



**UNITED STATES OF AMERICA:  
SUBMISSION TO THE UN COMMITTEE  
AGAINST TORTURE**

LIST OF ISSUES PRIOR TO REPORTING, 7 NOVEMBER-7 DECEMBER 2016

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# 1. INTRODUCTION

In advance of the adoption of the List of Issues Prior to Reporting for the United States of America (USA)'s sixth periodic report under the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT), due in November–December 2016, Amnesty International would like to provide some information to the Committee Against Torture (the Committee).

## 2. IMPUNITY FOR TORTURE

Enforced disappearances, torture and other cruel, inhuman or degrading treatment were committed in the program of detention and interrogation operated by the Central Intelligence Agency (CIA) after the attacks of 11 September 2001. Despite overwhelming evidence that crimes under international law occurred in this program, the perpetrators continue to enjoy impunity. No one has been held criminally accountable, and investigations have been inadequate. The role of senior officials in the development and approval of this program has not been properly investigated. The severe accountability gap constitutes a very serious and continuing challenge to the rule of law and respect for international human rights law and standards.

Amnesty International issued a major report in April 2015 calling for truth and accountability in relation to the CIA program.<sup>1</sup> The recommendations of this report, and of UN experts and others, remain largely unmet. The full Senate Select Committee on Intelligence report on the CIA program remains classified top secret.

## 3. BLOCKING OF REMEDY

Victims of enforced disappearance and other unlawful detention, and those who were subjected to interrogation methods or conditions of detention that violated the prohibition of torture and other cruel, inhuman or degrading treatment continue to be denied real access to meaningful remedy. This includes individuals who were held in the CIA rendition program, as well as those subjected to US military detention at the Guantánamo naval base or in Afghanistan.

The failure of the US authorities to offer all necessary rehabilitative, medical and psychological care to survivors of torture still in US detention has compounded the injustice. Among the cases of concern in this regard have been individuals who were subjected to years in the CIA detention program before being transferred to Guantánamo a decade ago, in 2006. These detainees have been held in the confines of Camp 7 at the naval base. The secrecy surrounding the conditions in that facility has exacerbated concern for their well-being and how the conditions there may be impacting any pre-existing sequelae of any earlier torture they endured.

## 4. GUANTÁNAMO

A decade after the Committee made it clear to the US government that the indefinite detentions without charge or trial at Guantánamo per se amounted to violations of the Convention Against Torture, dozens of detainees are still held there. The absolute failure of the US authorities to address the detentions as a human rights issue within a framework of human rights law has meant that the detainees have remained prisoners of domestic politics and what the Bush administration dubbed the “war on terror” and the Obama administration adopted in all but name.

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<sup>1</sup> “USA: Crimes and Impunity” is available at <https://www.amnesty.org/en/documents/amr51/1432/2015/en/>

## 5. US DETAINEE TRANSFERS IN IRAQ, SYRIA AND OTHER PLACES

US operations in Iraq and Syria have involved capture of individuals who may be members of armed groups, including the armed group calling itself the Islamic State. In 2016, a US official reportedly stated that the USA “do[es] not intend to engage in the long-term detention of ISIL detainees, nor will we send any such detainees to the detention facility at Guantánamo Bay.”<sup>2</sup> While a decision not to engage in further unlawful indefinite detention is appropriate, recent reports of US capture operations highlight continuing problems with the policies that would govern any US short-term detention and transfer operations.

In particular, the US government’s position leaves open the possibility that its intelligence agencies could conduct or facilitate secret detainee transfers to governments and armed groups with records of torture. The US government continues to rely upon diplomatic assurances against torture, which should be rejected since they do not provide a reliable safeguard against torture and other human rights violations.<sup>3</sup> Moreover, the USA has not specifically prohibited all forms of secret detention and extrajudicial transfers, even following reforms initiated under President Obama.

The US government has specifically recognized and established procedures to implement its non-refoulement obligation in policy binding the Department of Defense.<sup>4</sup> However, it is not clear whether any such policies govern the CIA and other intelligence agencies. The authorities also declassified some information about the USA’s use of diplomatic assurances.<sup>5</sup> However, it has failed to provide information on the steps it takes to monitor the treatment of individuals the Department of Defense transferred and respond to allegations of torture and other cruel, inhuman or degrading treatment.

## 6. TASERS

Over 690 people have died in the USA since 2001 after being struck by police Tasers, with 49 deaths in 2015 alone, raising serious concern about the use and safety of such devices. Although most of the deaths have been attributed to other factors, coroners have found that the Taser played a role in more than 60 deaths, and there are other cases where the cause of death was unclear. Tasers continue to be widely used against individuals who do not pose a serious and imminent threat to life, including children, the elderly and people under the influence of drink or drugs. In many of the cases documented by Amnesty International, the use of Tasers has violated international standards on the use of force, as well as on prohibiting torture and other ill-treatment.<sup>6</sup> No national guidelines exist and policies on their use vary from agency to agency. The US Department of Justice should issue national guidelines on the use of Tasers that limit their use to only those instances where an officer or the public is faced with an imminent threat of death or serious injury. The USA should establish a National Crime and Justice Task Force to examine and make recommendations on policing issues, including a nationwide review of police use of Tasers and ensure that all policies on their use be brought in line with international standards.

