

Physicians for  
Human Rights



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**Submission  
United Nations Committee Against Torture**

**Using Science and Medicine to  
Stop Human Rights Violations**

**List of Issues Prior to Reporting – United States  
59<sup>th</sup> Session (November-December 2016)**

**June 27, 2016**

## **Physicians for Human Rights**

Physicians for Human Rights (PHR) is an independent, non-profit organization that uses medicine and science to prevent mass atrocities and severe human rights violations. Founded in 1986, PHR leverages the expertise and independence of health professionals to investigate, document, and advocate against human rights violations.

PHR has been instrumental in establishing international guidelines for the medical investigation and documentation of torture (Istanbul Protocol), and trains medical and legal professionals around the world in their use so that victims of torture may obtain justice. PHR conducts investigations of torture allegations, and calls on states to prevent such violations and to ensure that perpetrators are held accountable.

In the United States, PHR works to end torture and other cruel, inhuman or degrading treatment in the context of national security law, policy, and practice. PHR advocates for the United States to fulfill its obligation to prevent torture, investigate allegations, punish perpetrators, and provide reparations to victims. PHR also works to end the complicity and misuse of U.S. health professionals in torture and other human rights violations.

In addition, PHR trains and coordinates a network of clinicians to provide asylum seekers fleeing torture and persecution with forensic evaluations to buttress their claims. In addition, PHR advocates for improved conditions in U.S. immigration detention centers, and documents human rights abuses that immigrants suffer in their home countries and in U.S. care.

PHR holds consultative status with ECOSOC.

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Physicians for Human Rights (PHR) wishes to bring to the Committee Against Torture's attention issues we consider important in relation to the United States in advance of the adoption of the *List of Issues Prior to Reporting* of at the 59<sup>th</sup> session of the Committee to be held in November-December 2016. We note that many of the concerns and recommendations the Committee set out in its December 2014 *Concluding observations on the combined third to fifth periodic reports of the United States of America* remain pertinent.<sup>1</sup> For some of the issues focused on below, there have been significant developments since December 2014.

## Transparency and Accountability for U.S. Torture

### **1. Responsibility to ensure full transparency and accountability for torture and ill-treatment and to collect and preserve evidence**

The United States must declassify, release, and disseminate the full report of the U.S. Senate Select Committee on Intelligence (SSCI) on CIA torture, *The Committee Study of the Central Intelligence Agency's Detention and Interrogation Program*.<sup>2</sup> In addition, the United States must collect, analyze, and preserve all relevant evidence of torture; undertake comprehensive investigations into allegations of torture, including those with command responsibility for authorizing torture, and including health professionals involved in detainee torture and ill-treatment; and, initiate criminal prosecutions of all those responsible for the U.S. torture program.<sup>3</sup>

In its 2014 Concluding Observations on the Third to Fifth periodic reports of the United States of America, the Committee expressed concern over the lack of proper investigation into torture allegations, including the inadequate inquiry conducted by Assistant U.S. Attorney John Durham and the resulting decision of the Justice Department to decline prosecution.<sup>4</sup> The United States has not adequately addressed these concerns.<sup>5</sup>

The Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol), which Physicians for Human Rights (PHR) helped author, states that those investigating acts of torture:

...must, at a minimum, seek to obtain statements from the victims of alleged torture; to recover and preserve evidence, including medical evidence, related to the alleged torture to aid in any potential prosecution of those responsible; to identify possible witnesses and obtain statements from them concerning the alleged torture; and to

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<sup>1</sup> Committee Against Torture, *Concluding observations on the combined third to fifth periodic reports of the United States of America* (19 December 2014), CAT/C/USA/CO/3-5, available at:

<http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsuLMmIdNURtE47FFHU%2bcDW3YqC%2f3zHkM7HdrMe8Ha0T3LrxFZw2DBuPPjJtmrR1GUBC%2fjzvD8gcT%2fCPPgMygXRPgJd4yWY90dyGDoPyZiQO4>.

<sup>2</sup> US Senate, Select Committee on Intelligence, *Committee Study of the Central Intelligence Agency's Detention and Interrogation Program*, December 13, 2012

<sup>3</sup> Sarah Dougherty, Christine Mehta, *Truth Matters: Accountability for CIA Psychological Torture*. New York: Physicians for Human Rights, Dec. 2015, available at <http://physiciansforhumanrights.org/library/reports/truth-matters-accountability-for-cia-psychological-torture.html>.

<sup>4</sup> *One-Year Follow-up Response of the United States of America to Recommendations of the Committee against Torture on its Combined Third to Fifth Periodic Reports on Implementation of the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment* ("US Follow-up Report"), Nov. 27, 2015, available at <http://www.state.gov/j/drl/rls/250342.htm>.

