United Nations CAT/C/USA/CO/3-5

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Committee against Torture

Concluding observations on the combined third to fifth periodic reports of the United States of America*

1. The Committee against Torture considered the combined third to fifth periodic reports of the United States of America (CAT/C/USA/3-5) at its 1264th and 1267th meetings (CAT/C/SR.1264 and 1267), held on 12 and 13 November 2014, and adopted at its 1276th and 1277th meetings (CAT/C/SR.1276 and 1277), held on 20 November 2014, the following concluding observations.

A. Introduction

2. The Committee expresses its appreciation to the State party for accepting the optional reporting procedure, as it helps the State party to prepare a more focused report and improves the dialogue between the State party and the Committee. It notes, however, that the report was submitted with a two-year delay.

3. The Committee appreciates the dialogue with the State party's high-level delegation and the responses provided orally to the questions and concerns raised during the consideration of the report.

B. Positive aspects

4. The Committee welcomes the changes in the State party's legislation and jurisprudence in areas of relevance to the Convention, including:

(a) Recognition by the Supreme Court in *Boumediene* v. *Bush*, 553 U.S. 723 (2008), of the extraterritorial application of constitutional habeas corpus rights to aliens detained by the military as enemy combatants at Guantanamo Bay;

(b) Presidential Executive Orders 13491 – Ensuring Lawful Interrogations, 13492 – Review and Disposition of Individuals Detained at the Guantanamo Bay Naval Base and Closure of Detention Facilities, and 13493 – Review of Detention Policy Options, issued on 22 January 2009;

* Adopted by the Committee at its fifty-third session (3–28 November 2014).

(c) Presidential Executive Order 13567, issued on 7 March 2011, which establishes a periodic review of individuals detained at the Guantanamo Bay detention facility who have not been charged, convicted or designated for transfer;

(d) Supreme Court rulings in *Graham* v. *Florida* (2010), which prohibited sentences of life imprisonment without parole for children convicted of non-homicide offences, and *Miller* v. *Alabama* (2012), which barred sentences of mandatory life imprisonment without parole for children convicted of homicide offences.

5. The Committee also welcomes the efforts of the State party to amend its policies, programmes and administrative measures to give effect to the Convention, including:

(a) Adoption of the Directive on the appropriate use of segregation in Immigration and Customs Enforcement (ICE) detention facilities, in 2013; and ICE revised Performance-Based National Detention Standards, in 2011;

(b) Promulgation of the National Standards to Prevent, Detect, and Respond to Sexual Abuse in Confinement Facilities, in accordance with the Prison Rape Elimination Act of 2003, in 2012; and the efforts undertaken by the State party to ensure respect of the act in federal, state and local facilities and to collect data on the extent of sexual violence in detention.

6. The Committee welcomes the firm and principled position adopted by the State party with regard to the applicability of the Convention during armed conflict, and its statement that a time of war does not suspend the operation of the Convention, which continues to apply even when the State is engaged in an armed conflict.

7. It also welcomes the State party's long-standing commitment to the United Nations Voluntary Funds for Victims of Torture and its mission.

8. Finally, the Committee notes with appreciation President Obama's public statement on 1 August 2014, in which he qualified some of the so-called "enhanced interrogation-techniques" as acts of torture.

C. Principal subjects of concern and recommendations

Definition and criminalization of torture

9. Notwithstanding the State party's statement that under United States law, acts of torture are prohibited by various statutes and may be prosecuted in a variety of ways, the Committee regrets that the specific offence of torture has not yet been introduced at the federal level. The Committee is of the view that the introduction of the offence of torture, in full conformity with article 1 of the Convention, would strengthen the human rights protection framework in the State party. The Committee also regrets that the State party maintains a restrictive interpretation of the provisions of the Convention and does not intend to withdraw any of its interpretative understandings lodged at the time of ratification. In particular, the concept of "prolonged mental harm" introduces a subjective non-measurable element which undermines the application of the treaty. While noting the delegation's explanations on this matter, especially with regard to articles 1 and 16 of the Convention, the Committee recalls that, under international law, reservations that are contrary to the object and purpose of a treaty are not permissible (arts. 1 and 2, paras. 1 and 4).

The Committee reiterates its previous recommendation (A/55/44, para. 180 (a) and CAT/C/USA/CO/2, para. 13) that the State party criminalize torture at the federal level, in full conformity with article 1 of the Convention, and ensure that penalties for torture are commensurate with the gravity of the crime. It recommends the re-

introduction of the Law Enforcement Torture Prevention Act, which contains a definition of torture and specifically criminalizes acts of torture by law enforcement personnel and others under the colour of law.

The State party should give further consideration to withdrawing its interpretative understandings and reservations to the Convention. In particular, it should ensure that acts of psychological torture are not qualified as "prolonged mental harm". In that regard, the Committee draws attention to its general comment No. 2 (2007) on the implementation of article 2 of the Convention by State parties, in which it states that serious discrepancies between the Convention's definition and that incorporated into domestic law create actual or potential loopholes for impunity (para. 9).

