

# **United States Compliance with the International Covenant on Civil and Political Rights**

## **List of Issues Submitted by Malcolm X Center for Self Determination and National Jericho Movement for Amnesty and Freedom of All (U.S.) Political Prisoners**

**107<sup>th</sup> Session of the Human Rights Committee, Geneva  
11-28 March 2013**

### **I. Criminalization of Dissent in the United States: Political Prisoners**

#### **II. Reporting Organization(s)**

**Malcolm X Center for Self Determination**, founded in 1991, The Malcolm X Center is a multi-issue, volunteer, grassroots, community based resource center. It serves as a public space for developing, testing, training and implementation of approaches to community capacity building, popular education, strategic planning, technical, artistic and communications skill enhancement for self-determination and human rights advocacy.

#### **Jericho Movement for Amnesty & Freedom of All (U.S.) Political Prisoners**

The Jericho Movement, founded 1998, is the official international multi-movement prisoner organized voice of imprisoned political activists (pp/pows/exiles), COINTELPRO/Civil Rights Era survivors, still held by the U.S. federal and state governments in excess of 30 - 40 years. These activists belonged to organizations like the Black Panther Party, La Raza Unida, FALN, Los Macheteros, North American Anti-Imperialist Movement, May 19th, AIM, the Black Liberation Army, and were incarcerated because of their political beliefs and acts against social injustice, and in support of and/or defense of freedom and self determination.

#### **III. Issue Summary**

**Accountability for Torture** (Article 2(3) (right to effective remedy); Articles 4, 15, 16 and 1; Article 7 (protection from torture and cruel, inhuman or degrading treatment or punishment))<sub>1</sub>

Political Prisoners/Prisoners of War (PP/POW) are confined in prolonged isolation or “control units” due to their status as political prisoners or prisoners of war, not because of disciplinary infractions in violation of Article 7, as well as The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

**Solitary Confinement** (Article 7 (protection from torture and cruel, inhuman or degrading treatment or punishment); Article 10 (right to be treated with humanity and with respect for the inherent dignity of the human person when deprived of their liberty))<sup>1</sup>

In 2006 and 2007, the Federal Bureau of Prisons (BOP or “Bureau”) secretly created the Communications Management Unit (CMU), a prison unit designed to isolate and segregate certain prisoners in the federal prison system from the rest of the BOP population. The Bureau claims that CMUs are designed to hold dangerous terrorists and other high-risk inmates, requiring heightened monitoring of their external and internal communications. Many prisoners, however, are sent to these isolation units for their constitutionally protected religious beliefs, unpopular political views, or in retaliation for challenging poor treatment or other rights violations in the federal prison system, among them are the COINTELPRO/Civil Rights Era political activists.

The newly enacted 2012 National Defense Authorization Act (NDAA), which contains provisions authorizing the U.S. military to pick up and imprison people, including U.S. citizens, without charging them or putting them on trial expands the specter of solitary confinement to again include ordinary unpopular citizens.

Specifically, the legislation “affirms that the authority of the President to use all necessary and appropriate force pursuant to the Authorization for Use of Military Force (Public Law 107-40) includes the authority for the Armed Forces of the United States to detain covered persons (as defined in subsection (b)) pending disposition under the law of war.”

It specifically authorizes “Detention under the law of war without trial until the end of the hostilities authorized by the Authorization for Use of Military Force,” referring to the bill passed by Congress more than ten years ago that authorized an endless “war on terror.”

### **Concluding Observations**

The UN Human Rights Commission has specified prolonged solitary confinement” is prohibited as a form of torture under the CAT. Despite their excellent prison record, PP/POWs are placed in “control units.” The men’s federal prison in Marion, Illinois, which includes several political prisoners among its 400 inmates, has been condemned by Amnesty International for violating international standards on the minimum treatment of prisoners. The men in Marion and other “supermax” prisons are locked in their cells 23 hours per day and are sometimes chained spread-eagle to their beds for days at a time.

The United States, despite recurring evidence, denies that it engages in torture. In its current report, it points to the Obama administration's 2009 ban on torture to persons in custody outside of the United States. But it continues to ignore claims of Human Rights violations against PP/POWs. These claims go back to December 11, 1978, when the National Conference of Black Lawyers, the National Alliance Against Racist and Political Repression and the United Church of Christ's Commission on Racial Justice filed a Petition to the United Nations Commission on Prevention of Discrimination and Protection of Minorities – raised the plight of political prisoners and victims of racist repression.

