

Submission to the United Nations Committee against Torture
List of Issues Prior to Reporting – United States
59th session (November-December 2016)

June 27, 2016

The undersigned groups welcome the opportunity to contribute to the *List of Issues Prior to Reporting* of the United States in preparation for its sixth periodic review. The recommended questions below focus primarily on the US criminal justice system, law enforcement practices, and treatment of people in confinement—signatories may be submitting additional alternative reports on other matters of concern to the Committee.

Human Rights Watch
Bill of Rights Defense Committee/Defending Dissent Foundation
Community Justice Project, Inc.
The Constitution Project
Criminal Justice Policy Foundation
International CURE (Citizens United for Rehabilitation of Errants)
LatinoJustice PRLDEF
National Association of Criminal Defense Lawyers
National Juvenile Justice Network
National Religious Campaign Against Torture
OpenTheGovernment.org
The Sentencing Project
T'ruah: The Rabbinic Call for Human Rights

SOLITARY CONFINEMENT (ARTICLES 1-2, 10-11, 13-14)

There are an estimated 80,000 to 100,000 prisoners in United States' state and federal facilities being kept in solitary confinement on any given day.¹ Solitary confinement, generally in a six-by-eight-foot cell (or smaller) for 22 to 24 hours a day, is marked by "social isolation, reduced environmental stimulation, and loss of control over all aspects of daily life" and creates serious psychological and physical risks for prisoners.² Many of them experience panic, anxiety, rage, depression, hallucinations, weight loss, difficulty sleeping, and overall cognitive decline.³ Suicide rates and incidents of self-mutilation are also far higher for people in solitary.⁴ The United Nations' Special Rapporteur on Torture has concluded that more than 15 days in isolation can constitute cruel, inhuman and degrading treatment and even torture, yet many US prisoners languish in isolation for years or even decades.⁵

RECOMMENDED QUESTIONS

1. *Acknowledging the State party's statement to the Committee that there is "no systematic use of solitary confinement in the United States"⁶ please provide statistics on the number of people being held on any given day in isolated confinement (administrative, punitive, or protective isolation, single or double celled) in state and federal confinement facilities, and for how long.*
2. *Please provide information on what steps, if any, are being taken to end the use of prolonged isolation in state and federal facilities.*
3. *Please provide statistics on the number of children under the age of 18 held in isolation of any duration, in either juvenile or adult facilities, and the average number of days spent in isolation. Consider providing similar statistics for young adults, age 18 to 25.*
4. *Please provide information on what steps, if any, are being taken to end the use of isolation of children in state and federal confinement facilities.*
5. *Please provide information on what steps, if any, are being taken by federal and state governments to end the use of isolation for people with physical, intellectual, or psychosocial disabilities.*

¹ The Arthur Liman Public Interest Program at Yale Law School and the Association of State Correctional Administrators, "Time-In-Cell: The ASCA-Liman 2014 National Survey of Administrative Segregation in Prison," August 2015, https://www.law.yale.edu/system/files/area/center/liman/document/asca-liman_administrativesegregationreport.pdf, (accessed June 19, 2016).

² American Psychological Association, "Incarceration Nation," *Monitor on Psychology*, vol. 45, no. 9 (October 2014) <http://www.apa.org/monitor/2014/10/incarceration.aspx> (accessed June 24, 2016); Center on Sentencing and Corrections, "Solitary Confinement: Common Misconceptions and Emerging Safe Alternatives," May 2015, http://www.vera.org/sites/default/files/resources/downloads/solitary-confinement-misconceptions-safe-alternatives-report_1.pdf (accessed June 24, 2016).