Extraterritoriality

10. The Committee welcomes the State party's unequivocal commitment to abide by the universal prohibition of torture and ill-treatment everywhere, including at Bagram and Guantanamo Bay detention facilities, as well as the assurances that United States personnel are legally prohibited under international and domestic law from engaging in torture or cruel, inhuman, or degrading treatment or punishment at all times and in all places. The Committee notes that the State party has reviewed its position concerning the extraterritorial application of the Convention and stated that it applies to "certain areas beyond" its sovereign territory, and more specifically to "all places that the State party controls as a governmental authority", noting that it currently exercises such control at "the United States Naval Station at Guantanamo Bay, Cuba, and over all proceedings conducted there, and with respect to U.S.-registered ships and aircraft". The Committee also values the statement made by the State party's delegation that the reservation to article 16 of the Convention, whose intended purpose is to ensure that existing United States constitutional standards satisfy the State party's obligations under article 16, "does not introduce any limitation to the geographic applicability of article 16", and that "the obligations in article 16 apply beyond the sovereign territory of the United States to any territory under its jurisdiction" under the terms mentioned above.

However, the Committee is dismayed that the State party's reservation to article 16 of the Convention features in various declassified memoranda, which contain legal interpretations of the extraterritorial applicability of United States obligations under the Convention, issued by the Department of Justice Office of Legal Counsel between 2001 and 2009, as part of deeply flawed legal arguments used to advise that interrogation techniques, which amounted to torture, could be authorized and used lawfully. While noting that those memoranda were revoked by Presidential Executive Order 13491 to the extent of their inconsistency with that order, the Committee remains concerned that the State party has not yet withdrawn its reservation to article 16 which could permit interpretations incompatible with the absolute prohibition of torture and ill-treatment.

The Committee reiterates its recommendation (CAT/C/USA/CO/2, para. 15) that the State party should take effective measures to prevent acts of torture, not only in its sovereign territory, but also "in any territory under its jurisdiction". In that respect, the Committee draws attention to its general comment No. 2 (2007), in which it recognizes that 'any territory' includes "all areas where the State party exercises, directly or indirectly, in whole or in part, de jure or de facto effective control, in accordance with international law. The reference to 'any territory' in article 2, like that in articles 5, 11, 12, 13 and 16 [of the Convention], refers to prohibited acts committed not only on board a ship or aircraft registered by a State party, but also during military occupation or peacekeeping operations and in such places as embassies, military bases, detention facilities, or other areas over which a State party exercises factual or effective control" (para. 16).

The State party should amend the relevant laws and regulations accordingly, and withdraw its reservation to article 16, as a means of avoiding wrongful interpretations.

Counter-terrorism measures

11. The Committee expresses grave concern over the extraordinary rendition, secret detention and interrogation programme operated by the United States Central Intelligence Agency (CIA) between 2001 and 2008, which comprised numerous human rights violations, including torture, ill-treatment and enforced disappearance of persons suspected of involvement in terrorism-related crimes. While noting the content and scope of Presidential Executive Order 13491, the Committee regrets that the State party only provided scant information about the now shuttered network of secret detention facilities, which formed part of the high-value detainee programme publicly referred to by President Bush on 6 September 2006. It also regrets that the State party did not provide information on the practices of extraordinary rendition and enforced disappearance, nor on the extent of the abusive interrogation techniques, such as waterboarding, used by the CIA on suspected terrorists. In that regard, the Committee is closely following the declassification process of the United States Senate Select Committee on Intelligence report on the CIA Detention and Interrogation Programme (arts. 2, 11 and 16).

The Committee recalls the absolute prohibition of torture contained in article 2, paragraph 2, of the Convention: "No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture." In that regard, the Committee draws the State party's attention to its general comment No. 2 (2007), in which it states that exceptional circumstances include "any threat of terrorist acts or violent crime as well as armed conflict, international or non-international."

The Committee urges the State party to:

(a) Ensure that no one is held in secret detention anywhere under its de facto effective control. The Committee reiterates that detaining individuals in such conditions constitutes, per se, a violation of the Convention (CAT/C/USA/CO/2, para. 17);

(b) Take all necessary measures to ensure that its legislative, administrative and other anti-terrorism measures are compatible with the provisions of the Convention, in particular the provisions of article 2;

(c) Adopt effective measures to ensure, in law and in practice, that all detainees are afforded all legal safeguards from the very outset of the deprivation of their liberty, including the safeguards mentioned in paragraphs 13 and 14 of the Committee's general comment No. 2 (2007).

The Committee calls for the declassification and prompt public release of the Senate Select Committee on Intelligence report on the CIA secret detention and interrogation programme, with minimal redaction.

The Committee also encourages the State party to ratify the International Convention for the Protection of All Persons from Enforced Disappearance.