In, 1981, Amnesty International issued a "Proposal for a Commission on Inquiry into the Effect of Domestic Intelligence Activities on Criminal Trials in the United States of America." Amnesty urged an investigation in to the plight of political prisoners.

Independent examiners, such as Yale Law Professor Thomas I. Emerson, could not avoid the "inescapable message of [such material] that is the FBI jeopardizes the whole system of free expression which is the cornerstone of our society...At worst it raises the specter of a police state...In essence, the FBI conceives on itself as an instrument to prevent radical social change in America...The Bureau's view of its function leads it beyond data collection and into political warfare." Yet not only were the FBI personnel involved in the activities which so concerned Dr. Emerson rewarded rather than punished, the bureau itself was left essentially unchanged in the wake of public revelations concerning COINTELPRO. The most that can be said is that, in 1979, it was subjected to a "rechartering," the terms of which it itself had taken a most prominent role in formulating.

## **V. U.S. Government Report**

The U.S. Government's Report is entirely silent on its treatment of its imprisoned COINTELPRO/Civil Rights Era political activists. However, the 1976 U.S. Senate subcommittee, popularly known as the Church Committee, was formed to investigate and study the FBI's covert action programs. In its report, The Church Committee concluded that the FBI had "conducted a sophisticated vigilante operation aimed squarely at preventing the exercise of First Amendment rights of speech and association, on the theory that preventing the growth of dangerous groups and the propagation of dangerous ideas would protect the national security and deter violence." It went on to report that "Many of the techniques used would be intolerable in a democratic society even if all of the targets had been involved in violent activity.

The herein referenced political prisoners and prisoners of war are the survivors of this official misconduct. The Church Committee made factual findings which amounted to massive human rights violations against US citizens based on race, political ideas, and political affiliations. In the final reports of the Committee permanent means of congressional review was recommended. But,

none of the recommendations addressed the human rights violations suffered by dozens of political prisoners who were victimized by the U.S. government's political repression against African-Americans, Puerto Ricans, and Native American communities. Such repression resulted in murders, injuries, false arrests, malicious prosecutions and lengthy imprisonments of scores of political activists. Many of these political prisoners and prisoners of war languish in prisons throughout the United States. U.S. political prisoners have languished in U.S. prisons for decades under conditions cruel and inhumane conditions. Several have died in prisons, others have endured years of solitary confinement, poor medical health care, and profunctory parole hearings resulting in routine denial of release. To this day they remain without remedy.

## **VI. Legal Framework**

ICCPR Articles 1,2,4,7,10,15,16, and 26 apply to issues of criminalization of dissent in the United States which has result in long term incarceration of political activists and their subjugation to torture and solitary confinement. Criminally punishing individuals for resisting often time brutal and violent racial oppression when no meaningful legal alternative existed or exists is cruel, inhuman and degrading. Disparate enforcement of facially neutral laws against imprisoned political activists often discriminates on multiple, intersecting grounds, including race, gender, social origin, property and disability status and results in denial of medical care, parole, or compassionate release when terminally ill. For domestic advocates, it is important to establish the norms under ICCPR Articles 1,2,4,7,10,15, 16 and 26 for potential use in litigation. The United States' imprisoned political are otherwise without adequate remedies or protection.

## **VI. Human Rights Committee General Comments**

None.

## **VII. Other UN Body Recommendations**

During the November 2010 Universal Periodic Review (UPR) of the United States called for the release of all imprisoned U. S. political activists. Six of the historic 228 Recommendations referred to U.S. held political activists, particularly Recommendations 92-153 - 154.

