



REFERENCE:KF/fup-117

16 August 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 examination of the fourth periodic report of the United States of America.

At the end of its 110<sup>th</sup> session, the Committee transmitted its concluding observations to your Permanent Mission. You may recall that, in paragraph 27 of the concluding observations, the Committee requested the State party to provide within one year further information on the specific areas of concern identified in paragraphs 5, 10, 21 and 22 of the concluding observations.

On 14 July 2015, the Committee received the reply of the State party. At its 117th session, held in July 2016, the Committee analysed this information and adopted the following decisions:

- **Paragraph 5: (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.

His Excellency  
Ms. Pamela K. Hamamoto  
Ambassador Extraordinary and Plenipotentiary  
Permanent Representative  
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**(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: (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: (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: (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 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.

The Committee would appreciate it if the information referred be forwarded to the Secretariat **by 1 November 2016**. The reply should be sent in Word electronic version to the Secretariat of the Human Rights Committee (Kate Fox: [kfox@ohchr.org](mailto:kfox@ohchr.org)). The information will then be scheduled for consideration at a future session.

The Committee looks forward to pursuing its constructive dialogue with the authorities of the United States of America on the implementation of the Covenant.

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

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