

TORTURE AND CRUELTY BY US OFFICIALS

Independent Information for the 107th session of the Human Rights Committee (HRC)

Submitted by the Midwest Coalition for Human Rights Friday, December 21, 2012

Reporting Organization

1. The Midwest Coalition for Human Rights (Coalition or Midwest Coalition)¹ is a network of 56 organizations, service providers, and university centers,² that work together to promote and protect human rights in our Midwest region³. Through collaboration in the Heartland, we advocate, educate and take action with a strong regional voice on national and international human rights issues. In particular, our work focuses on the following critical issues areas:

Freedom from Torture and Cruelty – The Coalition works to eliminate torture, and other cruel, inhuman and degrading treatment or punishment by U.S. officials at home or abroad. Specifically, we advocate against excessive use of force, misuse of Tasers, long-term sentencing of youth, and segregation and prolonged isolation in jails and prisons.

Immigrant Rights – The Midwest Coalition is committed to advocating for the human rights of immigrants, refugees, and asylum seekers. In particular, we focus on ending unjust U.S. immigration detention practices.

Economic Justice – The Coalition is dedicated to ensuring the full spectrum of economic, social, and cultural rights in our communities. In particular, we use the human rights framework to uphold worker rights and address unemployment, income inequality, and the dismantling of social welfare.

Non-Discrimination – The Midwest Coalition works to achieve equity by utilizing international human rights standards to promote and protect the rights of all people regardless of race, nationality, ethnic origin, gender, or sexual orientation. We are committed to identifying and opposing disparate, unequal treatment and discrimination in all areas of our work.

Issue Summary

2. The United States subjects its citizens to torture and to cruel, inhuman, and degrading treatment. This submission focuses on the American Midwest, where:
 - State and federal laws do not provide appropriate punishment or accountability for perpetrators of torture within U.S. territory;
 - Otherwise healthy inmates develop severe depression and clinical psychosis as a result of prolonged solitary confinement. Of particular concern in this regard is Tamms Correctional Center in Tamms, Illinois, where the reporting Organization has documented horrific conditions and significant psychological harm to the inmates.

¹ See www.MidwestHumanRights.org for more information about the reporting organization.

² See Appendix A for a full list of members.

³ The Coalition represents the following Midwest states: Illinois, Indiana, Iowa, Michigan, Minnesota, Nebraska, Ohio, North Dakota, and Wisconsin.

- Detained immigrants are routinely sexually abused and denied adequate medical care. Of particular concern in this regard are the Tri-County Correctional Facility in Ullin, Illinois and the Jefferson County Jail in Mt. Vernon, Illinois. The Reporting Organization, among others, has documented conditions in both facilities that fall far below even the inadequate standards of the U.S. Government
- Chicago police systematically tortured confessions from suspects, many of whom are innocent and still incarcerated;
- Law enforcement officers routinely and unnecessarily use electroshock devices on unarmed citizens, whether young, old, or pregnant.

Concluding Observations

3. The Human Rights Committee (“the Committee”) made two recommendations in its Concluding Observations on the last report submitted to it by the US Government that are relevant to these issues and have not been implemented:
 - **Para 30:** The State party should increase significantly its efforts towards the elimination of police brutality and excessive use of force by law enforcement officials. The State party should ensure that EMDs and other restraint devices are only used in situations where greater or lethal force would otherwise have been justified, and in particular that they are never used against vulnerable persons. The State party should bring its policies into line with the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.
 - **Para 32:** The State party should scrutinize conditions of detention in prisons, in particular in maximum security prisons, with a view to guaranteeing that persons deprived of their liberty be treated in accordance with the requirements of article 10 of the Covenant and the United Nations Standard Minimum Rules for the Treatment of Prisoners.

U.S. Government Report

4. The Reporting Organization wishes to provide additional information on several of the statements made by the U.S. Government in its Fourth Periodic report. The following list provides a summary of those statements.
 - **Para 172-176:** The U.S. Government contends that “a range of federal and state laws prohibit conduct constituting torture or cruel, inhuman or degrading treatment or punishment.” However, the Reporting Organization contends that such laws provide neither accountability for torturers nor redress for victims, and that the U.S. should enact a federal law to prevent and punish torture when committed within the United States or territories.
 - **Para 174:** The U.S. Government mentions the Detainee Treatment Act of 2005, which would ostensibly protect an individual in the custody of the U.S. Government from conduct that amounts to torture and cruel, inhuman or degrading treatment. Yet individuals in immigration detention suffer significant sexual abuse and are specifically excluded from the application of the Prison Rape Elimination Act of 2003.

