



HAUT-COMMISSARIAT AUX DROITS DE L'HOMME • OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS  
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REFERENCE:KF/fup-118

7 December 2016

Excellency,

In my capacity as Deputy Special Rapporteur for Follow-up to Concluding Observations of the Human Rights Committee, I have the honour to refer to the follow-up to the recommendations contained in paragraphs 5, 10, 21, and 22 of the concluding observations on the report submitted by the United States of America (CCPR/C/USA/CO/4), adopted at the 110th session in March 2014.

At its 114th session, held in July 2015, the Committee evaluated the information provided by the State party and requested additional information on the implementation of the recommendations selected for the follow-up procedure.

On 12 October 2015, the Committee received the reply of the State party. At its 117th session, held in July 2016, the Committee evaluated that information. The Committee considered that the recommendations selected for the follow-up procedure have not been fully implemented and decided to request additional information on their implementation. The assessment of the Committee and the additional information requested from the State party are reflected in the Report on follow-up to concluding observations (CCPR/C/117/2). I hereby attach, for ease of reference, a copy of the advanced unedited version of the relevant section of the said report.

During its 118th session held in October-November 2016, the Committee noted that the additional information requested from the State party has not yet been provided and decided to send a reminder to the State party. The Committee would appreciate receiving the information requested by **7 March 2017**.

The State party is kindly requested, when submitting its reply to the Committee, not to reiterate information that has already been provided to the Committee.

The reply should be sent in Microsoft Word electronic version to the Secretariat of the Human Rights Committee (Kate Fox: [kfox@ohchr.org](mailto:kfox@ohchr.org) and [ccpr@ohchr.org](mailto:ccpr@ohchr.org)). In accordance with the Note by the Human Rights Committee on the procedure for follow-up to concluding observations (see CCPR/C/108/2), the follow-up report should not exceed a maximum of 3,500 words.

The Committee looks forward to pursuing its constructive dialogue with the State party on the implementation of the Covenant.

H.E. Ms. Pamela K. Hamamoto  
Ambassador  
Permanent Representative  
Fax: 0 22 749 48 80  
Email: [mission.usa@ties.itu.int](mailto:mission.usa@ties.itu.int)



Please accept, Excellency, the assurances of my highest consideration.

A handwritten signature in black ink, appearing to read 'Yadh Ben Achour', written over a horizontal line.

Yadh Ben Achour  
Deputy Special Rapporteur for Follow-up to Concluding Observations  
Human Rights Committee



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**Assessment of replies**

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*Reply/action satisfactory*

A Response largely satisfactory

*Reply/action partially satisfactory*

B1 Substantive action taken, but additional information required

B2 Initial action taken, but additional information and measures required

*Reply/action not satisfactory*

C1 Response received but actions taken do not implement the recommendation

C2 Response received but not relevant to the recommendation

*No cooperation with the Committee*

D1 No response received within the deadline, or no reply to a specific question in the report

D2 No response received after reminder(s)

*The measures taken are contrary to the Committee's recommendations*

E Response indicates that the measures taken are contrary to the Committee's recommendations

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Concluding observations: CCPR/C/USA/CO/4, 26 March 2014  
Follow-up paragraphs: 5, 10, 21 and 22  
First reply: 1 April 2015  
Committee's evaluation: Additional information required on paragraphs 5[B2][C1][C1][B1], 10[C1][C1], 21[B2][C2] and 22[B2][C1][C1][D1][C2]

**Paragraph 5:** The State party should ensure that all cases of unlawful killing, torture or other ill-treatment, unlawful detention or enforced disappearance are effectively, independently and impartially investigated, that perpetrators, including, in particular, persons in positions of command, are prosecuted and sanctioned, and that victims are provided with effective remedies. The responsibility of those who provided legal pretexts for manifestly illegal behavior should also be established. The State party should also consider the full incorporation of the doctrine of "command responsibility" in its criminal law and declassify and make public the report of the Senate Special Committee on Intelligence into the CIA secret detention programme.

