

TORTURE IN THE HOMELAND: Failure of the United States to Implement the International Convention against Torture to protect the human rights of African-American Boys and African-American Men in Chicago, Illinois

A Response to the fifth periodic report filed by The United States of America. The United States' review will take place in Geneva on November 12 and 13, 2014.

Submitted by:

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From 1972 well into the 1990s, over 100 African-American boys and men were tortured by former Chicago Police Commander Jon Burge and detectives under his command at Police Areas Two and Three in Chicago, Illinois. No less than seven independent investigations and numerous courts have concluded that the detectives under Burge's command committed acts of torture, which included electrically shocking men's genitals, ears and lips with a cattle prod or an electric shock box, suffocating individuals with plastic bags, mock executions, and beatings with telephone books and rubber hoses to extract confessions.

These coerced statements were used against the tortured victims in their unjustified prosecutions, as a result of which, all were found guilty and sentenced to lengthy prison terms or, in several instances, sentenced to death. Yet, until very recently, not a single officer had ever been prosecuted for these acts, which violate criminal laws, the victims' Constitutional rights, and international treaties banning the use of torture. In October, 2008, former police commander Jon Burge was indicted and subsequently convicted in June, 2010 by the United States Attorney in the Northern District of Illinois on charges of obstruction of justice and perjury in his efforts to cover up his crimes. Meanwhile, many of the victims of his torture conspiracy continue to languish behind bars based on confessions beaten and tortured out of them. 1

SUMMARY OF ISSUES

A. Failure to promptly investigate and prosecute crimes of torture.

1. Although Government officials had been on notice for over 20 years that African-American boys and men had been victims of torture by Chicago Police Officers in violation of:
 - Article 5 of the Universal Declaration of Human Rights and article 7 of the International Covenant of Civil and Political Rights, both of which provide that no one may be subjected to torture or to cruel, inhuman or degrading treatment or punishment;

- The Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly on 9 December 1975 (resolution 3452;

- Article 1 of the Convention Against Torture (CAT) provides that “...the purposes of this Convention, torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession...for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity....”

2. Government officials intentionally and deliberately failed to prosecute the Chicago Police Officers that engaged in the racially motivated torture of over 100 African-American boys and men for over a two decade period, and that Government officials intentionally allowed the Statute of Limitations to bar the prosecution on more substantive criminal charges. For example:

- On or about November 2, 1990, Office of Professional Standards “OPS” investigator Michael Goldston submitted a 25 page Report to the Superintendent of Police, Leroy Martin, concerning allegations of torture and abuse by Chicago Police detectives against African-American arrestees. The Goldston Report included the following findings:

As to the matter of alleged physical abuse, the preponderance of the evidence is that it did occur and that it was systematic. The time span involved covers more than ten years. (1980-1990) The type of abuse described was not limited to the usual beating, but went into such esoteric areas as psychological techniques and planned torture....The number of incidents in which an Area 2 command member is identified as an accused can lead to only one conclusion. Particular command members were aware of the systematic abuse and participated in it either by actively participating in same or failing to take any action to bring it to an end. This conclusion is also supported by the number of incidents in which Area 2 officers are named at the location of the abuse.

OPS Special Project Conclusion Reports and Findings, dated November 2, 1990 (Goldston Report); 2

- U.S. District Court Judge Milton Shadur found the following in his decision in U.S. ex.rel. Maxwell v. Gilmore, 37 F. Supp. 2d 1078, 1094 (N.D.Ill.1999):

It is now common knowledge that in the early to mid-1980s Chicago Police Commander Jon Burge and many officers working under him regularly engaged in the physical abuse and torture of prisoners to extract confessions. Both internal police accounts and numerous lawsuits and appeals brought by suspects alleging such abuse substantiate that those beatings and other means of torture occurred as an established practice, not just on an isolated basis. 3

- Seventh Circuit Court of Appeals Judge Diane Wood found in her concurring opinion in Hinton v. Uchtman, 395 F 3d 810, 822-23 (7th Cir. 2005):