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<sup>2</sup> Charlie Savage et al., “Lack of Plan for ISIS Detainees Raises Human Rights Concerns,” N.Y. Times, 11 May 2016, <http://www.nytimes.com/2016/05/12/world/middleeast/lack-of-plan-for-isis-detainees-raises-human-rights-concerns.html>.

<sup>3</sup> See Amnesty International, *Dangerous Deals: Europe’s Reliance on ‘Diplomatic Assurances’ Against Torture*, Index: EUR 01/012/2010, online at <https://www.amnesty.org/en/documents/EUR01/012/2010/en/>.

<sup>4</sup> See Department of Defense Directive 2310.01E, 19 August 2014, § 3(m)(6), online at <http://www.dtic.mil/whs/directives/corres/pdf/231001e.pdf>

<sup>5</sup> See, e.g., Inspector General of the US Department of Defense, “Inspection of DoD Detainee Transfers on Assurances,” DODIG-2012-055, 28 Feb. 2012, online at <https://www.scribd.com/doc/312046861/DOD-IG-Detainee-Transfer-Assurances#fullscreen>; Inspector General of the US Department of Defense, “Inspection of DoD Detainee Transfers on Assurances,” DODIG-2013-127, 23 Sept. 2013, online at <https://www.documentcloud.org/documents/2838675-DOD-IG-Assurances-Torture-Leopold-FOIA-Redacted.html>.

<sup>6</sup> See Amnesty International, “Use of Force. Guidelines for Implementation of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials”, [http://www.amnesty.nl/sites/default/files/public/ainl\\_guidelines\\_use\\_of\\_force\\_0.pdf](http://www.amnesty.nl/sites/default/files/public/ainl_guidelines_use_of_force_0.pdf)

## 7. POLICE TORTURE

The City of Chicago, Illinois, passed an ordinance to provide reparations to the more than 100 survivors of torture committed by members of the Chicago Police Department (CPD) from 1972-1991.

Early in 2015, an investigation by the Guardian news agency uncovered a proverbial “black site” at a CPD facility called Homan Square in the City of Chicago. According to allegations, individuals taken to Homan Square are not formally processed or registered, providing a public, searchable record. It is further alleged that lawyers and relatives have no method to determine their clients’ and family members’ whereabouts and that those lawyers who have attempted to gain access to Homan Square are most often turned away, even as their clients remain in custody inside. Advocates in Chicago allege that many of these practices are not unique to the Homan Square facility, but potentially point to larger issues within the CPD. While the US Department of Justice announced in late 2015 the opening of a patterns and practice investigation into the Chicago Police Department that focuses on the agency’s use of force, including racial, ethnic and other disparities in the persons being subjected to the police’s use of force, and its systems of accountability, that investigation will not look specifically at the practices at Homan Square. Amnesty International wrote to the Mayor of Chicago, Rahm Emanuel, to open an investigation into the practices at Homan Square. No response was received.

The government has not yet passed the Law Enforcement Torture Prevention Act to formally criminalize acts of torture committed by law enforcement agents and those acting under color of law.

## 8. POLICE USE OF LETHAL FORCE

The US administration should promptly take all necessary measures to document the number of people who are killed in interactions with law enforcement or in custody.<sup>7</sup> While the government implements a voluntary reporting system on the number of individuals killed by law enforcement that presents an incomplete picture of the issue, media outlets have tried to fill the void. The Guardian newspaper began tracking officer-involved deaths and deaths in custody and documented 1146 people killed by law enforcement in 2015, with 1019 of those killed by firearms. According to that data, Black men are disproportionately impacted. The USA fails to protect the right to life by failing to ensure that domestic legislation meets international human rights standards on the use of lethal force by law enforcement officers. State statutes on the use of lethal force are far too permissive and none limit the use of firearms as a last resort only after non-violent and less harmful means are exhausted, and only in those instances where the officer or others are faced with an imminent threat of death or serious injury.

A national commission such as the above-mentioned National Crime and Justice Task Force could examine and make recommendations on policing issues, including a nationwide review of police use of lethal force laws, policies, training and practices, as well as a thorough review and reform of oversight and accountability mechanisms. These laws, policies and practices must be brought in line with international standards.

## 9. LIFE WITHOUT PAROLE SENTENCES FOR JUVENILE OFFENDERS

The USA is one of two countries worldwide that currently permits the sentencing of juveniles to life without parole, despite the categorical prohibition of such sentences under international law. As of April 2016, only 18 states and the District of Columbia have categorically banned life without parole sentences for juvenile offenders, in conformity with international law.