- **Para 181:** The U.S. Government lists several prosecutions for acts that would constitute torture while omitting other instances – such as the routine torture of suspects by the Chicago police – where such prosecutions were rendered impossible by the absence of a federal law against torture and where the victims still await redress.
- **Para 217:** The U.S. Government states that “[s]tate policy regarding the medical care that will be provided to those in state custody must be made with due regard for an individual’s medical needs and the medical judgment of qualified health care providers.” Evidence indicates that medical decisions for individuals in immigration detention are not made by qualified health care professionals and that, as a result, immigration detainees are frequently denied adequate medical care.
- **Para 225:** The two examples provided by the U.S. Government of its investigation into complaints by immigration detainees highlight the inadequacy of oversight of immigration detention. The outcomes of the investigations were non-binding recommendations, limited to those two facilities. Yet the routine violations of the rights of individuals in immigration detention is a widespread problem that requires systemic and binding reform.
- **Paras 226-230:** The U.S. Government documents its efforts to address sexual assault of adult and juvenile prison inmates. Many of the increased protections described, including the Prison Rape Elimination Act, do not extend to individuals in immigration detention.
- **Para 234:** The policy governing prolonged solitary confinement described by the U.S. Government in this paragraph is inconsistent with the State party’s obligations.
- **Paras 236-245** describe the measures in place to ensure that the rights of individuals in immigration detention are fully protected. Those measures, however, are non-binding and not followed even where facilities are found to fall below the proscribed standards. Furthermore, the measures are not subject to independent oversight; the office charged with investigating complaints is itself part of the department that manages detention. The ability of immigration detainees to secure their rights is further complicated since they are denied access to counsel.

Legal Framework, Human Rights Committee General Comments

5. In its General Comment 20, the Committee recognized that it is not enough for States Parties to prohibit torture as well as other cruel, inhuman, or degrading treatment or punishment; rather, states must act to prevent such acts, to protect individuals—particularly vulnerable populations—and to “effectively guarantee[] the immediate termination of all acts proscribed by article 7” In its prisons, detention facilities, and police forces the United States fails to uphold those obligations.
6. The Committee has recognized that Article 2 requires States Parties to, among other things, a) address claims of violations of rights, specifically to “investigate allegations of violations promptly, thoroughly and effectively through independent and impartial bodies; and, b) to provide reparations to victims through means generally recognized in international law, including compensation, satisfaction, rehabilitation, restitution, public apologies, and guarantees of non-repetition.”
7. The United States violates the ICCPR in a variety of ways: (1) U.S. federal and state laws do not provide appropriate punishment or accountability for perpetrators or torture when committed within U.S. territory, (2) the U.S. supports and uses prolonged solitary confinement, a known method of torture; (3) the U.S. improperly manages its immigration detention system by allowing endemic sexual abuse and refusing adequate medical care, and failing to provide remedies or redress for

abuses; (4) the U.S. failed to prevent the Chicago Police Department from torturing civilians, failed to bar the use in court of evidence obtained from torture, and further failed to provide redress or reparations to torture victims; and (5) the U.S. allows and promotes routine electrocution of unarmed and non-threatening individuals by police.

Other UN Body Recommendations

8. In a report delivered at the United Nations General Assembly in August, 2011, UN Special Rapporteur on Torture Juan Mendez states that “Solitary confinement, when used for the purpose of punishment, cannot be justified for any reason, precisely because it imposes severe mental pain and suffering beyond any reasonable retribution for criminal behavior.”⁴ Additionally, he “finds solitary confinement to be contrary to one of the essential aims of the penitentiary system, which is to rehabilitate offenders and facilitate their reintegration into society.”⁵ Mr. Mendez urges states to prohibit the imposition of solitary confinement as punishment, calls on states to abolish the use of solitary confinement for juveniles and persons with mental disabilities, and recommends that prolonged solitary confinement, in excess of 15 days, should be subject to an absolute prohibition.⁶ In addition, the Committee against Torture (“CAT”) recommended that “[t]he State party should review the regime imposed on detainees in supermaximum prisons, in particular the practice of prolonged isolation.”⁷
9. The CAT commended the U.S. Government for its adoption of the Prison Rape Elimination Act of 2003, the Detainee Treatment Act of 2005, and the National Detention Standards in 2000 (“NDEA”) (new detention standards, not yet implemented, were introduced in 2011).⁸ Only the NDEA and its successor standards apply to individuals in immigration detention, however, and those standards are not legally binding, not followed in practice, and complaints of violations are not subject to independent investigation or enforcement.
10. The CAT made a number of recommendations the U.S. Government has not implemented. For instance, although “[t]he Committee reiterate[d] its previous recommendation that the State party should enact a federal crime of torture...”⁹ the U.S. Government still has not done so. Individuals in both federal and state custody continue to be subjected to prolonged solitary confinement despite the CAT’s recommendation that “[t]he State party should ensure that acts of psychological torture, prohibited by the Convention, are not limited to ‘prolonged mental harm’ as set out in the State party’s understandings lodged at the time of ratification of the Convention, but constitute a wider category of acts, which cause severe mental suffering, irrespective of their prolongation or its duration.”¹⁰

⁴ UN General Assembly, Interim report prepared by the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman, or degrading treatment or punishment, Juan E. Mendez: *Torture and other cruel, inhuman, or degrading treatment or punishment*, sixty-sixth session, 5 August 2011.

