

Calls persist in U.S. for prosecution of "torture memo" authors

by Matthew Rusling

WASHINGTON, May 7 (Xinhua) -- In spite of the recent Justice Department's draft report which fell short of recommending criminal charges against the "torture memo" authors, calls continue for further investigation and possible criminal trial of the case.

At the center of the controversy are three former Justice Department lawyers who wrote a series of memos arguing that interrogation practices such as "water boarding" -- a non-lethal technique simulating drowning -- do not constitute torture and are therefore lawful.

The authors -- Jay Bybee, now a federal judge; John Yoo, now a law professor; and Steven Bradbury, who has left the Justice Department -- defined "torture" as brutality causing organ failure and death.

Democrats countered that torture includes any type of pain or suffering inflicted to obtain intelligence or a confession. Many of them seek to punish the three attorneys for legally sanctioning practices that defy international norms on the treatment of prisoners.

The Bush administration said it was simply using "enhanced" techniques to gain intelligence about future attacks on the United States.

The draft report will now go to Attorney General Eric Holder for final revision or approval.

But despite the findings, the American Civil Liberties Union (ACLU) is still calling for an independent investigation. The report was just one more piece of the puzzle and by no means conclusive, the group said.

"Regardless of the findings from the Department of Justice ethics division, the ball is in Attorney General Holder's court," Anthony D. Romero, executive director of the ACLU, said.

Holder "should not be swayed by political considerations or by an inquiry that was intentionally neutered and limited in scope," Romero said.

The memos were declassified in April as a result of an ACLU Freedom of Information Act lawsuit, sparking a debate between those clamoring for an independent investigation and possible criminal prosecution and others who prefer to leave the issue in the past.

Vincent Warren, executive director of the Center for Constitutional Rights, said his group will also continue to call for a special

investigative counsel, despite the findings.

He said he was shocked that the Justice Department did not recommend prosecution "after all of the evidence of abuse and torture that have resulted from the legal reasoning of the people at issue."

Prominent Democrats are also pressing for an independent investigation.

A representative for Patrick Leahy, the Senate Judiciary Committee chairman, said: "(Leahy) still believes that would be the best way to proceed."

The Senate Intelligence Committee will also conduct its own probe, in spite of the Justice Department's conclusions, said the representative.

Despite the outcry, others said prosecution would be detrimental to the nation. Richard Haas, president of the Council on Foreign Relations, a Washington, D.C. think tank, said prosecutions would have a "chilling" effect on future officials -- few would pitch controversial proposals that could one day be deemed unlawful -- and could discourage people from careers in public service.

Jim Carafano, fellow at the Heritage Foundation, said no laws have been broken and that an investigation would be inappropriate.

"This is all about politics," he said. "You can't prosecute a lawyer for giving legal advice. That is just ridiculous."

Such prosecutions should be reserved for those who abuse power, but in this case the authors of the memo were acting in good faith in an effort to make Americans safer, Carafano said.

"I have no problem with someone going after an abuse of power. We went after Nixon because he broke the law," Carafano said, referring to the former president's impeachment in the 1970s. "This current issue is completely different," he said.

David Rittgers, legal policy analyst at the CATO Institute, another think tank based in Washington, said a trial could impact the president's ability to obtain legal advice.

Rittgers noted that the United States has traditionally avoided prosecuting members of outgoing administrations. Doing so would be a "break from history," he said.

Proving guilt in a jury trial would also be difficult, as some Americans are in favor of harsh interrogation techniques if those methods yield useful information, Rittgers said.

"That torture should not happen is not a unanimous view across the county," he said. "You would have to have a jury of 12 people who agreed that it was wrong."

Indeed, a recent Gallup poll found a mixed bag of opinions -- 51 percent of Americans favor an investigation and 42 percent are opposed.

At the same time, 55 percent of Americans believe the use of rough techniques is justified, while only 36 percent say it is not. Most of those following the issue "very closely" oppose an investigation and think harsh interrogation methods are justified, the poll said.

In a recent speech, President Barack Obama surprised many by saying harsh interrogation methods have produced useful information, although he was quick to emphasize that they should still be ruled out on moral grounds.

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