³ *Ibid.*; Center on Sentencing and Corrections, Solitary Confinement: Common Misconceptions and Emerging Safe Alternatives 17-18 (2015) http://www.vera.org/sites/default/files/resources/downloads/solitary-confinement-misconceptions-safe-alternatives-report_1.pdf *citing* Fatos Kaba et al., "Solitary Confinement and Risk of Self-Harm Among Jail Inmates," *American Journal of Public Health* 104, no. 3, (2014): 442-447; Eric Charles Lanes, "Are the 'Worst of the Worst' Self-Injurious Prisoners More Likely to End Up in Long-Term Maximum-Security Administrative Segregation?" *International Journal of Offender Therapy and Comparative Criminology* 55, no. 7 (2011): 1034-1050.

⁴ Center on Sentencing and Corrections, "Solitary Confinement: Common Misconceptions and Emerging Safe Alternatives," p. 17-18, *citing* Fatos Kaba et al., "Solitary Confinement and Risk of Self-Harm Among Jail Inmates," *American Journal of Public Health*, vol. 104, no. 3, (2014): 442-447; Eric Charles Lanes, "Are the 'Worst of the Worst' Self-Injurious Prisoners More Likely to End Up in Long-Term Maximum-Security Administrative Segregation?" *International Journal of Offender Therapy and Comparative Criminology*, vol. 55, no. 7 (2011), p. 1034-1050.

⁵ Solitary Watch, "FAQ", 2015, <http://solitarywatch.com/facts/faq/> (accessed June 24, 2016); Center on Sentencing and Corrections, "Solitary Confinement: Common Misconceptions and Emerging Safe Alternatives."

⁶ U.S. Department of State, "Periodic Report of the United States of America to the United Nations Committee against Torture (Third, Fourth, and Fifth Reports)," August 12, 2013, (CAT/C/USA/3-5), <http://www.state.gov/documents/organization/213267.pdf> (accessed June 24, 2016).

DEATH PENALTY (ARTICLES 1-2, 10-12, 14)

As of January 1, 2016, there were 2,943 people on death row in the United States.⁷ Most await execution while in isolated confinement, and as of 2013 the average elapsed time from sentence to execution for people on death row was 15.5 years.⁸

More businesses are refusing to play a role in US executions. In mid-May 2016, Pfizer became the most recent pharmaceutical company to bar distributors from selling its drugs to corrections departments that could use them for lethal injections. More than 20 American and European drug companies have imposed similar bans.⁹ States' reactions to such bans have included enacting laws that prohibit the disclosure of information about the drugs used in lethal injection protocols, "including the identity of the drug manufacturers, and the types, dosages, and expiration dates of the drugs."¹⁰ The majority of the 31 states with the death penalty have such secrecy provisions,¹¹ making it increasingly more difficult for prisoners to obtain the information necessary to determine if the drugs would violate prohibitions under the Convention.

RECOMMENDED QUESTIONS

1. *Please provide an explanation of the State party's position on disclosure to the public of information regarding execution procedures, including but not limited to:*
 - a. *the steps to be followed in preparation for, during, and after an execution;*
 - b. *the qualifications and background of execution team members; and*
 - c. *details about any drugs to be used, including the names, manufacturers or suppliers, doses, expiration date(s), and testing results concerning use of the drugs.*
2. *Please detail any steps being taken to mandate or encourage disclosure of the procedures and drugs detailed in Question 1.*
3. *Please detail any steps taken by the State party to ensure that drugs not approved by the US Food and Drug Administration are prohibited from importation for purposes of use in lethal injections.*
4. *Please provide the Committee with information on any executions undertaken by state or federal authorities since the last US report where the condemned prisoner struggled or appeared to suffer, where the execution was otherwise prolonged, or where the execution deviated from the adopted protocols and regulations concerning the execution process.*

⁷ Death Penalty Information Center, "Death Row Inmates by State and Size of Death Row by Year", 2016, <http://www.deathpenaltyinfo.org/death-row-inmates-state-and-size-death-row-year> (accessed June 17, 2016).