Inquiries into allegations of torture overseas

12. The Committee expresses concern over the ongoing failure on the part of the State party to fully investigate allegations of torture and ill-treatment of suspects held in United States custody abroad, evidenced by the limited number of criminal prosecutions and convictions. In that respect, the Committee notes that during the period under review, the

United States Department of Justice successfully prosecuted two instances of extrajudicial killings of detainees by Department of Defense and CIA contractors in Afghanistan. It also notes the additional information provided by the State party's delegation regarding the criminal investigation undertaken by Assistant United States Attorney John Durham into allegations of detainee mistreatment while in United States custody at overseas locations. The Committee regrets, however, that the delegation was not in a position to describe the investigative methods employed by Mr. Durham or the identities of any witnesses his team may have interviewed. Thus, the Committee remains concerned about information before it that some former CIA detainees, who had been held in United States custody abroad, were never interviewed during the investigations, which casts doubts as to whether that high-profile inquiry was properly conducted. The Committee also notes that the Justice Department had announced on 30 June 2011 the opening of a full investigation into the deaths of two individuals while in United States custody at overseas locations. However, Mr. Durham's review concluded that the admissible evidence would not be sufficient to obtain and sustain convictions beyond a reasonable doubt. The Committee shares the concerns expressed at the time by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment over the decision not to prosecute and punish the alleged perpetrators.[1] It further expresses concern about the absence of criminal prosecutions for the alleged destruction of torture evidence by CIA personnel, including the destruction of the 92 videotapes of interrogations of Abu Zubaydah and Abd al-Rahim al-Nashiri that triggered Mr. Durham's initial mandate. The Committee notes that, in November 2011, the Justice Department had decided, based on Mr. Durham's review, not to initiate prosecutions of those cases (arts. 2, 12, 13 and 16).

The Committee urges the State party to:

(a) Carry out prompt, impartial and effective investigations wherever there is reasonable ground to believe that an act of torture and ill-treatment has been committed in any territory under its jurisdiction, especially in those cases resulting in death in custody;

(b) Ensure that alleged perpetrators of and accomplices to torture, including persons in positions of command and those who provided legal cover, are duly prosecuted and, if found guilty, given penalties commensurate with the grave nature of their acts. In that connection, the Committee draws the State party's attention to paragraphs 9 and 26 of its general comment No. 2 (2007);

(c) Provide effective remedies and redress to victims, including fair and adequate compensation, and as full rehabilitation as possible, in accordance with the Committee's general comment No. 3 (2012) on the implementation of article 14 of the Convention by State parties;

(d) Undertake a full review into the way in which the responsibilities of the CIA were discharged in relation to the allegations of torture and ill-treatment against suspects during United States custody abroad. In the event that investigations are reopened, the State party should ensure that any such inquiries are designed to address the alleged shortcomings in the thoroughness of the previous reviews and investigations.

[1] Juan Méndez, UN Special Rapporteur on Torture, "Enforcing the Absolute Prohibition Against Torture", transcript of discussion chaired by Sir Emyr Jones Parry, Chair of Board of Trustees, Redress (Chatham House, London, 10 September 2012), pp. 5-6.

Military accountability for abuses

13. The information provided by the State party's delegation indicates that the United States Department of Defense has conducted "thousands of investigations since 2001, and prosecuted or disciplined hundreds of service members for mistreatment of detainees and other misconduct". However, the Committee regrets that, in the course of the dialogue, the delegation only provided minimal statistics on the number of investigations, prosecutions, disciplinary proceedings and corresponding reparations. The Committee also did not receive sufficient information about the sentences and criminal or disciplinary sanctions imposed on offenders or about whether the alleged perpetrators of those acts were suspended or expelled from the United States military, pending the outcome of the investigation of the abuses. In the absence of that information, the Committee is unable to assess whether the State party's actions are in conformity with the provisions of article 12 of the Convention (arts. 2, 12, 13, 14 and 16).

The Committee urges the State party to:

(a) Ensure that all instances of torture and ill-treatment by military personnel are promptly and impartially investigated, that alleged perpetrators are prosecuted and, if found guilty, punished appropriately, and that effective reparation, including adequate compensation, is granted to every victim;

(b) Ensure that alleged perpetrators of torture or ill-treatment are immediately suspended from duty for the duration of the investigation, particularly when there is a risk that they might otherwise be in a position to repeat the alleged act or to obstruct the investigation.

Guantanamo Bay detention facilities

14. The Committee expresses its deep concern that the State party continues to hold a number of individuals without charge in the Guantanamo Bay detention facilities. Notwithstanding the State party's position that those individuals were captured and detained as "enemy belligerents" and that, under the law of war, it is permitted "to hold them until the end of the hostilities", the Committee reiterates that indefinite detention without charge constitutes, per se, a violation of the Convention (CAT/C/USA/CO/2, para. 22). According to the figures provided by the delegation, to date, out of the 148 men still held at the facility, only 33 have been designated for potential prosecution, either in federal court or by military commissions, and the latter fail to meet international fair trial standards. The Committee notes with concern that 36 others have been designated for "continued law of war detention". While noting that detainees held in Guantanamo Bay have the constitutional privilege of the writ of habeas corpus, the Committee is concerned at reports that indicate that federal courts have rejected a significant number of habeas corpus petitions.