Referencing the American Civil Liberties Union's Human Rights Day ICCPR, numerous governments articulated their concern that the U.S. government is promoting impunity rather than accountability for torture. The government of Brazil expressed concern about "the persistent impunity" of officials responsible for torture under the United States' counterterrorism policy, and recommended that "the U.S. take[] measures to ensure . . . the accountability of those responsible for such acts."<sup>12</sup> Brazil also expressed concern about "the lack of reparation and rehabilitation of the victims of torture," and recommended that "the U.S. takes measures to ensure reparation to victims of acts of torture under

United States' control.”<sup>13</sup> The government of Norway recommended that the U.S. government investigate acts of torture and ill-treatment of detainees by military or civilian personnel.<sup>14</sup> In an advance question submitted to the United States, Mexico asked about the mechanisms in place to punish torture.<sup>15</sup> The Russian Federation<sup>17</sup> called on the United States to “[c]onduct [a] thorough and objective investigation of facts concerning [the] use of torture against imprisoned persons in the secret prisons of United States of America and detainees of the detention centres in Bagram and Guantanamo” and to “bring those who are responsible for these violations to justice.”<sup>16</sup>

In 2006, the Committee Against Torture recommended that the U.S. investigate, prosecute, and punish perpetrators of torture as well as “senior military and civilian officials authorizing, acquiescing, or consenting, in any way, to acts of torture committed by their subordinates.”<sup>17</sup>

The Committee also recommended victims of torture have access to mechanisms to obtain full redress, compensation and rehabilitation, and stated that the U.S. must not “limit the right of victims to bring civil actions.”<sup>18</sup> These issues will come up again in the U.S. Third Periodic Report to the Committee Against Torture, which was due in July 2011 and —as of this writing— has not yet been submitted.

#### **IV. Recommended Questions**

1. What measures have been taken to comprehensively and effectively investigate and prosecute the torture and cruel, inhuman or degrading treatment of imprisoned COINTELPRO/Civil Rights Era political activists in U.S. custody?
2. Despite well-documented and credible evidence of the deliberate and widespread use of torture and other illegal abuses by federal and state law enforcement agencies during the COINTELPRO/Civil Rights Era, 1956 to 1971, the U.S. has failed to criminally prosecute any senior government official responsible for the creation and implementation of COINTELPRO, its attendant and continued torture and solitary confinement programs and regimes.
3. How does the persistent failure to ensure accountability for torture and other abuses reconcile with the U.S.' obligations under ratified treaties and other international law to investigate and prosecute civilian and military leaders who ordered and approved the use of torture under COINTELPRO and current conditions of incarceration?
4. Given U.S. government officials' practice of securing the dismissal of civil suits brought by torture victims by asserting the state secrets privilege and claiming effective immunity from suit, what actions are the State Party taking to ensure that torture victims are ensured effective remedy and justice?
5. What measures have been taken by each branch of the U.S. government—the executive branch, Congress, and the federal courts—to ensure full transparency

regarding the use of torture and solitary confinement now and during the United States' COINTELPRO/Civil Rights Era ?

#### **V. Suggested Recommendations**

1. Congress should update the investigation of the Church Committee and publicly disclose the results of its investigation into the role of U.S. law enforcement, e.g. FBI, CIA, state and local law enforcement in the use of torture, solitary confinement, and other abuses against domestic human rights activists, and make it public, along with the role of officials in the White House in authorizing or ordering past and present use of torture, solitary confinement, medical neglect, and other abuses.
2. The United States should take immediate steps to use his presidential clemency powers and commute the sentences to time served and immediate release of all imprisoned COINTELPRO/Civil Rights Era political activists currently held in federal custody.
3. The United States should direct the Department of Justice to review the convictions of all COINTELPRO/Civil Rights Era political activists in federal or state custody to identify and address civil and human rights violations;
4. The U.S. should establish a National Truth and Reconciliation Commission to address the abuses of imprisoned COINTELPRO/Civil Rights Era political activists to facilitate their immediate and unconditional release;
5. The United States should establish a fund for reparations or other compensation to COINTELPRO/Civil Rights Era victims of torture, solitary confinement and other abuses in U.S. federal or state custody or control
6. Take leadership role to insure creation of public education and protections afforded under U.S. Constitution and international treaties and conventions are applied vigorously.
7. Adopt and ratify all major treaties and conventions, without RUDs.

December 17, 2012

Efia Nwangaza, Director  
Malcolm X Center for Self Determination  
321 W. Antrim Drive P.O. Box 16102  
Greenville, SC 29607  
864-239-0470 [mxcentergv1@gmail.com](mailto:mxcentergv1@gmail.com)