⁵ *Ibid.*, pp. 22, line 79.

⁶ *Ibid.*, pp. 22 – 23, lines 84, 86, 88.

⁷ CAT/C/USA/CO/2 (18 May 2006), para. 36.

⁸ *Ibid.*, paras. 9-10.

⁹ *Ibid.*, para. 13.

¹⁰ *Ibid.*

11. Individuals in immigration detention suffer routine sexual abuse and are denied adequate medical treatment. Furthermore, they exist in a legal black hole where they are effectively denied counsel and where the available remedies for violations of their rights (even if they were to have legal counsel) are murky. The same department that manages immigration detention investigates complaints of violations of the non-binding standards governing immigration detention. This state of affairs persists despite several relevant recommendations from the CAT, including the following:

- The State party should recognize and ensure that the provisions of the Convention expressed as applicable to “territory under the State party’s jurisdiction” apply to, and are fully enjoyed, by all persons under the effective control of its authorities, of whichever type, wherever located in the world (Paragraph 15);
- The State party should promptly, thoroughly, and impartially investigate any responsibility of senior military and civilian officials authorizing, acquiescing or consenting, in any way, to acts of torture committed by their subordinates (Paragraph 19);
- The State party should promptly, thoroughly and impartially investigate all allegations of acts of torture or cruel, inhuman or degrading treatment or punishment by law enforcement personnel and bring perpetrators to justice... (Paragraph 25);
- The State party should ensure, in accordance with the Convention, that mechanisms to obtain full redress, compensation and rehabilitation are accessible to all victims of acts of torture or abuse, including sexual violence, perpetrated by its officials (Paragraph 28);
- The State party should not limit the right of victims to bring civil actions and amend the Prison Litigation Reform Act accordingly (Paragraph 29); and,
- The State party should design and implement appropriate measures to prevent all sexual violence, in all its detention centres. The State party should ensure that all allegations of violence in detention centres are investigated promptly and independently, perpetrators are prosecuted and appropriately sentenced and victims can seek redress, including appropriate compensation (Paragraph 32).

12. The U.S. Government also failed to implement the CAT’s recommendation that “[t]he State party should promptly, thoroughly and impartially investigate all allegations of acts of torture or cruel, inhuman or degrading treatment or punishment by law enforcement personnel and bring perpetrators to justice...”¹¹ when it failed to prosecute Chicago Police Officer John Burge for torture – but rather settled for perjury – and failed to prosecute his collaborators, Peter Dignan and John Byrne, for anything at all.

13. The U.S. Government allows and promotes the electrocution of individuals in situations where the use of any level of force – much less deadly force – is not warranted despite the CAT’s recommendation that “[t]he State party should carefully review the use of electro-shock devices, strictly regulate their use, restricting it to substitution for lethal weapons and eliminate the use of these devices to restrain persons in custody, as this leads to breaches of article 16 of the Convention.”¹²

¹¹ Ibid., para. 25.

¹² Ibid., para. 35.

Recommended Questions

14. The Reporting Organization submits the following recommended questions for the consideration of the Committee:

Laws Against Torture

- 14.1 Please explain what efforts are underway to enact legislation or regulation at the federal level prohibiting torture when committed within U.S. territories. Does the U.S. Government support the passage of the Law Enforcement Torture Prevention Act previously introduced by Congressman Danny Davis?

Solitary Confinement

- 14.2 Please describe measures being taken to ensure that solitary confinement is used only in very exceptional circumstances, for as short a time as possible.
- 14.3 Please describe how the U.S. will provide care for victims of solitary confinement who suffer from ongoing psychosis or depression.
- 14.4 Please provide the Committee with a detailed plan for the closure of the Tamms Correctional Center, in Tamms, Illinois.

Immigration Detention Facilities

- 14.5 Please provide a detailed account of plans to extend to immigration detainees the basic protections of the law, including the Prison Rape Elimination Act.
- 14.6 Please explain the measures in place to guarantee to immigration detainees an independent and impartial investigation of claims that their rights have been violated.
- 14.7 Please explain why the U.S. has not enacted the Detainee Basic Medical Care Act that ensures adequate medical care is provided to detainees to prevent death and unnecessary suffering.
- 14.8 Please provide the Committee with a detailed plan for the closure of the Tri-County Detention Center in Ullin, Illinois.