While noting the explanations provided by the State party concerning the conditions of detention at Guantanamo Bay, the Committee remains concerned about the secrecy surrounding conditions of confinement, especially in Camp 7, where high-value detainees are housed. It also notes the studies received on the cumulative effect of the conditions of detention and treatment in Guantanamo Bay on the psychological health of detainees. There have been nine deaths in Guantanamo during the period under review, including seven suicides. In that respect, another cause of concern is the repeated suicide attempts and recurrent mass hunger strike protests by detainees over indefinite detention and conditions of detention. In that connection, the Committee considers that force-feeding of prisoners on hunger strike constitutes ill-treatment in violation of the Convention. Furthermore, it notes that lawyers of detainees have argued in court that force-feedings are allegedly

administered in an unnecessarily brutal and painful manner (arts. 2, 11, 12, 13, 14, 15 and 16).

The Committee calls upon the State party to take immediate and effective measures to:

(a) Cease the use of indefinite detention without charge or trial for individuals suspected of terrorism-related activities;

(b) Ensure that detainees held at Guantanamo Bay who are designated for potential prosecution are charged and tried in ordinary federal civilian courts. Any other detainees who are not to be charged or tried should be immediately released. Detainees and their counsels must have access to all evidence used to justify the detention;

(c) Investigate allegations of detainee abuse, including torture and ill-treatment, appropriately prosecute those responsible, and ensure effective redress for victims;

(d) Improve the situation of detainees so as to persuade them to cease their hunger strike;

(e) Put an end to the force-feeding of detainees on hunger strike as long as they are able to take informed decisions;

(f) Invite the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment to visit the Guantanamo Bay detention facilities, and give him full access to the detainees, including private meetings with them, in conformity with the terms of reference for fact-finding missions carried out by the special procedures of the Human Rights Council.

The Committee reiterates its previous recommendation (CAT/C/USA/CO/2, para. 22) that the State party close the detention facilities at Guantanamo Bay, as per section 3 of Presidential Executive Order 13492 of 22 January 2009.

Abuse of State secrecy provisions and mutual judicial assistance

15. The Committee expresses serious concern at the use of State secrecy provisions and immunities to evade liability. While noting the delegation's statement that the State party abides by its obligations under article 15 of the Convention with regard to the administrative procedures established to review the status of law of war detainees at Guantanamo Bay, the Committee is particularly disturbed at reports that describe a draconian system of secrecy surrounding high-value detainees that keeps their torture claims out of the public domain. Furthermore, the regime applied to these detainees prevents access to effective remedies and reparations and hinders investigations into human rights violations by other States (arts. 9, 12, 13, 14 and 16).

The Committee calls for the declassification of torture evidence, in particular accounts of torture by Guantanamo Bay detainees. The State party should ensure that all victims of torture are able to access a remedy and obtain redress, wherever acts of torture have occurred, and regardless of the nationality of the perpetrator or the victim.

The State party should take effective steps to ensure the provision of mutual judicial assistance in all matters of criminal procedure regarding the offence of torture and the related crimes of attempting to commit, complicity and participation in torture. The Committee recalls that article 9 of the Convention obligates States parties to "afford one another the greatest measure of assistance in connection with criminal proceedings" related to violations of the Convention.

Transfer of detainees from Guantanamo Bay and reliance on diplomatic assurances

16. The Committee notes the explanations provided by the delegation concerning the processes involved in transferring the remaining detainees from the Guantanamo Bay detention facilities and lifting the moratorium on detainee transfer to Yemen. However, it expresses concern that most of the 79 detainees who are currently designated for transfer had already been cleared for transfer five years ago by the Review Task Force. While noting the information provided by the State party on the practice of obtaining diplomatic assurances against torture, the Committee remains disturbed by reports from non-governmental sources which indicate that some former Guantanamo Bay detainees have experienced abuse during post-release treatment (art. 3).

The Committee calls upon the State party to ensure that no individual, including persons suspected of terrorism, who is expelled, returned, extradited or deported, is exposed to the danger of torture or other cruel, inhuman or degrading treatment or punishment. It urges the State party to refrain from seeking and relying on diplomatic assurances "where there are substantial grounds for believing that [a person] would be in danger of being subjected to torture" (art. 3). The principle of non-refoulement should always have precedence over any other protection measure.

Interrogation techniques

17. The Committee appreciates the initiatives of the State party to eliminate interrogation methods which constitute torture or ill-treatment. Nevertheless, the Committee is concerned about certain aspects of Appendix M of Army Field Manual No. 2-22.3, Human Intelligence Collector Operations, of 6 September 2006, in particular the description of some authorized methods of interrogation, such as the interrogation techniques of "physical separation" and "field expedient separation". While noting the information provided by the delegation that such practices are consistent with the State party's obligations under the Convention, the Committee remains concerned over the possibilities for abuse that such techniques may entail (arts. 1, 2, 11 and 16).

The State party should ensure that interrogation methods contrary to the provisions of the Convention are not used under any circumstances. The Committee urges the State party to review Appendix M of Army Field Manual No. 2-22.3 in the light of its obligations under the Convention.

