

## SCHOOL OF LAW

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May 4, 2015

Mr. Patrice Gillibert  
Committee against Torture  
Human Rights Treaties Division  
Office of the United Nations High Commissioner for Human Rights  
Palais Wilson - 52, rue des Pâquis  
CH-1201 Geneva (Switzerland)

**RE: Follow-up letter concerning the concluding observations on the third to fifth periodic reports of United States of America.**

Dear Mr. Gillibert,

I have the honor to address the Committee Against Torture (CAT) on behalf of the Human Rights Clinic at the University of Texas School of Law (Clinic). The purpose of this letter is to follow up with you on the dire conditions of extreme heat in the U.S. correctional facilities, particularly those administered by the Texas Department of Criminal Justice (TDCJ).

I would like to acknowledge the importance of the conclusions and recommendations of the CAT on November 20, 2014. Those Concluding Observations coincide with diagnosis made by the Clinic on the severity of the prison conditions which were documented in our initial report titled "Deadly Heat in Texas Prisons," released last April 2014. Since the adoption of the Concluding Observations by the CAT, the Clinic has published a new report titled "Reckless Indifference: Extreme Heat in Texas Prisons" released on April 2, 2015. The new report confirms the findings of the Concluding Observations of the CAT and demonstrates that six months after CAT's recommendations, they remain without any implementation.

The Concluding Observation of the CAT in November of 2014 continues to be ignored by the U.S. government, the State of Texas, and the TDCJ. None of the relevant authorities, for example, have taken action to investigate the deaths of 14 inmates, to offer proper medical services to TDCJ inmates, and to monitor heat-sensitive inmate to prevent further heat-related injuries. Moreover, the Texas Legislature has not yet stepped in the right direction to alleviate the extreme heat in TDCJ units. Lack of appropriate measures by all relevant authorities signifies the severity of the situation in Texas prisons.

Particularly, the new report confirms the concern of CAT "about reports of inmate deaths that occurred as a result of extreme heat exposure due to imprisonment in unbearably hot and poorly

ventilated prison facilities.<sup>1</sup>” Based on the testimonies of inmates and the revision of their letters and grievances, the report ratifies the cruel, inhuman, and degrading treatment that prisoners are being subjected to. One inmate recalled an officer getting a reading of 137°F from pointing a laser thermometer at his cell. Numerous wrongful death suits have been filed on behalf of those inmates who lost their lives due to the deadly heat they were subjected to in TDCJ facilities. In addition, countless inmates who were interviewed by the Clinic, including those who are typically considered strong and healthy complained of heat-related injuries. Inmates have reported lying on the floor with wet towels so they can attempt to get a few hours of sleep at night. Although some inmates have fans, they are one of the most expensive items an inmate may purchase at TDCJ commissaries, and they actually do more harm than good once the heat index reaches a certain level. Ice and ice water are said to be provided by the TDCJ in the summer, but this is usually an inadequate amount to actually help inmates avoid dehydration and heatstroke. Even when ice and ice water are provided, inmates say they are typically dirty and filled with mosquitoes. In addition, a considerable number of inmates have avoided meals sometimes in order to circumvent the heat of the chow hall. TDCJ guards are also not immune to the heat; multiple guards have collapsed while on the job, complaining of chest pain due to the extreme heat. Guards reported over 92 instances of heat injury for workers’ compensation claims in 2012-13 alone; a number that union representatives say is likely much lower than the actual number of heat-related injury cases. So far, the U.S. government had failed to implement CAT’s clear recommendation to “should adopt urgent measures to remedy any deficiencies relating to temperature, insufficient ventilation and humidity levels in prison cells, including death row facilities.”<sup>2</sup>

Specifically, the report notes with regard to the TDCJ’s treatment of heat-sensitive inmates, the TDCJ fails to provide effective medical care for its inmates. This is contrary to the CAT’s recommendation to properly monitor heat-sensitive inmate to prevent further heat-related injuries. Although all TDCJ inmates suffer from extreme heat exposure during the summer, a substantial portion of these inmates are particularly susceptible to heat injury due to prior medical conditions or old age. The TDCJ neither monitors nor provides these inmates with adequate care to prevent suffering and death during the summer months. One inmate, who died of heat-related illness while in TDCJ custody, suffered symptoms of heat stroke for two days before his death. Despite being aware of his symptoms, and with knowledge of his previous medical history, the TDCJ guards and nurses did not adequately monitor his health. Even where the TDCJ and its health care providers have standards for heat-sensitive individuals, they do not follow them correctly. The TDCJ also violates its own internal standards, required by its Administrative Directive, for monitoring inmates while they work by forcing them to work in conditions of extreme heat. The increase in costs for receiving health care in TDCJ facilities—from a \$3 copay per visit to a \$100 payment for an entire year of services—also incentivizes inmates to avoid receiving such health care. This violates the American Bar Association’s Standards on the Treatment of Prisoners, which expressly states that prisoners should not be charged fees for necessary healthcare.