⁸ Tracy L. Snell, "Capital Punishment, 2013 – Statistical Tables, Bureau of Justice Statistics," U.S. Department of Justice, Bureau of Justice Statistics, December 2014, <http://www.bjs.gov/content/pub/pdf/cp13st.pdf> (accessed June 24, 2016).

⁹ Tony Alanez, "Florida's death penalty facing new questions as last lethal-injection drug supplier bans use," *Sun Sentinel*, May 17, 2016, <http://www.sun-sentinel.com/news/fl-florida-executions-drugs-judges-20160517-story.html> (accessed June 20, 2016).

¹⁰ American Bar Association, "Death Penalty Due Process Review Project," 2015, http://www.americanbar.org/content/dam/aba/administrative/house_of_delegates/resolutions/2015_hod_midyear_meeting_108b.docx (accessed June 24, 2016).

¹¹ Alanez, "Florida's death penalty facing new questions as last lethal-injection drug supplier bans use," *Sun Sentinel*.

TREATMENT OF INCARCERATED PERSONS WITH PSYCHOSOCIAL DISABILITIES (ARTICLES 1-2, 4, 10-14, 16)

US prisons and jails confine such high numbers of people with psychosocial disabilities that they have taken on the role of mental health facilities.¹² This new role for them reflects, to a great extent, the limited availability of community-based outpatient and residential mental health programs and resources, and the lack of alternatives to incarceration for people with psychosocial disabilities who have engaged in minor offenses.

According to one recent estimate, correctional facilities confine at least 360,000 men and women with serious conditions such as schizophrenia, bipolar disorder, and major depression. In a federal survey, 15 percent of state prisoners and 24 percent of jail inmates acknowledged symptoms of psychosis such as hallucinations or delusions.¹³

While correctional staff are authorized to use force to protect safety and security, force against any prisoner may be used only when—and to the extent—necessary as a last resort, and never as punishment. Corrections officials at times needlessly and punitively deluge prisoners with psychosocial disabilities with chemical sprays; shock them with electric stun devices; strap them to chairs and beds for days on end; break their jaws, noses, ribs; or leave them with lacerations, second degree burns, deep bruises, and damaged internal organs.¹⁴ Such violence can traumatize already vulnerable men and women, aggravating their symptoms and making future mental health treatment more difficult. In some documented cases the use of force has caused or contributed to prisoners' deaths.¹⁵

RECOMMENDED QUESTIONS

- 1. Please identify any measures and strategies undertaken by the State Party to ensure appropriate interventions for persons with psychosocial disabilities at every stage of the federal and state criminal justice systems, provide reasonable accommodations, and improve access to treatment and rehabilitation programs available both in confinement and in the community, based on the individual's free and informed consent.*
- 2. Please identify steps taken to increase the transparency and reporting of the treatment of incarcerated persons with psychosocial disabilities. Additionally, please note any steps taken to facilitate complaints processes for allegations of misconduct.*

LAW ENFORCEMENT ABUSES AND LACK OF ACCOUNTABILITY (ARTICLES 1-2, 4, 10-16)

In the United States there exists no consolidated resource to identify incidents of alleged police abuse or to determine how often allegations of local, state, and federal law enforcement (e.g. US Marshals Service, US Border Patrol, Immigration and Customs Enforcement, and Transportation Security Agency) misconduct result in an investigation, prosecution, or conviction. Even when it comes to arrest-related or law enforcement custody-related deaths, the United States collects

¹² Human Rights Watch, *Callous and Cruel—Use of Force against Inmates with Mental Disabilities in US Jails and Prisons*, May 2015, <https://www.hrw.org/report/2015/05/12/callous-and-cruel/use-force-against-inmates-mental-disabilities-us-jails-and>.

¹³ Ibid.

¹⁴ Ibid.