In particular, the State party should abolish the provision regarding the "physical separation technique" which states that "use of separation must not preclude the detainee getting four hours of continued sleep every 24 hours". Such provision, applicable over an initial period of 30 days, which may be extended upon due approval, amounts to sleep deprivation — a form of ill-treatment —, and is unrelated to the aim of the "physical separation technique", which is preventing communication among detainees. The State party should ensure the needs of detainees in terms of sleep time and sleeping accommodation provided for prisoners, are in conformity the requirements of rule 10 of the Standard Minimum Rules for the Treatment of Prisoners.

Equally, the State party should abolish sensory deprivation under the "field expedient separation technique", which is aimed at prolonging the shock of capture, by using goggles or blindfolds and earmuffs on detainees in order to generate the perception of separation. Based on recent scientific findings, sensory deprivation for long durations

has a high probability of creating a psychotic-like state in the detainee,[2] which raises concerns of torture and ill-treatment.

Asylum protection requests at the south-western border

18. The Committee is concerned by the expansion of expedited removal procedures, which do not adequately take into account the special circumstances of asylum seekers and other persons in need of international protection. It is also concerned by a growing number of reports that United States Customs and Border Protection and other United States immigration agencies fail to identify and refer many of the individuals facing expedited removal for an asylum-screening interview. Furthermore, persons subject to expedited removal proceedings may be detained until they are removed from the United States. The Committee also notes with concern that the United States Citizenship and Immigration Services Asylum Division recently revised its interpretation of the credible fear standard, making it more restrictive (art. 3).

The State party should ensure full compliance with its obligations in respect of non-refoulement, under article 3 of the Convention. In particular the State party should:

(a) Take concrete measures to ensure the adequacy of the refugee determination process and asylum procedures for migrants of all nationalities;

(b) Uphold the principle that asylum procedures should remain confidential and should provide for special consideration for minors, women, victims of torture or traumatization, and other asylum seekers with specific needs;

(c) Conduct a thorough risk assessment of situations covered by article 3 of the Convention, notably by taking into consideration the current security situation in Mexico and in the Northern Triangle of Central America;

(d) Review the use of expedited removal procedures and guarantee access to counsel;

(e) Revert to the original, less restrictive application of the "credible fear" screening standard with respect to all individuals expressing a fear of return who have been referred for such screening interviews.

Immigration detention

19. The Committee notes with concern that, under certain circumstances, the State party continues to use mandatory detention to hold asylum seekers and other immigrants on arrival in prison-like detention facilities, county jails and private prisons. It is also concerned at the recent plan to expand family detention, with the establishment of up to 6,350 additional detention beds for undocumented migrant families with children. The Committee observes that, despite the increased placement of unaccompanied children and separate children in foster care, many children continue to be held in group homes and secure facilities, which closely resemble juvenile correctional facilities. While acknowledging the steps taken by the State party to reform the immigration detention system, the Committee remains concerned by reports of substandard conditions of detention in immigration facilities and the use of solitary confinement. It is also concerned about reports of sexual violence by staff and other detainees (arts. 2, 11 and 16).

The State party should:

[2] C. Daniel, A. Lovatt and O.J. Manson, "Psychotic-like experiences and their cognitive appraisal under short-term sensory deprivation", *Frontiers in Psychiatry*, vol. 5: 106 (15 August 2014).

(a) Review the use of mandatory detention for certain categories of immigrants;

(b) Develop and expand community-based alternatives to immigration detention, expand the use of foster care for unaccompanied children, and halt the expansion of family detention, with a view to progressively eliminating it completely;

(c) Ensure compliance with United States Immigration and Customs Enforcement directive, Review of the Use of Segregation for ICE Detainees, of 4 September 2013, and Performance-Based National Detention Standards 2011, in all immigration detention facilities;

(d) Prevent sexual assault in immigration detention and ensure that all facilities holding immigration detainees comply with the standards provided for in the Prison Rape Elimination Act;

(e) Establish an effective and independent oversight mechanism to ensure prompt, impartial and effective investigation into all allegations of violence and abuse in immigration centres.

Solitary confinement

20. While noting that the State party has indicated that there is "no systematic use of solitary confinement in the United States", the Committee remains concerned about reports of extensive use of solitary confinement and other forms of isolation in United States prisons, jails and other detention centres, for purposes of punishment, discipline and protection, as well as for health-related reasons. The Committee also notes the lack of relevant statistical information. Furthermore, it is concerned about the use of solitary confinement for indefinite periods of time and its use with respect to juveniles and individuals with mental disabilities. Full isolation of 22 to 23 hours a day in super-maximum security prisons is unacceptable (art. 16).

The State party should:

(a) Limit the use of solitary confinement as a measure of last resort, for as short a time as possible, under strict supervision and with the possibility of judicial review;

(b) Prohibit the use of solitary confinement for juveniles, persons with intellectual or psychosocial disabilities, pregnant women, women with infants and breastfeeding mothers, in prison;

(c) Ban solitary confinement regimes in prisons, such as those in super-maximum security detention facilities;

(d) Compile and regularly publish comprehensive disaggregated data on the use of solitary confinement, including related suicide attempts and self-harm.

