appointed Gina Haspel CIA Deputy Director. In May 2018, she was promoted to Director.

Haspel has held various positions since joining the CIA in 1985. From 2002 to 2005, she was involved in the CIA's rendition and torture program, including as head of a "blacksite" (secret prison) in Thailand.

Prior to 2017, Haspel's work at the CIA was undercover, and it was only during her appointment as Deputy Director that her name, previous posts and areas of work became known.

In June 2017, ECCHR submitted a criminal [complaint](#) about Haspel,

ECCHR's first such legal action against a serving CIA official. The complaint, which was filed with the **German Federal Public Prosecutor** (*Generalbundesanwalt – GBA*), is aimed at securing an arrest warrant for Haspel. This submission is a follow-up to a criminal complaint about the US torture program to German prosecutors in December 2014.

ECCHR calls for an investigation into the US torture program as a whole, and the members of government, CIA and military who bear responsibility for the program. In its submissions, ECCHR accuses Tenet, Rumsfeld and other named suspects of the war crime of torture under Article 8 § 1(3) of the German Code of Crimes under International Law. The US Senate Intelligence Committee Report on the CIA Detention and Interrogation Program confirmed that acts of torture occurred in the program.

9 NEXT STEPS

By appointing Gina Haspel as CIA Director, President Trump showed his support for a woman who approved of and supervised torture. Although former President Barack Obama planned to close the Guantánamo prison, he failed to ensure that those responsible for the unlawful policies faced legal consequences. President Trump shows no hesitation in keeping Guantánamo open and running, and has repeatedly voiced his support for torture, including waterboarding.

Those responsible for the US torture program, including former Defense Secretary Rumsfeld, former President Bush and other high-ranking politicians and military officials, enjoy total impunity for their role in torture. Some of those responsible face restrictions when travelling overseas, thanks to criminal complaints, open letters and civil society organizations' efforts. None, however, have ever stood trial as a defendant.

ECCHR will keep challenging those responsible for torture, war crimes and crimes against humanity. This includes the [cases of British soldiers](#) who abused prisoners in Iraq.

Several hundred Iraqis who were detained by British forces brought allegations of

grave mistreatment from 2003 to 2008 to ECCHR's former British partner organization Public Interest Lawyers (PIL). Together, ECCHR and PIL chose to analyse 85 representative cases in a communication to the [International Criminal Court](#) in The Hague. The submission details how techniques including physical assault, hooding, electric shocks, stress positions, deprivation of food, water and sleep, and sexual humiliation were used against detainees.

In December 2017, the ICC's Office of the Prosecutor announced that it had a reasonable basis to believe that members of the UK armed forces committed war crimes against detainees in Iraq. Prosecutors in The Hague moved to what is referred to as Phase 3 of the proceedings, examining issues of gravity and complementarity. The complementarity assessment will consider whether the UK is conducting genuine investigations and prosecutions.

In so many cases, powerful decision-makers evade prosecution for the crimes they commit. ECCHR works with an international network of activists and lawyers in an effort to end this impunity.

10 GLOSSARY

Geneva Conventions: The four Geneva Conventions of 1949 form the basis of International Humanitarian Law. These laws protect persons who are not or no longer involved in hostilities. This includes civilians, prisoners of war and wounded and sick soldiers. 196 states have signed up to the Geneva Conventions to date.

German Federal Public Prosecutor: The Office of the German Federal Public Prosecutor (*Generalbundesanwaltschaft*, GBA) is Germany's highest prosecutory authority. The GBA is responsible for prosecutions in serious cases relating to crimes against international law and crimes concerning state security.

International criminal law: International criminal law is a body of rules prohibiting grave human rights violations such as genocide, war crimes, crimes against humanity and the crime of aggression. These are crimes which are so serious they are seen as concerning the international community as a whole. This body of law allows the perpetrators of these crimes to be held criminally liable for their actions. Prosecutions for these crimes can – depending on the case – be carried out on a national level or at an international tribunal such as the International Criminal Court.

UN Convention against Torture: The UN Convention against Torture aims to prevent torture and other cruel, inhuman or degrading treatment or punishment. It was adopted in 1984 and supplements the Universal Declaration on Human Rights and the Geneva Conventions. Under the Convention states are obliged to prevent and punish acts of torture.