¹⁵ Ibid.

statistics on only 35 to 50 percent of those deaths annually, potentially even less.¹⁶ Police disciplinary records are publicly available in only 12 states¹⁷ and other records of complaints against police officers are available only in fits and starts, often after prolonged legal battles.¹⁸ One such battle resulted in records showing less than two percent of complaints filed against the Chicago Police Department from 2011-2015 resulted in any discipline.¹⁹ Additionally, many law enforcement contracts are reportedly structured to “ensure that complaints of misconduct are a closely guarded secret, hiding the fact that there are rarely any consequences for repeat offenders or incompetent officers.”²⁰ Without clear data on infractions, complaints, investigations, discipline, and prosecutions, abuses by law enforcement officers cannot be properly addressed and those departments performing admirably cannot be identified as models for other law enforcement agencies.

RECOMMENDED QUESTIONS

1. *Please detail any steps taken to ensure reports of law enforcement misconduct and excessive use of force are promptly, thoroughly, and transparently investigated.*
2. *Please detail any steps taken to ensure more transparent reporting and documentation of incidents of law enforcement misconduct and excessive use of force nationally.*
3. *Please provide information detailing all occasions since the last US report where an investigation has led to disciplinary action and/or prosecution of a law enforcement official for incidents of misconduct or excessive use of force and the outcome of that action and/or prosecution.*

DISPROPORTIONATE SENTENCING (ARTICLES 1-2, 11, 14, 16)

The United States confines approximately 2.2 million people in prison or jail (and keeps another 4.7 million under other forms of correctional control).²¹ Despite similar victimization rates for many crimes, the United States’ incarceration rate is five times the European average.²² International

¹⁶ Brian Root (Human Rights Watch), “Dispatch: US Needs Better Data on Police Killings,” March 6, 2015, <https://www.hrw.org/news/2015/03/06/dispatches-us-needs-better-data-police-killings> (accessed June 24, 2016).

¹⁷ “Is Police Misconduct a Secret in Your State?” *WNYC News*, October 15, 2015, <http://project.wnyc.org/disciplinary-records> (accessed June 24, 2016).

¹⁸ Timothy Williams, “Chicago Rarely Penalizes Officers for Complaints, Data Shows,” *New York Times*, November 18, 2015, <http://www.nytimes.com/2015/11/19/us/few-complaints-against-chicago-police-result-in-discipline-data-shows.html> (accessed June 24, 2016).

¹⁹ Invisible Institute, Citizens Police Data Project, November 10, 2015, <https://cpdb.co/findings> (accessed June 24, 2016).

²⁰ Debra Loevy, “Police Contracts Protecting Misconduct,” Loevy & Loevy, February 22, 106 <http://www.loevy.com/blog/policecontractsprotectingmisconduct> (accessed June 24, 2016).

²¹ Peter Wagner and Bernadette Rabuy, “Mass Incarceration: The Whole Pie 2016,” Prison Policy Initiative, March 14, 2016, <http://www.prisonpolicy.org/reports/pie2016.html> (accessed June 24, 2016); U.S. Department of Justice, Bureau of Justice Statistics press release, “For the seventh consecutive year U.S. adults under community supervision declined in 2014,” November 19, 2015, <http://www.bjs.gov/content/pub/press/ppus14pr.cfm> (accessed June 24, 2016).

²² United Nations Interregional Crime and Justice Research Institute, “International Crime Victims Survey,” 2000, http://www.unicri.it/services/library_documentation/publications/icvs/statistics/17-icvs-app4.pdf (accessed June 24, 2016). The Council of Europe Annual Penal Statistics’ 2014 report showed the average European prison population rate was 136 inmates per 100,000 inhabitants. In the United States this number was 693 per 100,000. Council of Europe Annual Penal Statistics, “SPACE I,” December 2015, http://wp.unil.ch/space/files/2016/03/ENG_Executive_Summary_SPACE-2014_160308.pdf (accessed June 24, 2016); World Prison Brief, “United States of America,” <http://www.prisonstudies.org/country/united-states-america> (accessed June 24, 2016). When you shift the calculation to look at the number incarcerated per 100,000 adults this number becomes 900 per 100,000. The number of adults supervised by the United States Correctional System is 2,780 per 100,000. U.S. Department of Justice, Bureau of Justice Statistics, “Correctional Populations in the United States, 2014,” January 21, 2016, <http://www.bjs.gov/content/pub/pdf/cpus14.pdf> (accessed June 24, 2016).