Protection of prisoners against violence, including sexual assault

21. The Committee is seriously concerned at the widespread prevalence of sexual violence, including rape, in prisons, jails and other places of detention, by staff and other inmates. It also notes with concern the disproportionally high rate of sexual violence faced by children in adult facilities, as well as the even higher rate of sexual victimization reported by inmates with a history of mental health problems and lesbian, gay, bisexual, transgender and intersex (LGBTI) individuals. While welcoming the adoption, in 2012, of the National Standards to Prevent, Detect, and Respond to Prison Rape, pursuant to the Prison Rape Elimination Act, the Committee is concerned by reports that their implementation at the state level continues to be a substantial challenge. In that context, the

Committee notes with concern that six states have not certified that they are in full compliance with the standards under the Act, and several agencies operating federal confinement facilities are still in the process of issuing their own regulations for the implementation of the Act.

The Committee remains concerned at the negative effects of the Prison Litigation Reform Act on the ability of prisoners to seek protection of their rights. While noting the amendments to the Act in 2013 (inter alia, adding "the commission of a sexual act" as an alternative to physical injury in order to establish eligibility for compensation for emotional distress), the Committee considers that the State party has continued to place greater emphasis on the goal of curbing prisoner lawsuits at the expense of inmates' rights. Thus, the Committee regrets that section 1997 e (e) provides for either "physical injury" or "the commission of a sexual act" as prerequisites to obtaining compensatory damages for mental or emotional injury. It is concerned further about section 1997 e (a) of the Act, which requires prisoners to exhaust all internal complaint procedures before bringing an action in federal court, which implies that they have to meet applicable deadlines for filing the initial grievance and making administrative appeals.

Finally, the Committee notes that 19 states have enacted laws restricting the shackling of pregnant inmates and that such legislation has been under consideration in a number of other states. The Committee is nevertheless concerned at reports that, in certain cases, incarcerated women are still shackled or otherwise restrained throughout pregnancy and during labour, delivery and post-partum recovery (arts. 2, 11, 12, 13, 14 and 16).

The Committee recommends that the State party increase its efforts to prevent and combat violence in prisons and places of detention, including sexual violence by law enforcement and penitentiary personnel and other inmates. In particular, the State party should:

(a) Ensure that the standards pursuant to the Prison Rape Elimination Act or similar standards are adopted and implemented by all states, and that all federal agencies and departments operating confinement facilities propose and publish regulations that apply the standards of the Act in all detention facilities under their jurisdiction;

(b) Promote effective and independent mechanisms for receiving and handling complaints of prison violence, including sexual violence;

(c) Ensure that all reports of prison violence, including sexual violence, are investigated promptly and impartially, and that the alleged perpetrators are prosecuted;

(d) Ensure the use of same-sex guards in contexts where the detainee is vulnerable to attack, in scenarios that involve close personal contact or the privacy of the detainee;

(e) Provide specialized training to prison staff on prevention of sexual violence;

(g) Develop strategies for reducing violence among inmates. Monitor and document incidents of violence in prisons with a view to revealing the root causes and designing appropriate prevention strategies;

(h) Authorize monitoring activities by non-governmental organizations;

(i) Amend sections 1997 e (a) and (e) of the Prison Litigation Reform Act;

(j) Revise the practice of shackling incarcerated pregnant women, bearing in mind that the prison regime should be flexible enough to respond to the needs of pregnant women, nursing mothers and women with children.[3]

Deaths in custody

22. The Committee notes with concern that 958 inmates died while in custody in local jails, in 2012, an 8 per cent increase over the 889 deaths in 2010. During the same year, State prison deaths remained stable with 3,351 reported deaths. The Committee is particularly concerned about reports of inmate deaths that occurred as a result of extreme heat exposure due to imprisonment in unbearably hot and poorly ventilated prison facilities in Arizona, California, Florida, New York, Michigan and Texas (arts. 2, 11 and 16).

The Committee urges the State party to promptly, thoroughly and impartially investigate the deaths of all detainees, assessing the health care received by the inmates as well as any possible liability of prison personnel, and provide, where appropriate, adequate compensation to the families of the victims.

The State party should adopt urgent measures to remedy any deficiencies relating to temperature, insufficient ventilation and humidity levels in prison cells, including death row facilities.

Juvenile justice

23. The Committee remains concerned at the notable gaps in the protection of juveniles in the State party's criminal justice system. In particular, the Committee once again expresses concern at the detention conditions of juveniles, including their placement in adult jails and prisons, and in solitary confinement (arts. 11 and 16).

The State party should take the necessary measures to ensure the proper functioning of the juvenile system in compliance with international standards. In particular, the State party should:

(a) Ensure full implementation of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) and the United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines);

(b) Ensure that juvenile detainees and prisoners under 18 are held separately from adults, in line with the provisions of the Beijing Rules (rules 13.4 and 26.3) and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (rules 17, 28 and 29);

(c) Prohibit the use of solitary confinement for juveniles (see para. 20 above);

(d) Resort to alternatives to incarceration, taking into account the provisions of the United Nations Standard Minimum Rules for Non-custodial Measures (Tokyo Rules) and the Bangkok Rules.

