

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES  
UNDER ARTICLE 19 OF THE CONVENTION**

**Concluding observations of the Committee against Torture**  
*(Extracts for follow-up of CAT/C/USA/CO/3-5)*

**UNITED STATES OF AMERICA**

(...)

**C. Principal subjects of concern and recommendations**

(...)

**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.<sup>1</sup> 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

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<sup>1</sup> 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.

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;**

(...)

**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:**

(...)

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

(...)

### **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,<sup>2</sup> which raises concerns of torture and ill-treatment.**

(...)

### **Excessive use of force and police brutality**

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<sup>2</sup> 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).

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 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:**

(...)

**(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.**

(...)

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.

(...)