The claim Hinton made regarding his confession illustrates dramatically the high price our system of criminal justice pays when police abuse runs rampant: a cloud hangs over everything that the bad actors touched...[A] mountain of evidence indicates that torture was an ordinary occurrence at the Area Two station of the Chicago Police Department during the exact time period pertinent to Hinton's case. Eventually, as this sorry tale came to light, the Office of Professional Standards Investigation of the Police Department looked into the allegations, and it issued a report that concluded that police torture under the command of Lt. Jon Burge... had been a regular part of the system for more than ten years. And, in language reminiscent of the news reports of 2004 concerning the notorious Abu Ghraib facility in Iraq, the report said that '[t]he type of abuse described was not limited to the usual beating, but went into such esoteric areas as psychological techniques and planned torture....' Indeed, the alleged conduct is so extreme that, if proven, it would fall within the prohibitions established by the United Nations Convention Against Torture ("CAT"), which defines torture as 'any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession....,' thereby violating the fundamental human rights principles that the United States is committed to uphold... 4

- On January 10, 2003, Illinois Governor George Ryan granted four Burge death row torture victims pardons on the basis of innocence, finding:

The category of horrors was hard to believe. If I hadn't reviewed the cases myself, I wouldn't believe it. We have evidence from four men, who did not know each other, all getting beaten and tortured and convicted on the basis of the confessions they allegedly provided. They are perfect examples of what is so terribly broken about our system.

Statement of Governor George Ryan, Depaul University School of Law, January 10, 2003. 5

In short, the above is a small sample of the mountain of evidence that became available over a two decade period that would ordinarily require the prosecution of the dozens of Chicago Police

Officers involved in the torture of over 100 African-American boys and men. Yet, The U.S. Attorney of The Northern District, The U.S. Justice Department, The Federal Bureau of Investigations, The Cook County States' Attorney, The Illinois Attorney General, and The Special Prosecutor turned a blind eye to the torture of these boys and men. Indeed, it was not until this "Committee", CAT, issued its Concluding Observations on May 18, 2006 before the Government took any action, and due to the enormous delay, the prosecution of Jon Burge was largely "token" and will have no deterrent effect against police torture in the future. The Committee expressed concern "...with allegations of impunity of some of the State party's law enforcement personnel in respect of acts of torture or cruel, inhuman or degrading treatment or punishment." The Committee noted, "...the limited investigation and lack of prosecution in respect of the allegations of torture perpetrated in areas 2 and 3 of the Chicago Police Department. (Article 12)" 6

The "Committee" directed the United States of America as follows:

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, in order to fulfill its obligations under article 12 of the Convention. The State party should also provide the Committee with information on the ongoing investigations and prosecution relating to the above mentioned case. 7

The U.S. Government's Periodic Report addresses The Committee's concerns as follows:

142. On June 28, 2010, a federal jury in Chicago convicted former Chicago Police Department (CPD) Commander Jon Burge on perjury and obstruction charges related to his denials that he participated in the torture of suspects in police custody in the 1980s. The jury found that Burge lied and obstructed justice in November 2003 when he provided false statements in a civil lawsuit that alleged that he and others tortured and abused people in their custody. On January 21, 2011, Burge was sentenced to 54 months in prison. His conviction was upheld on appeal on April 2, 2013. United States v. Burge, 711 F.3d 803 (7th Cir. 2013). Mr. Burge had been suspended by the Chicago Police Department in 1991 and fired in 1993 over allegations of abuse.

143. During the trial, several victims testified that they had been tortured by Burge and other officers who worked for him in area two of the CPD. Various witnesses testified that the officers administered electric shocks to their genitals, suffocated them with typewriter covers, threatened them with loaded guns, and

burned them on radiators. The jury found that Burge had lied under oath when he claimed that he did not participate in any of the acts of torture, and that he was unaware of any other officers having done so. Investigations into allegations of abuse by other CPD officers, and related false statements by those officers, are ongoing. 8

Response to how the United States addressed the issues raised by this Committee in paragraph 25 of its May 18, 2006 Conclusions and Recommendations.

Firstly, due to the Government's failure to investigate and prosecute perpetrators of the torture against the 100+ boys and men, this allowed the Statute of Limitations to expire on additional serious crimes, such as assault, battery, attempted murder, and conspiracy to commit the above crimes. Instead of a more serious substantive offense, the Government charged Burge with lying on interrogatories or lying during depositions during civil law suits brought by various torture victims. He was found guilty and sentenced to a mere 54 months in prison. He will actually be required to serve 85% of that amount, or about 46 months. In this instance, the punishment definitely did not fit the crime. Burge's victims were tortured into confessing to murder offenses. Several received death sentences, many others received life sentences. 9