**Follow-up question:**

(a)[B2]: While noting, with appreciation, the information provided by the State party on the recent prosecutions of law enforcement officials, as well as the convictions of four Blackwater USA contractors for their crimes in Iraq, the Committee requires information on investigations, prosecutions or convictions of United States Government personnel in positions of command for crimes committed during international operations or as part of

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United States detention and interrogation programmes. The Committee is also concerned at reports that current and former Guantanamo detainees have been deprived of the ability to seek judicial remedy for torture and other human rights violations incurred while in United States custody. The Committee reiterates its recommendations.

**(b)[C1]:** The Committee requires information on measures taken to establish the responsibility of those who provided legal pretexts for manifestly illegal behaviour. The Committee reiterates its recommendations.

**(c)[C1]:** The Committee regrets that no action has been taken to incorporate into its criminal law the doctrine of command responsibility for crimes under international law. The Committee reiterates its recommendations.

**(d)[B1]:** The Committee welcomes the declassification and release of over 500 pages of the Senate Select Intelligence Committee's report on the CIA's secret detention programme but is concerned about reports that over 6,000 pages remain classified. It is also concerned about reports that the Department of Justice does not plan to reopen investigations, despite having access to the full report.

**Summary of State party's reply:**

**(a)(b)** The State party will continue to investigate all credible allegations of crimes committed during international operations and to prosecute those responsible for such crimes.

The State party provided details of convictions for unlawful killings, unreasonable force and mistreatment of detainees made since their last follow-up report in March 2015. They also provided details of court-enforceable settlements in an effort to remedy patterns or practices of police misconduct. Examples of effective remedies provided in the form of compensation at the state level for victims of abuse were provided.

**(c)** No information was provided.

**(d)** The Department of Justice did not find any new material in the classified Senate Select Committee on Intelligence report.

**Committee's evaluation:**

**(a)[B2]:** The Committee notes the information provided by the State party on unlawful killings, unreasonable force and mistreatment of detainees. The Committee regrets, however, that no further information was provided on investigations, prosecutions or convictions of U.S. government personnel in positions of command for crimes committed during international operations or as part of the U.S. detention and interrogation programmes. The Committee also regrets that further information was not provided on reports that current and former Guantanamo detainees have been deprived of the ability to seek judicial remedy for torture and other human rights violations incurred while in U.S. custody.

**(b)[D1]:** The Committee regrets that no further information was provided on measures taken to establish responsibility for those who provided legal pretexts for manifestly illegal behaviour. The Committee reiterates its recommendations.

**(c)[D1]:** The Committee regrets that no information has been provided on actions taken to incorporate the doctrine of command responsibility for crimes under international law into its criminal law. The Committee reiterates its recommendations.

**(d)[C2]:** The State party provided no additional information on the Senate Select Intelligence Committee's report on the CIA's secret detention programme or on the Department of Justice's plans to reopen investigations.

**Paragraph 10: The State Party should take all necessary measures to abide by its obligation to effectively protect the right to life. In particular, it should:**

**(a) Continue its efforts to effectively curb gun violence, including through the**



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continued pursuit of legislation requiring background checks for all private firearm transfers, in order to prevent possession of arms by persons recognized as prohibited individuals under federal law, and ensure strict enforcement of the Domestic Violence Offender Gun Ban of 1996 (the Lautenberg Amendment); and

(b) Review the Stand Your Ground laws to remove far-reaching immunity and ensure strict adherence to the principles of necessity and proportionality when using deadly force in self-defence.

**Follow-up question:**

(a)[C1]: While welcoming the Supreme Court decision upholding a federal law barring domestic violence offenders from possessing firearms, the Committee requests information on new measures taken since the examination of the State party's report. The Committee repeats its recommendations.

(b)[C1]: With regard to stand-your-ground laws, while the Committee recognizes the State party's federal system, the Committee requests information on measures taken to implement the recommendation. It is particularly concerned about reports that the immunity provided by stand-your-ground laws has, in some areas, expanded. The Committee reiterates its recommendations.