Life-without-parole sentences for juvenile offenders

24. While welcoming the Supreme Court rulings in *Graham* v. *Florida* (2010) and *Miller* v. *Alabama* (2012), in which the court imposed limitations on juvenile life-without-parole sentences, the Committee remains concerned that some courts have ruled that the

[3] United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules), rule 42.2.

Miller v. *Alabama* ruling does not apply retroactively and that the majority of the 28 states that allow mandatory life sentences without the possibility of parole for children have not passed legislation to comply with the ruling. Moreover, the rulings leave open the possibility for judges to impose life-without-parole sentences in homicide cases, even where the child played a minimal role in the crime, and courts continue to impose the sentence (arts. 11 and 16).

The State party should abolish the sentence of life imprisonment without parole for offences committed by children under 18 years of age, irrespective of the crime committed, and enable child offenders currently serving life without parole to have their cases reviewed by a court for reassessment and resentencing, to restore parole eligibility and for a possible reduction of the sentence.

Death penalty

25. While welcoming the fact that six states abolished capital punishment during the period under review, the Committee expresses concern at the State party's admission that it is not currently considering abolishing the death penalty at the federal level. The Committee also expresses concern at reported cases of excruciating pain and prolonged suffering that procedural irregularities have caused condemned prisoners in the course of their execution. The Committee is specially troubled by the recent cases of botched executions in Arizona, Oklahoma, and Ohio. The Committee is equally concerned at the continued delays in recourse procedures, which keep prisoners sentenced to death in a situation of anguish and incertitude for many years. The Committee notes that, in certain cases, such situation amounts to torture insofar as it corresponds to one of the forms of torture (i.e., the threat of imminent death) contained in the interpretative understanding made by the State party at the time of ratification of the Convention (arts. 1, 2 and 16).

The State party should review its execution methods in order to prevent pain and prolonged suffering. The Committee recalls that the safeguards guaranteeing protection of the rights of those facing the death penalty[4] stipulates that, where capital punishment occurs, it shall be carried out so as to inflict the minimum possible suffering (para. 9).

The State party should reduce the procedural delays that keep prisoners sentenced to capital punishment in death row for prolonged periods.

The State party is encouraged to establish a moratorium on executions, with a view to abolishing the death penalty. It is also encouraged to commute the sentences of individuals currently on death row and to accede to the Second Optional Protocol of the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.

Excessive use of force and police brutality

26. The Committee is concerned about the numerous reports of police brutality and excessive use of force by law enforcement officials, in particular against persons belonging to certain racial and ethnic groups, immigrants and LGBTI individuals. It is also concerned about racial profiling by police and immigration offices and the growing militarization of policing activities. The Committee is particularly concerned at the reported current police violence in Chicago, especially against African-American and Latino young people, who are allegedly consistently profiled, harassed and subjected to excessive force by Chicago Police Department officers. It also expresses deep concern at the frequent and recurrent

[4] Approved by Economic and Social Council resolution 1984/50 of 25 May 1984.

shootings or fatal pursuits by the police of unarmed black individuals. In that regard, the Committee notes the alleged difficulties of holding police officers and their employers accountable for abuses. While noting the information provided by the State party's delegation that over the past five years, 20 investigations had been opened into allegations of systematic police department violations, and over 330 police officers had been criminally prosecuted, the Committee regrets that there is a lack of statistical data on allegations of police brutality, as well as a lack of information on the results of the investigations undertaken in respect of those allegations. With regard to the acts of torture committed by former Chicago Police Department Commander Jon Burge and others under his command, between 1972 and 1991, the Committee notes the information provided by the State party that a federal rights investigation did not gather sufficient evidence to prove beyond reasonable doubt that prosecutable constitutional violations had occurred, However, the Committee remains concerned that, despite the fact that Jon Burge was convicted for perjury and obstruction of justice, no police officer has been convicted for the acts of torture due to the statute of limitations. While noting that several victims were ultimately exonerated of the underlying crimes, the vast majority of those tortured — most of them African Americans —, have not received any compensation for the extensive injuries suffered (arts. 11, 12, 13, 14 and 16).

The State party should:

(a) Ensure that all instances of police brutality and excessive use of force by law enforcement officers are investigated promptly, effectively and impartially by an independent mechanism with no institutional or hierarchical connection between the investigators and the alleged perpetrators;

(b) Prosecute persons suspected of torture or ill-treatment and, if found guilty, ensure that they are punished according to the gravity of their acts;

(c) Provide effective remedies and rehabilitation to the victims;

(d) Provide redress for Chicago Police Department torture survivors by supporting the passage of the ordinance entitled Reparations for the Chicago Police Torture Survivors.

Electrical discharge weapons (Tasers)

27. The Committee is concerned about the numerous, consistent reports that the police have used electrical discharge weapons against unarmed individuals who resist arrest or fail to comply immediately with commands, suspects fleeing minor crime scenes, and even minors. Moreover, the Committee is appalled at the number of reported deaths resulting from the use of electrical discharge weapons, including the recent cases of Israel "Reefa" Hernández Llach, in Miami Beach, Florida, and Dominique Franklin Jr., in Sauk Village, Illinois. While taking note of the information provided by the State party on the relevant guidelines and training available for law enforcement officers, the Committee observes the that there is need to introduce more stringent regulations governing the use of such weapons (arts. 11, 12, 13, 14 and 16).