<sup>5</sup> See Human Rights Watch, *Submission to the United Nations Committee against Torture: Follow-up Assessment Report*, Mar. 2016, available at <https://www.hrw.org/news/2016/03/01/submission-united-nations-committee-against-torture>.

determine how, when and where the alleged incidents of torture occurred as well as any pattern or practice that may have brought about the torture.<sup>6</sup>

The Durham inquiry's failure to interview some former CIA detainees and the United States' refusal to describe the investigative methods employed highlight the U.S. government's ongoing failure to hold those responsible for torture through credible investigations and prosecutions. The SSCI report summary, released in December 2014, confirmed that U.S. officials authorized and carried out torture and highlighted that health professionals were involved to a much greater extent than previously understood.<sup>7</sup> Despite additional evidence of torture, the Justice Department has not opened any new investigations into torture and other human rights violations in connection with the CIA torture program.

The United States continues to bar disclosure of declassified information related to the CIA torture program by detainees on trial at the military commissions at Guantánamo Bay.<sup>8</sup> In addition, the United States continues to block the release of redacted videos depicting force-feeding of former Guantánamo hunger striker Abu Wa'el Dhiab, as well as nearly 1,800 photos relating to detainee mistreatment and deaths at U.S. military facilities in Iraq and Afghanistan, as requested by the American Civil Liberties Union, PHR, and other parties. PHR examined 198 of the photos, which were released in February 2016, and concluded that they failed to show a single act of abuse which the government's own records describe as having taken place.<sup>9</sup> Selective disclosure and other lack of transparency is part of an ongoing pattern by the United States of concealing evidence of crimes to prevent accountability for torture.

### Recommended Questions

1. Please explain how the censorship of the SSCI report on the CIA's "Rendition, Detention and Interrogation Program" is compatible with the U.S. government's responsibility to investigate and prosecute the crime of torture.
2. Please detail any steps taken to open criminal investigations into allegations of torture and to ensure evidence of torture is collected and preserved for prosecutions. If no steps have been taken, please explain why.
3. Please detail any steps taken to investigate the role of U.S. government-employed health professionals in promoting and supporting torture, as indicated in the SSCI executive summary. If no steps have been taken, please explain why.

### **2. Ensure that victims of U.S. torture, including those held in CIA black sites and military detention facilities, have access to an effective remedy and adequate reparation**

The United States must repeal all laws that provide immunity from prosecutions for the crime of torture to the government, individuals working under the color of state authority, and private contractors

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<sup>6</sup> Office of the High Commissioner for Human Rights, Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol), Aug. 9, 1999, at para. 77, available at <http://www.ohchr.org/Documents/Publications/training8Rev1en.pdf>.

<sup>7</sup> See Scott A. Allen et al., *Doing Harm: Health Professionals' Central Role in the CIA Torture Program*. New York: Physicians for Human Rights, Dec. 2014, available at [https://s3.amazonaws.com/PHR\\_Reports/doing-harm-health-professionals-central-role-in-the-cia-torture-program.pdf](https://s3.amazonaws.com/PHR_Reports/doing-harm-health-professionals-central-role-in-the-cia-torture-program.pdf).

<sup>8</sup> Letter to Secretary Carter and Attorney General Lynch re: Information on Abu Zubaydah Case, Sept. 2015, available at [https://www.hrw.org/sites/default/files/supporting\\_resources/jt\\_ltr\\_on\\_blocking\\_of\\_cia\\_torture\\_info\\_9-18-15.pdf](https://www.hrw.org/sites/default/files/supporting_resources/jt_ltr_on_blocking_of_cia_torture_info_9-18-15.pdf)

<sup>9</sup> Physicians for Human Rights, Press Release: U.S. Government Releases Photos of Detainee Abuse at U.S. Military Facilities – Obama Administration Continues to Hide Most Torture Evidence, Feb. 2016, available at <http://physiciansforhumanrights.org/press/press-releases/us-government-releases-photos-of-detainee-abuse-at-us-military-facilities.html>

working for the government, consistent with its legal obligation to ensure accountability for the torture and ill-treatment of detainees in U.S. custody. In addition, the United States must refrain from invoking the state secrets privilege to seek dismissal of cases brought in connection with the U.S. torture program.<sup>10</sup>

The United States has an obligation to provide victims of U.S. torture with the means to seek redress against the government and its agents, regardless of where the crime was committed. Additionally, the United States must provide victims of torture with a full range of reparations, including restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition.<sup>11</sup> To date, the United States has failed to deliver justice, official apology, or compensation to detainees subjected to the U.S. torture program, or to provide adequate medical and psychological treatment and rehabilitative services.