human rights standards require punishment be no more severe than needed to accomplish its legitimate ends.²³ Penal sanctions can take different forms such as fines, community service, probation, electronic monitoring, evening-only confinement, or full incarceration.²⁴ In the United States, however, 69 percent of state felony defendants are incarcerated²⁵ and, in 2015, 87 percent of all federal sentences were prison only.²⁶ Life sentences, including life without the possibility of parole, are not reserved only for serious crimes but applied broadly for property or drug crimes.²⁷ While state laws on parole may vary there is no parole for federal prisoners, including those with life sentences.²⁸ Sentencing throughout the United States' criminal justice system tends to be disproportionate to the severity of most crimes, leading to massive long-term incarceration of people convicted of relatively minor offenses.

RECOMMENDED QUESTIONS

1. *Please detail what steps, if any, are being taken to ensure proportionate sentencing for all crimes at the state and federal levels. For example, have steps been taken to reduce the number of mandatory minimum sentences or sentencing enhancements for state and federal crimes?*
2. *Please provide statistics on the number of people incarcerated in state and federal facilities in the United States who are serving life without parole sentences, disaggregated by age, race, ethnicity, and gender identity.*

²³ "US: A Nation Behind Bars," Human Rights Watch news release, May 6, 2014, <https://www.hrw.org/news/2014/05/06/us-nation-behind-bars>.

²⁴ *Ibid.*

²⁵ Most recent data for state felony sentences from 2006: Sean Rosenmerkel, Matthew Durose and Donald Farole, Jr., "State Felony Offenses in 2006 – Statistical Tables," U.S. Department of Justice, Bureau of Justice Statistics, December 2009, <http://www.bjs.gov/content/pub/pdf/fssco6st.pdf> (accessed June 24, 2016), Table 1.2.

²⁶ United States Sentencing Commission, Distribution of Offenders Receiving Sentencing Options, "2015 Sourcebook of Federal Sentencing Statistics," <http://www.ussc.gov/research/sourcebook-2015> (accessed June 24, 2016).

²⁷ Human Rights Watch, "Nation Behind Bars: A Human Rights Solution," May 2014, https://www.hrw.org/sites/default/files/related_material/2014_US_Nation_Behind_Bars_o.pdf *citing* American Civil Liberties Union, "A Living Death: Life Without Parole for Nonviolent Offenses," 2013, <https://www.aclu.org/criminal-law-reform/living-death-life-without-parole-nonviolent-offenses-o> (accessed June 24, 2016) *and* Christina Sterbenz, "5 People Sentenced to Life in Prison Over Nonviolent Drug Offenses," *Business Insider*, August 14, 2013, <http://www.businessinsider.com/life-sentences-from-mandatoryminimums-2013-8> (accessed June 24, 2016); Matt Eloffson, "Ashford man gets life sentence for drug distribution," *Dothan Eagle*, September 17, 2013, http://www.dothanegale.com/news/crime_court/article_obb98686-1fc5-11e3-9871-0019bb30f31a.html (accessed June 24, 2016).

²⁸ Human Rights Watch, "Nation Behind Bars: A Human Rights Solution," *citing* Illinois, Iowa, Louisiana, Maine, Pennsylvania, and South Dakota. Ashley Nellis and Ryan S. King, "No Exit: The Expanding Use of Life Sentences in America," The Sentencing Project, July 2009, http://www.sentencingproject.org/doc/publications/publications/in_c_NoExitSept2009.pdf (accessed June 24, 2016), p 4. With the exception of those federal prisoners sentenced before 1987.