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<sup>7</sup> Deadly force. Police use of lethal force in the United States, 2015, [http://www.amnestyusa.org/sites/default/files/aiusa\\_deadlyforcereportjune2015.pdf](http://www.amnestyusa.org/sites/default/files/aiusa_deadlyforcereportjune2015.pdf)

## 10. SOLITARY CONFINEMENT

The USA's current use of solitary confinement is unprecedented. More than 80,000 prisoners are held in isolation; the most extreme forms involve 22-24 hours a day confinement to a small, windowless room, without any interaction with other prisoners or the outside world. This can persist for years: Albert Woodfox was recently released from prison in Louisiana after 43 years, most of which he spent in isolation in a 6 x 9 ft. cell.

The Department of Justice's 2016 report on solitary confinement represents an important pledge to tackle the practice of punitive isolation in the USA. Despite the report's commitments, however, a second federal supermax facility (built to house 1,600 prisoners in isolation) is due to open soon, and the report imposes no obligations on state facilities, where 90% of prisoners are held. Some states have recently taken steps to reduce their use of solitary confinement or document its use. For example, California ended its policy of automatically isolating gang-affiliated prisoners and Maryland passed a law to collect and publish data on its use of solitary confinement. Some states have also ended their practice of isolating juveniles, including Illinois in 2015. Despite these improvements, the use of prolonged solitary confinement continues to be widespread and there is a lack of comprehensive data on how each state uses it. Some states clearly have no intention of reducing their isolated prisoner populations: in 2015, Arizona opened a new 500-bed supermax facility, and in Nebraska and other states, juveniles can still be placed in unlimited solitary confinement for minor rule infractions.

## 11. ASYLUM PROTECTION REQUESTS AT THE SOUTHWESTERN BORDER

In 2014, the USA experienced a surge in migration across its southern border, and apprehended a total of 68,445 family units and 68,541 unaccompanied children. Though the influx lessened during 2015, apprehensions of unaccompanied minors and families are surging once more in 2016, at monthly rates sometimes surpassing those of 2014. Most of those apprehended were fleeing violence and insecurity in Honduras, El Salvador, and Guatemala. Many may qualify for refugee status and protection: one UN report indicated that 58% of unaccompanied minors demonstrated international protection needs. Despite this, many of these migrants will face detention and mistreatment—detainees have reported denial of medical care, confiscation of legal documents, and even sexual abuse and death threats by Border Patrol and CBP officials. Immigration courts are massively backlogged and understaffed, leading to lengthy detentions for many while awaiting a decision on their claim. Due to the recent implementation of "rocket dockets" which accelerate hearings for unaccompanied children and families in detention, individuals are often not informed in time about changes in hearing dates and location, leaving judges to rule on their case in their absence. Oftentimes they do not have enough time to procure pro bono representation, leaving many, especially unaccompanied children, unrepresented at their hearing.

## 12. IMMIGRATION DETENTION

More than 350,000 men, women and children are detained by US immigration authorities annually. There should be a presumption, established by law, against detention for the purposes of immigration control. Alternative non-custodial measures should always be considered first and given preference before resorting to detention. Any restrictions on the rights to liberty or to freedom of movement for immigration control purposes should be considered only to prevent irregular migrants or asylum-seekers from absconding, to verify their identity, or ensure their compliance with a removal order. Detention of irregular migrants and asylum seekers will therefore only be lawful when the authorities can demonstrate in each individual case that alternatives will not be effective, and that it is necessary and proportionate to achieve one of these three objectives. Detention in immigration related cases may therefore only be used in exceptional circumstances, and that it must be justified in each case and be subject to judicial control. However, migrants continue to be detained under a mandatory detention system for months or years without any form of meaningful

individualized judicial review of their detention. Conditions in detention continue to violate both US and international standards on the treatment of detainees.

## 13. THE DEATH PENALTY

Amnesty International opposes the death penalty unconditionally, in all cases, in all countries, regardless of the crime in question or the method used to end the life of the convicted person. This is a punishment that is incompatible with human dignity and unavoidably cruel, inhuman and degrading. In June 2015, in *Glossip v. Gross*, US Supreme Court Justice Stephen Breyer, joined by Justice Ruth Bader Ginsburg, took the opportunity afforded by a ruling on a lethal injection drug to argue that the death penalty now in all likelihood per se violated the constitutional ban on cruel and unusual punishments. Their opinion pointed, among other things, to the unreliability of the capital justice system – as illustrated by the large number of people sentenced to death for crimes they did not commit, geographic and racial disparities, and evidence that the punishment was not reserved for the “worst of the worst” crimes and offenders as was supposedly the case under US constitutional law. In addition, Justice Breyer pointed to the cruelty of prolonged confinement on death row, length of confinement that could not be reduced without increasing still further the risk of irrevocable error.

Over the years, numerous Justices of the US Supreme Court have reached the conclusion that the death penalty is unconstitutional in its application. To use Justice Blackmun’s words from 1994, there should be no more “tinkering with the machinery of death” in the USA, just calls and moves for abolition. Amnesty International believes it is incumbent on all officials in the USA, in all jurisdictions, to work towards this end and on all concerned for human rights and due process to encourage them to do so.





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