Not only will Burge spend a very short time in prison; to add insult to injury, he is still receiving his pension while in prison. Further, the detectives that conspired with him to commit these crimes are being defended with millions of dollars of tax-payers' money. In some respects, Burge is being rewarded by the City of Chicago with a pension worth tens of thousands of dollars. 10 Moreover, the City has paid millions of dollars to defend Burge and his cohorts in lawsuits filed by the many victims. 11

Secondly, the Government claims that there is an ongoing "...investigation into allegations of abuse by other CPD officers, and related false statements by those officers..." It would be interesting to learn what the Government is investigating. Since

the Statute of Limitations has effectively barred prosecutions of the other serious criminal offenses related to the police torture of these civilians, like battery, criminal conspiracy, attempted murder (for those on death row), or the torture itself, the only option that remained for federal prosecutions was the less serious charge of obstruction of justice. The Government had the opportunity to prosecute several of the police perpetrators during the time period that Burge was charged, in late 2008, but obviously decided not to prosecute. There were several officers that committed the same offense of obstruction that Burge committed by lying on interrogatories or lying during depositions during civil litigation. For example, on November 26, 2003, Area 2 detective Daniel McWeeny denied torture and abuse in *Hobley v. Burge*; in November 2003 sworn interrogatory answers of Area 2 detectives Paladino, Lotito, Dwyer and Garrity denied torture and abuse in Federal case of *Hobley v. Burge*; in June of 2006, Daniel McWeeny denied torture and abuse in the Federal case of *Orange v. Burge*; on November 17, 2006, detective Michael Bosco denied knowledge of , or participation in , any acts of torture. There are many, many more Area 2 detectives that “did corruptly obstruct, influence, and impede an official proceeding, and attempt to do so, in that the defendants signed answers containing false statements in response to interrogatories in various civil rights cases or lied during their testimony during sworn depositions. In short, The Government prosecutors could have prosecuted an additional 15+ Area 2 or Area 3 police officers for obstruction without very much additional investigation. But, as usual, the Government deliberately allowed the Statute of Limitations to elapse on these cases.

B. Chicago Torture Victims have a right to Reparations as well as other national remedies

The provisions providing a right to reparations and other remedies of victims of international human rights law can be found in numerous international instruments, in particular article 14 of the CAT, article 8 of the Universal Declaration of Human Rights, article 2 of the International Covenant on Civil and Political Rights, article 6 of the International Convention on the Elimination of All Forms of Racial Discrimination, and article 39 of the Convention on the Rights of the Child.

Moreover, in December 2005, The General Assembly of the United Nations adopted the “Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law” (“Basic Principles”) to affirm the importance of addressing the question of remedies and reparation for victims of gross violations of international human rights laws. ¹²

The Basic Principles provide, in pertinent part, the following:

I. Obligation to respect, ensure respect for and implement international human rights law and international humanitarian law...

2...States shall, as required under international law, ensure that their domestic law is consistent with their international legal obligations by:

...(c) Making available adequate, effective, prompt and appropriate remedies, including reparation...

IV. Statutes of Limitations

6. Where so provided for in an applicable treaty or contained in other international legal obligations, statutes of limitations shall not apply to gross violations of international human rights law and serious violations of international humanitarian law which constitute crimes under international law...

IX. Reparation for harm suffered

15. Adequate, effective and prompt reparation is intended to promote justice by redressing gross violations of international human rights law or serious violations of international humanitarian law. Reparations should be proportional to the gravity of the violations and the harm suffered...

18. In accordance with domestic law and international law, and taking account of individual circumstances, victims of gross violations of international human rights law and serious violations of international humanitarian law should, as appropriate and proportional to the gravity of the violation and the circumstances of each case, be provided with full and effective reparation...which include the following forms: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

19. Restitution should, whenever possible, restore the victim to the original situation before the gross violations of international human rights or serious violations of international humanitarian law occurred. Restitution includes, as appropriate: **restoration of liberty**, enjoyment of human rights....

Although the United States has the obligation to provide reparation for the harm suffered by 100+ torture victims, including efforts to restore the liberty of those still languishing in prisons, it has done nothing! In fact, as outlined above, it has failed in its obligation to investigate and prosecute those responsible for the violations. It has allowed the Statute of Limitations to expire on the more serious crimes, i.e., torture, battery, attempted murder, criminal conspiracy, as well as the less serious crimes, i.e., lying on interrogatories or in depositions in civil cases.