The State party should ensure that electrical discharge weapons are used exclusively in extreme and limited situations — where there is a real and immediate threat to life or risk of serious injury — as a substitute for lethal weapons, and by trained law enforcement personnel only.

The State party should revise the regulations governing the use of such weapons, with a view to establishing a high threshold for their use, and expressly prohibit their use on children and pregnant women. The Committee is of the view that the use of electrical discharge weapons should be subject to the principles of necessity and

proportionality and should be inadmissible in the equipment of custodial staff in prisons or any other place of deprivation of liberty. The Committee urges the State party to provide more stringent instructions to law enforcement personnel authorized to use electric discharge weapons, and to strictly monitor and supervise their use through mandatory reporting and review of each use.

Training

28. The Committee notes the information that it has received regarding training in lawful interrogation methods and internal reporting mechanisms. It is concerned, however, by the lack of information on the impact of the training provided to law enforcement officials, intelligence and security officials, military personnel and prison staff, and how effective the training programmes have been in reducing incidents of torture and ill-treatment (art. 10).

The State party should:

(a) Further develop mandatory training programmes to ensure that all public servants — law enforcement officers, military officers, intelligence officials, prison staff and medical personnel employed in prisons and psychiatric hospitals — are well acquainted with the provisions of the Convention and are fully aware that violations will not be tolerated and will be investigated, and that those responsible will be prosecuted;

(b) Ensure that all relevant staff, including medical personnel, are specifically trained to identify cases of torture and ill-treatment, in accordance with the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol);

(c) Develop and apply a methodology for assessing how effective training programmes are in reducing the number of cases of torture and ill-treatment.

Redress, including compensation and rehabilitation

29. While noting the State party's assertion that its legislation provides a wide range of civil remedies for seeking redress in cases of torture at the federal and state levels, the Committee regrets that the delegation only provided limited information about rehabilitation programmes for both domestic and third-country victims and the resources allocated to support such programmes. The Committee is further concerned about the situation of certain individuals and groups who have been made vulnerable by discrimination or marginalization and who face specific obstacles that impede the enjoyment of their right to redress (art. 14).

The State party should ensure that appropriate rehabilitation programmes are provided to all victims of torture and ill-treatment, including medical and psychological assistance. It should also enhance its support and funding for torture rehabilitation programmes in the State party.

The Committee urges the State party to take immediate legal and other measures to ensure that all victims of torture and ill-treatment obtain redress and have an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible, in particular victims of police brutality, terror suspects claiming abuse, victims of gender violence, asylum seekers, refugees and others under international protection

The Committee draws the State party's attention to its general comment No. 3 (2012) on the implementation of article 14 by State parties, in particular paragraphs 3, 4, 11-15, 19, 32 and 39, in which it elaborates on the nature and scope of State parties'

obligations to provide full redress and the means for full rehabilitation to victims of torture.

Sexual violence and rape in the United States military

30. While welcoming the recently increased efforts by the Department of Defense to prevent sexual assault in the military, the Committee remains concerned about the high prevalence of sexual violence, including rape, and the alleged failure of the Defense Department to adequately prevent and address military sexual assaults of both men and women serving in the armed forces (arts. 2, 12, 13 and 16).

The State party should increase its efforts to prevent and eradicate sexual violence in the military by taking effective measures to:

(a) Ensure prompt, impartial and effective investigations of all allegations of sexual violence;

(b) Ensure that, in practice, complainants and witnesses are protected from any acts of retaliation or reprisals, including intimidation, related to their complain or testimony;

(c) Ensure equal access to disability compensation to veterans who are survivors of military sexual assault.

Other issues

31. The Committee reiterates its previous recommendation (CAT/C/USA/CO/2, para. 41) that the State party ratify the Optional Protocol to the Convention and make the declaration provided for in article 22 of the Convention, recognizing the competence of the Committee to receive and consider individual communications.

32. The State party is requested to disseminate widely the report submitted to the Committee and the present concluding observations, in all appropriate languages, through official websites, the media and non-governmental organizations.

33. The Committee requests the State party to provide, by 28 November 2015, follow-up information in response to the Committee's recommendations relating to ensuring or strengthening legal safeguards for persons detained; conducting, prompt, impartial and effective investigations; and prosecuting suspects and sanctioning perpetrators of torture or ill-treatment, as contained in paragraphs 12 (a), 14 (c) and 17, respectively, of the present concluding observations. In addition, the Committee requests information on follow-up to the recommendations concerning remedies and redress to victims, as contained in paragraph 26 (c) and (d) of the present concluding observations.

34. The State party is invited to submit its next report, which will be the sixth periodic report, by 28 November 2018. To that end, the Committee will, in due course, submit to the State party a list of issues prior to reporting, in view of the fact that the State party has accepted to report to the Committee under the optional reporting procedure.