**Summary of State party's reply:**

(a) The current government supports legislation which reduces the incidence of gun violence and urges the Congress to consider legislative proposals.

(b) The United States Commission on Civil Rights has not yet completed the review of the Stand Your Ground Provisions under various state laws initiated in May 2013.

**Committee's evaluation:**

(a)[C2]: The Committee welcomes the State party reiterated intention to support legislation to reduce the incidence of gun violence, but regrets that no measures appear to have been taken since the examination of the State party's previous follow-up report. The Committee reiterates its recommendation.

(b)[C2]: The Committee regrets that the State party has not yet completed the review the Stand Your Ground laws, initiated in 2013. The Committee request information on the progress of the United States Commission on Civil Rights' review and reiterates its recommendation.

**Paragraph 21: The State party should expedite the transfer of detainees designated for transfer, including to Yemen, as well as the process of periodic review for Guantánamo detainees and ensure either their trial or their immediate release and the closure of the Guantánamo Bay facility. It should end the system of administrative detention without charge or trial and ensure that any criminal cases against detainees held in Guantánamo and in military facilities in Afghanistan are dealt with through the criminal justice system rather than military commissions, and that those detainees are afforded the fair trial guarantees enshrined in article 14 of the Covenant.**

**Follow-up question:**

(a)[B2]: The Committee welcomes steps taken by the State party to expedite the review and transfer of detainees remaining at Guantanamo Bay, but is concerned about reports that, at the current rate, review hearings will not be completed for all detainees until 2020. Updated information, including statistical data, is required on the transfer and review of Guantanamo detainees and the detention status of individuals who remain in custody there.

(b)[C2]: The Committee notes that persons continue to be held in administrative detention in Guantanamo Bay without charge or trial, in many cases for over a decade, and regrets the State party's plans to continue prosecution of Guantanamo detainees by military commission, which is contrary to the Committee's recommendations. The Committee

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reiterates its recommendations.

**Summary of State party's reply:**

Detainees at Guantanamo Bay may petition for a writ of habeas corpus to challenge the legality of their detention.

Since the State party's first follow-up report in March 2015 a further 8 detainees have been transferred from Guantanamo. Also since March 2015 the Periodic Review Board (PRB) has conducted 8 hearings bringing the total number of hearings to 22. Of the 114 detainees who remain at Guantanamo, 54 are currently designated for transfer. Of the 60 others, 10 are currently facing charges, awaiting sentencing, or serving criminal sentences, and the remaining 50 continue to be eligible for review by the PRB.

In June 2015 the Secretary of State announced the appointment of a new State Department Special Envoy for Guantanamo Closure who will lead ongoing diplomatic engagements to make the closure of the Guantanamo detention facility in a timely manner possible.

**Committee's evaluation:**

(a)[B2]: The Committee welcomes the updated information provided by the State party on the review and transfer of detainees remaining at Guantanamo Bay but remains concerned at the pace of these reviews. Accordingly the Committee requires information on measures taken to expedite hearings and transfers of detainees. The Committee reiterates its recommendation.

(b)[C1]: The Committee acknowledges the information provided regarding the possibility for detainees to challenge the legality of their detention. However, the Committee notes that the issue of persons being held in administrative detention without charge or trial remains. The Committee regrets that the State party has not provided information with regard to the continued prosecution of Guantanamo detainees by military commission. The Committee reiterates its recommendation.

(c)[B1]: The Committee welcomes the measures taken to advance the closure of the Guantanamo Bay facility, including by the appointment of a new State Department Special Envoy for Guantanamo Closure. The Committee requires updated information on the progress of this initiative.