Chicago Police Torture

- 14.9 When will any remaining, innocent and still-incarcerated victims convicted using tortured confessions extracted by the Chicago Police Department be granted new evidentiary hearings? What is the U.S. Government's position on the recently-filed class action seeking such hearings?

- 14.10 Please describe the restitution, if any, which will be provided to the remaining torture victims of the Chicago Police Department.
- 14.11 Please describe the Justice Department's current procedure on responding to current or future allegations of police torture and how that procedure will ensure that systematic police torture and associated cover-ups will not occur again.

Electroshock

- 14.12 Please describe measures to implement a federal law limiting the use of electroshock devices by law enforcement to substitution for lethal weapons.
- 14.13 Please describe measures to implement a federal law allowing greater access by electroshock victims to legal claims for remedies for excessive force.

Suggested Recommendations

15. The Reporting Organization submits the following recommended questions for the consideration of the Committee:
 - 15.1 Enact a federal law against torture that prohibits all acts of torture that occur in US territory, and that provides for both criminal accountability for perpetrators and redress for victims;
 - 15.2 Limit all use of solitary confinement to a maximum of 15 days; eliminate all use of solitary confinement, of any duration, as a punishment, whether judicially imposed or used as a disciplinary measure; and eliminate all use of solitary confinement, of any duration, for juveniles or persons with mental disabilities;
 - 15.3 Ensure that every individual in immigration detention is protected from torture and other cruel, inhuman and degrading treatment by:
 - Extending the protections of the Prison Rape Elimination Act to all individuals in any form of detention, including immigration detention;
 - Providing individuals in immigration detention with access to legal counsel; and,
 - Ensuring that individuals in immigration detention are given adequate medical care;
 - 15.4 Promptly provide new hearings to the Chicago Police torture survivors who remain in prison, and provide all victims with redress; and,
 - 15.5 Limit the use of electroshock devices to substitution for lethal weapons and provide victims of unwarranted electrocution by law enforcement officials with the ability to bring legal claims for redress.

APPENDIX A

The following organizations are members of the Midwest Coalition for Human Rights:

8th Day Center for Justice
Advocates for Basic Legal Equality, Inc.
American Civil Liberties Union of Illinois
American Friends Service Committee – Great Lakes Regional Office
Amnesty International USA – Midwest Office
Center for Civil and Human Rights – Notre Dame Law School
Center for Holocaust and Genocide Studies – University of Minnesota
Center for International Human Rights – Northwestern University
Center for the Human Rights of Children – Loyola University
Center for Victims of Torture
Champaign-Urbana Citizens for Peace & Justice
Chicago Justice Project
Chicago Religious Leadership Network on Latin America
Children and Family Justice Center – Northwestern University
Citizens Alert
Coalition of African, Arab, Asian, European and Latino Immigrants of Illinois (CAAELII)
Coalition to Protect Public Housing
Council of Islamic Organizations of Greater Chicago
Council on Crime and Justice
Freedom House – Detroit
Global Initiative on Economic Social and Cultural Rights
Heartland Alliance for Human Needs and Human Rights
Hispanic Advocacy and Community Empowerment through Research (HACER)
Human Rights Center – University of Minnesota
Human Rights Program – University of Chicago
Human Rights Program – University of Minnesota
Human Rights Watch – The Chicago Committee
Immigrant Law Center of Minnesota
International Human Rights Law Institute – DePaul University
International Studies and Human Rights Program – University of Dayton
International Women’s Rights Action Watch
Interprofessional Center for Counseling and Legal Services University of St. Thomas
Jewish Council on Urban Affairs
Justice for Our Neighbors – Iowa
Justice for Our Neighbors – Nebraska
Juvenile Life Without Parole Initiative – ACLU of Michigan
La Conexión de las Americas
League of Minnesota Human Rights Commissions
MacArthur Justice Center – Northwestern University
Marjorie Kovler Center for the Treatment of Survivors of Torture
Michigan Coalition for Human Rights
National Immigrant Justice Center
National Underground Railroad Freedom Center
Nebraska Applesseed Center for Law in the Public Interest
North Dakota Human Rights Coalition
Program in International Human Rights Law – Indiana University
Tamms Year Ten Campaign

The Advocates for Human Rights
University of Iowa Center for Human Rights
University of Iowa Labor Center
Urban Morgan Institute for Human Rights – University of Cincinnati College of Law
US Labor Education in the Americas Project (USLEAP)
Voces de la Frontera
Women's All Points Bulletin
Workers Interfaith Network
World Without Genocide