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<sup>1</sup> Committee Against Torture, *Concluding Observations on the Third to Fifth Periodic Reports of the United States of America*, para. 22, U.N. Doc. CAT/C/USA/3-5 (Nov. 20 2014), <http://www.state.gov/documents/organization/234772.pdf>.

<sup>2</sup> *Id.*

We regret to inform the CAT that despite its very clear recommendations to the U.S. government to “promptly, thoroughly and impartially investigate the deaths of all detainees, assessing the health care received by the inmates as well as any possible liability of prison personnel, and provide, where appropriate, adequate compensation to the families of the victims,<sup>3</sup>” our new report documents the ineffective, frustrating, and futile TDCJ grievance procedure. As a consequence, inmates have no legitimate mechanism to voice their complaints and grievances. Along with the threat of retaliation, the lack of an effective grievance procedure leads many inmates to avoid filing any grievances at all. Those who do file grievances frequently receive boilerplate responses such as, “There was no evidence to substantiate your allegations of agency policy violations. No further action warranted.” Although the TDCJ Ombudsman offers inmates and their families an alternative way to submit grievances and inquiries, it does not provide a prompt response to inquiries, and most are returned with no investigation or substantive result. Some common responses inmates and their families receive from the Ombudsman include “general info provided/policy or process explained” or “investigated–no corrective action necessary.” Additionally, the Ombudsman’s office has no independent oversight authority. Thus although it can hear inquiries, the Ombudsman does not have any power to review TDCJ policies. In other words, it has no jurisdiction to address the underlying issues that gave rise to the inquiry and grievance in the first place.

The Clinic would like to reiterate how the Special Procedures' involvement contributes significantly in dealing with this issue. The Clinic has brought this problem to the attention of the Texas and U.S. government authorities on multiple occasions, yet no authority has taken any steps to substantively improve the situation of inmates in TDCJ facilities.

The Texas Legislature is currently in session, but after this session concludes in June 2015 the Legislature will not convene until January 2017. Therefore, if no action is taken before the end of this session, TDCJ inmates will inevitably suffer for at least the next two years without legislative action. There are currently two pending legislative actions taken concerning the TDCJ and heat related issues in Texas prisons. However, even if these proposals are successfully passed, they will not do enough to substantively deal with the issue. First, in March 2015, Representative Sylvester Turner filed a rider in Article XI of the Budget, which requires the TDCJ to determine a study on the cost of implementing air conditioning within all TDCJ facilities. A rider is an additional provision added to an appropriations or budget bill that stipulates an instruction or contingency, depending on available expenditures, to a program, body, or agency that is funded by that particular bill. The rider contains an instruction specifically directed at the TDCJ, which is funded by the budget bill, to conduct a study showing the costs of implementing air conditioning in all correctional facilities. The general budget bill, with the proposed rider in it, is still being considered by the Texas Legislature and, therefore, has not passed or taken effect. It will likely be voted on by the full Senate and House Conference Committee at the end of April 2015.

The second legislative action occurred on April 9, 2015, when the House Corrections Committee heard HB 3303 by Representative Miles. This bill was proposed in an attempt to create an

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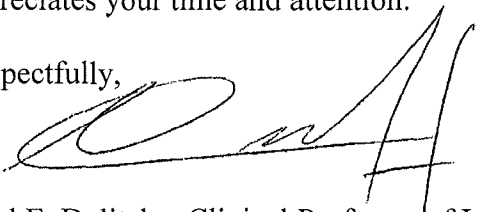
<sup>3</sup> *Id.*

independent oversight Ombudsman over the TDCJ. The current Ombudsman does not have jurisdiction to investigate claims filed, and the Ombudsman is not an independent authority. Therefore, the current Ombudsman has not been effective and impartial in carrying out its duties. The bill would eliminate the current Ombudsman and move it to a separate agency in order to make it an independent oversight agency. It further removes the second step grievance procedures from TDCJ and places it at the new Ombudsman office. As of April 9 2015, the bill is still pending in the Committee.

While the Clinic recognizes that the adoption of these two legislative measures might be the first step in recognizing part of the problems present in TDCJ units, they are absolutely insufficient to address all the concerns raised by the CAT and to effectively implement the recommendations made in its Concluding Observations. Due to the likely inability of these proposals to substantively improve the extreme conditions ongoing in TDCJ facilities, it is essential that the CAT continues a proper follow up of this important issue. The Clinic sincerely hopes that you will continue to monitor and address the U.S. government on this issue, and request information about how the Government protects the right to health and freedom from torture and other cruel, inhuman or degrading treatment or punishment of inmates in its custody when extreme heat is present, such as in Texas.

I remain at your disposal for any further information or clarification you may need. The Clinic appreciates your time and attention.

Respectfully,



Ariel E. Dulitzky, Clinical Professor of Law and Director



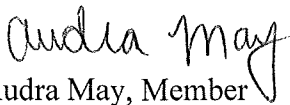
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