### Recommended Questions

1. Please detail any steps taken to ensure that all forms of torture and ill-treatment of detainees by the U.S. government or its agents, in any territory under U.S. jurisdiction or place under its effective control, is promptly, impartially, and thoroughly investigated.
2. Please provide details on the measures taken to ensure detainees' right not to be subjected to torture or cruel, inhuman or degrading treatment or punishment, and their right to health, including access to medical care while in detention.
3. Please detail any steps taken to ensure all health professionals in detention facilities undergo specialized training in the detection of torture and ill-treatment and that the Istanbul Protocol is an integral part of training provided to physicians and others involved in detainee care.
4. Please provide details on any measures taken to ensure effective judicial and non-judicial remedy and reparations to victims of U.S. torture and ill-treatment, including comprehensive treatment and rehabilitation.
5. Please describe measures taken to ensure that all victims of U.S. torture and ill-treatment, including those still detained at Guantanamo Bay, have an enforceable right to effective remedy and reparations, including:
  - a. Steps taken to ensure mechanisms for full redress, compensation and rehabilitation are accessible to all victims of acts or torture perpetrated by U.S. government officials.
  - b. Information about any reparation programs, including psychological treatment and other forms of rehabilitation, provided to victims of torture and ill-treatment as well as the allocation of adequate resources to ensure effective functioning of such programs.
  - c. Statistical data on the number of requests for redress made by victims of U.S. torture, the number of requests granted, the amounts ordered, and the amounts provided in each case.

## U.S. Detention and Interrogation Policies and Practices

### *1. Indefinite detention at Guantanamo Bay detention facility*

The United States must discontinue the practice of indefinite detention without charge or trial and ensure that Guantánamo detainees are safely repatriated, resettled in third countries, or transferred to the United States for prosecution before Article III courts, in accordance with due process and humane treatment standards under domestic and international law.

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<sup>10</sup> The Center for Victims of Torture, The Constitution Project, Human Rights First, Human Rights Watch, National Religious Campaign Against Torture, Physicians for Human Rights, *Letter to Attorney General Lynch Urging Not to Dismiss CIA Torture Victims Lawsuit*, Nov. 20, 2015, available at <https://www.hrw.org/news/2015/11/20/letter-attorney-general-lynch-urging-not-dismiss-cia-torture-victims-lawsuit>.

<sup>11</sup> Committee Against Torture, *General Comment No. 3, Implementation of article 14 by States parties*, CAT/C/GC/3 (Nov. 19, 2012), available at [http://www2.ohchr.org/english/bodies/cat/docs/GC/CAT-C-GC-3\\_en.pdf](http://www2.ohchr.org/english/bodies/cat/docs/GC/CAT-C-GC-3_en.pdf).

Indefinite detention of detainees at Guantánamo without charge or trial constitutes ongoing inhumane treatment and violates the absolute prohibition on torture and ill-treatment. It creates a continuing state of suffering and uncertainty for the men, superimposed on experiences of torture and ill-treatment in U.S. custody. Prolonged deprivation of liberty induces psychological pain and suffering, on top of that caused by torture, and precludes the possibility of effective treatment as long as indefinite detention continues.

Many Guantánamo detainees have been subjected to the abusive interrogation and detention practices described in the SSCI report summary, including waterboarding, mock executions, rectal rehydration without medical necessity, threats of death, permanently injuring and disfiguring abuse, extended sleep deprivation, and extended periods in stress positions.<sup>12</sup> These practices, enacted by systematic design and carried out in coordination with and sometimes by health professionals, were calculated to induce a state of “learned helplessness,” or profound psychological trauma, and were inflicted on individuals in CIA and military custody.<sup>13</sup>

Independent health professionals who have conducted clinical evaluations of current and former Guantánamo detainees, including PHR clinicians, have found that these techniques harmed detainees. Moreover, lack of treatment for physical and mental symptoms and disabilities related to experiences of torture combined with prolonged incarceration in the place where many of these abuses took place, without due process or opportunity to address their confinement status, has dramatically intensified detainee suffering.<sup>14</sup>

### Recommended Questions

1. Describe steps taken to ensure that interrogation protocols, instructions, and methods are in full compliance with the absolute prohibition of torture including:
  - a. Updated information on the content of the Army Field Manual on Interrogation and its conformity with the Convention, detailing whether all interrogation techniques used in practice are in conformity with the Convention.
  - b. Updated information on the composition and functioning of the “High-Value Interrogation Group” responsible for the interrogation of high-value detainees including detailed information on steps taken to ensure that the unit is limited to the use of interrogation techniques that are in conformity with the Convention.
  - c. Describe steps taken to ensure that acts of health personnel are in full conformity with principle No. 2 of the Principles of Medical Ethics relevant to the Role of Health Personnel in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Provide information on the participation and role of health personnel in interrogations of terror suspects, including in secret detention facilities.
2. Clarify the U.S. government’s position with regard to its understanding of acts of psychological torture prohibited by the Convention. Does the U.S. government recognize a wider category of acts which cause severe mental suffering, irrespective of their prolongation or its duration, as acts of psychological torture prohibited by the Convention?