Rather than providing reparations to torture victims, the City of Chicago has paid one private law firm more than \$20.5 million defending police accused of torturing African-American boys and men according to Sun Times reporter Chris Fusco (July, 2012). The Government must pardon and/or restore liberty to victims of Chicago Police Torture and must provide other reparations to these victims of Torture.

C. The Case of Keith Walker: tortured to confess to a crime he didn't commit and tortured by prison officials who have kept him in segregation, solitary confinement, and isolation for over 20 years.

Juan E. Mendez, The United Nations Special Rapporteur on torture called on all countries to ban the solitary confinement of prisoners except in very exceptional circumstances and for as short a time as possible, with an absolute prohibition in the case of juveniles and people with mental disabilities. "Segregation, isolation, separation, cellular, lockdown, Supermax, the hole, Secure Housing Unit... whatever the name, solitary confinement should be banned by States as a punishment or extortion technique," UN Special Rapporteur on torture Juan E. Méndez told the General Assembly's third committee, which deals with social, humanitarian and cultural affairs, saying the practice

could amount to torture. “Solitary confinement is a harsh measure which is contrary to rehabilitation, the aim of the penitentiary system,” he stressed in presenting his first interim report on the practice, calling it global in nature and subject to widespread abuse. Indefinite and prolonged solitary confinement in excess of 15 days should also be subject to an absolute prohibition, he added, citing scientific studies that have established that some lasting mental damage is caused after a few days of social isolation.

“Considering the severe mental pain or suffering solitary confinement may cause, it can amount to torture or cruel, inhuman or degrading treatment or punishment when used as a punishment, during pre-trial detention, indefinitely or for a prolonged period, for persons with mental disabilities or juveniles,” he warned.

The practice should be used only in very exceptional circumstances and for as short a time as possible, he stressed. “In the exceptional circumstances in which its use is legitimate, procedural safeguards must be followed. I urge States to apply a set of guiding principles when using solitary confinement,” he said.

There is no universal definition for solitary confinement since the degree of social isolation varies with different practices, but Mr. Méndez defined it as any regime where an inmate is held in isolation from others, except guards, for at least 22 hours a day.

In short, Keith Walker is a victim of torture committed by prison officials. He must be removed from segregation, immediately, and granted reparations by the Government, including the restoration of his liberty or his release from prison.

Recommended Questions:

1. What steps has the United States taken to provide reparations, including, restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition for the Chicago torture victims.
2. What steps has the United States taken and what steps will the United States take to restore the liberties of or release from prison the Chicago torture victims who are still in prison as a result of torture and coerced confessions?
3. Does the United States have plans to prosecute other Chicago police perpetrators of torture that has resulted in the imprisonment of over 100 African-American boys and African-American men?

Suggested Recommendations:

1. CAT to urge the United States to pass the Law Enforcement Torture Prevention Act (LETPA). The United States has an obligation under Article IV to “ensure that all acts of torture are offences under its criminal law” and to “make these offences punishable by appropriate penalties which take into account their grave nature.” Moreover, the crime of torture, like the crime of murder, should be free of any statute of limitations due to grave nature of the offense and the importance of deterring others from committing these crimes and human rights violations.
2. The CAT urge the United States to fulfill its obligation to provide reparations and other remedies of victims of torture as provided by Article 14 of the CAT, Article 8 of the Universal Declaration of Human Rights, Article 2 of the International

Covenant on Civil and Political Rights, and Article 6 of the International Convention on the Elimination of All Forms of Racial Discrimination.

3. The CAT urge the United States to take concrete and effective steps to provide restitution, i.e., to restore the victims of torture to their original situation before they were tortured. The restitution must include the restoration of their liberties or release from prisons as provided by the Basic Principles and Guidelines.
4. The CAT urge the United States to promptly and effectively investigate the continuous violation of the Convention Against Torture as it relates to torture victim Keith Walker.
5. The CAT urge the United States to impose, at the federal level, a moratorium on the torture of inmates in its prison system resulting from the “Segregation, isolation, separation, cellular, lockdown, Supermax, the hole, Secure Housing Unit... whatever the name, solitary confinement should be banned by States as a punishment or extortion technique,” as reported by Juan E. Mendez, The United Nations Special Rapporteur on torture. The United States is urged to ban the solitary confinement of prisoners except in very exceptional circumstances and for as short a time as possible, with an absolute prohibition in the case of juveniles and people with mental disabilities

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