**Paragraph 22: The State party should:**

(a) Take all necessary measures to ensure that its surveillance activities, both within and outside the United States, conform to its obligations under the Covenant, including article 17; in particular, measures should be taken to ensure that any interference with the right to privacy complies with the principles of legality, proportionality and necessity, regardless of the nationality or location of the individuals whose communications are under direct surveillance;

(b) Ensure that any interference with the right to privacy, family, home or correspondence is authorized by laws that: (i) are publicly accessible; (ii) contain provisions that ensure that collection of, access to and use of communications data are tailored to specific legitimate aims; (iii) are sufficiently precise and specify in detail the precise circumstances in which any such interference may be permitted, the procedures for authorization, the categories of persons who may be placed under surveillance, the limit on the duration of surveillance; procedures for the use and storage of data collected; and (iv) provide for effective safeguards against abuse;

(c) Reform the current oversight system of surveillance activities to ensure its effectiveness, including by providing for judicial involvement in the authorization or monitoring of surveillance measures, and considering the establishment of strong and independent oversight mandates with a view to preventing abuses;

(d) Refrain from imposing mandatory retention of data by third parties;

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**(e) Ensure that affected persons have access to effective remedies in cases of abuse.**

**Follow-up question:**

**(a)(b)[B2]:** While the Committee welcomes the administrative measures taken by the State party to bring its surveillance activities into line with article 17, it requires information on legislative measures taken to ensure that these safeguards are provided for by law. The Committee is also concerned about reports that the administrative measures taken do not adequately protect rights guaranteed under article 17, which requires that interference with the right to privacy comply with the principles of legality, proportionality and necessity.

**(c)[C1]:** No measures appear to have been taken since March 2014 to provide for judicial involvement in the authorization and monitoring of surveillance measures or to establish strong and independent oversight mandates. The Committee repeats its recommendations.

**(d)[C1]:** The Committee requires information on measures taken to stop the practice of mandatory retention of data by third parties.

**(e)[D1]:** No information was provided by the State party on access to remedies for persons affected, in cases of abuse.

**(f)[C2]:** The Committee notes that the State party has not responded with regard to surveillance acts outside the United States of America and asks for more information on this matter.

**Summary of State's party reply:**

**(a)(b)(c)** The USA FREEDOM Act was enacted in June 2015, modifying the State party's surveillance authorities and other national security authorities and increasing transparency.

The Act requires that opinions of the Foreign Intelligence Surveillance Act (FISA) or the Foreign Intelligence Surveillance Court of Review (FISC) involving significant or novel interpretations of the law be declassified or summaries declassified. The Act increases the Government's public reporting obligations. The Act also requires the Inspectors General of the Department of Justice and the Intelligence Community to audit the effectiveness and use of FISA authority to obtain production of tangible things, including an examination of minimization procedures.

**(e)** The State party repeated information provided in its periodic report (CCPR/C/USA/CO/4). An aggrieved person move to suppress evidence on the grounds that the information was unlawfully acquired or the surveillance was not made in conformity with an order of authorization.

**Evaluation:**

**(a)(b)[B1]:** The Committee welcomes the enactment of USA FREEDOM Act of 2015 and requests that the State party provides information on the Act's implementation and effectiveness in ensuring that interferences with the right to privacy comply with the principles of legality, proportionality and necessity. The Committee also requires information on measures taken to ensure that the State party's surveillance activities, both within and outside the United States, conform to its obligations under the Covenant.

**(c)[B1]:** The Committee welcomes the information provided on the judicial involvement of the Foreign Intelligence Surveillance Court in the authorisation and monitoring of surveillance measures provided for by the USA FREEDOM Act and the Act's requirement that the Inspectors general of the Department of Justice and Intelligence Community audit the use of FISA authority. The Committee requires information on the application of the USA FREEDOM ACT of 2015.

**(d)[D1]:** The State party did not provide information on measures taken to stop the practice of mandatory retention of data by third parties. The Committee reiterates its recommendation.

**(e)[B2]:** The Committee welcomes the information provided on access to remedies for

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affected persons in cases of abuses. The Committee requests further information detailing the variety of avenues referred to, taking into account the recent adoption of the USA FREEDOM ACT of 2015.

**(f)[D1]:** The Committee notes that the State party has not provided information with regard to surveillance acts outside of the United States of America and reiterates its request for more information on this.

**Recommended action:** A letter should be sent reflecting the analysis of the Committee.

**Next periodic report:** 28 March 2019

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