Universal jurisdiction: The principle of universal jurisdiction provides for a state's jurisdiction over crimes against international law even when the crimes did not occur on that state's territory, and neither the victim nor perpetrator is a national of that state. The principle allows national courts in third countries to address international crimes occurring abroad, to hold perpetrators criminally liable, and to prevent impunity.

War crimes: War crimes are serious violations of international humanitarian law provisions applicable in international and non-international armed conflict. War crimes are part of the core crimes of international criminal law and are subject to universal jurisdiction. War crimes can include e.g. torture, intentional attacks on the civilian population or civilian objects such as hospitals and the use of chemical weapons.

11 PUBLICATIONS (SELECTION)

Wolfgang Kaleck: “Justice and Accountability in Europe – Discussing Strategies”, in: ECCHR (ed.), *CIA-‘Extraordinary Rendition’ Flights, Torture and Accountability – A European Approach*, Berlin 2009, pp. 6-17

Andreas Schüller / Morenike Fajana: “Piecing together the puzzle: making US torturers in Europe accountable”, in: *Statewatch*, September 2014

Christian Fuchs: “Trump’s Darling – Gina Haspel, the new No. 2 at the CIA, played a leading role in the torture of terror suspects following 9/11. Now German lawyers are seeking criminal action against her.” *ZEIT Online*, 10 June 2017

Wolfgang Kaleck: “Obamas Trippelschritte gegen die Folter”, in: *Recht Subversiv, DIE ZEIT*, 9 December 2015

Wolfgang Kaleck: “Litigating ‘Extraordinary Rendition’ Cases: Overview and Challenges”, in: Manfred Nowak / Roland Schmidt (eds.), *Extraordinary Renditions and the Protection of Human Rights*, series from the Ludwig Boltzmann Institut für

Menschenrechte 20, Vienna / Graz 2010, pp. 13-30

Wolfgang Kaleck: *Double Standards: International Criminal Law and the West*, Torkel Opsahl Academic, 2015

Wolfgang Kaleck: „Ein bitterer Sieg. Europäischer Gerichtshof für Menschenrechte urteilt: Menschenrechte von El Masri wurden verletzt“, in: T. Müller-Heidelberg et. al. (eds.), *Grundrechte-Report 2013. Zur Lage der Bürger- und Menschenrechte in Deutschland*, in: Fischer Taschenbuch Verlag 2013, pp. 22-25

Andreas Schüller et. al.: *Folter und die Verwertung von Informationen bei der Terrorismusbekämpfung*, ECCHR (ed.), Berlin 2011

For more information and documents related to ECCHR’s cases, see ecchr.eu/en/topic/us-torture as well as ECCHR’s 10 year anniversary [special publication](#).

“Those who commit, order or allow torture should be brought before a court – this is especially true for senior officials from powerful nations.”

– Wolfgang Kaleck, ECCHR General Secretary

Without your support we would not be able to fight against injustice, to give survivors a voice in court and to enforce human rights with legal means around the world.

With your donation you can help to:

- Put an end to the **impunity** of the powerful.
- Hold **accountable** those **responsible** for torture, arbitrary executions and enforced disappearances.
- Work together with those affected by grave human rights violations to further legal and societal efforts to **address past wrongs**.
- Protect and **enforce human rights** through legal means.
- Put **pressure on key decision-makers** to prevent future human rights violations.

ECCHR is financed solely through donations and grants from foundations in order to stay financially and politically independent.

Thank you for supporting us: ecchr.eu/en/donate

Alternatively, you can also transfer your donation to the following bank account:

You find ECCHR’s work on valuable? Please support us with a donation:

Account holder:	ECCHR	Bank:	Berliner Volksbank
Account number:	8853607011	Sort Code:	10090000
BIC / SWIFT:	BEVODEBB	IBAN:	DE77100900008853607011

(Please provide an address if you wish to receive a tax receipt for your donation).

IMPRINT:

Publisher: European Center for Constitutional and Human Rights (ECCHR) e.V.

info@ecchr.eu

www.ecchr.eu

Last updated: January 2020