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<sup>12</sup> Constitution Project (Georgetown Public Policy Institute). Task Force on Detainee Treatment. Washington, DC: Constitution Project. Apr. 2013.

<sup>13</sup> S. Armed Services Comm., 110th Cong., Inquiry into Treatment of Detainees (Comm. Print 2008), [http://www.armed-services.senate.gov/imo/media/doc/Detainee-Report-Final\\_April-22-2009.pdf](http://www.armed-services.senate.gov/imo/media/doc/Detainee-Report-Final_April-22-2009.pdf).

<sup>14</sup> Vincent Iacopino, Stephen N. Xenakis. Neglect of Medical Evidence of Torture in Guantánamo Bay: A Case Series, *PLoS Med* 8(4): e1001027. Apr. 2011.

3. Provide information on steps taken to ensure that all detained suspects are afforded fundamental safeguards, including the right to a lawyer and independent medical examinations, as well as the right to challenge the grounds for their detention in a court of law.
4. Describe the steps taken to ensure that the U.S. government does not indefinitely detain suspects, including those currently held at Guantánamo Bay, without charge. Elaborate on the legal safeguards provided to detainees who endure prolonged detention without trial as well as the steps taken to bring Guantánamo Bay detainees to justice in accordance with internationally recognized fair trial standards.
5. Provide updated information on the U.S. government's position on extending an invitation to special procedure mandate holders who have requested a visit, especially to the request of the Special Rapporteur on the torture and other cruel, inhuman or degrading treatment or punishment to visit Guantánamo Bay, as well as the UN Working Group on Arbitrary Detention, the Special Rapporteur for the promotion and protection of human rights and fundamental freedoms while countering terrorism, and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.
6. Provide updated information on how measures taken by the U.S. government to respond to threats of terrorism have affected human rights safeguards in law and practice. Detail steps taken to ensure that these measures comply with the U.S. government's obligations under international law.

## ***2. Prolonged and arbitrary detention of refugees, asylum seekers, and other immigrants, and the treatment of children and vulnerable groups in detention***

The United States' system of mandatory detention of refugees, asylum seekers and other immigrants in prison-like detention facilities, county jails and private prisons violates the prohibition against torture and ill-treatment. In particular, the policy and practice of detaining refugee families and children in the context of administrative immigration enforcement raises serious due process, health, and child protection concerns.

In a March 2015 report, Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Mendez, called on states to cease the detention of children on the basis of immigration status concluding that “[t]he deprivation of liberty of children based exclusively on immigration-related reasons exceeds the requirement of necessity,” and “becomes grossly disproportionate and may constitute cruel, inhuman or degrading treatment of migrant children.”<sup>15</sup>

The American Academy of Pediatrics (AAP) has conveyed to U.S. government officials that detention unnecessarily exposes vulnerable women and children with high rates of previous trauma, exploitation, and physical and sexual abuse to additional psychological trauma, putting children at heightened risk of long-term health consequences.<sup>16</sup>

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<sup>15</sup> Human Rights Council, twenty-eighth session, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Mendez* (5 March 2015), A/HRC/28/68, para 80, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/043/37/PDF/G1504337.pdf?OpenElement>.

<sup>16</sup> Letter from the American Academy of Pediatrics to the Honorable Jeh Johnson, July 24, 2015, available at <https://www.aap.org/en-us/advocacy-and-policy/federal-advocacy/Documents/AAP%20Letter%20to%20Secretary%20Johnson%20Family%20Detention%20Final.pdf>

### Recommended Questions

1. Provide details on any steps taken to end the use of detention in the context of administrative immigration enforcement, in particular the detention of children, families, and other vulnerable groups.
2. Provide details on any steps taken to implement the U.S. Department of Homeland Security's decision to scale back the use of family immigration detention, as well as the duration of detention. In addition, please provide information on steps taken to ensure due process protections during the credible or reasonable fear interview process, as well as steps taken to reduce wait times for interviews, information about what constitutes a "reasonable timeframe" in which to conduct credible or reasonable fear interviews, and opportunities for detained individuals to marshal claims and present the strongest evidence.
3. Provide details on steps to ensure the legal safeguards provided to immigrants in detention, including access to legal counsel and effective judicial remedies to challenge the legality of administrative detention decisions.
4. Provide details on the independent oversight mechanisms in place to ensure prompt and impartial investigations into allegations of violence and abuse in immigration centers.
5. Describe the measures taken to ensure the provision of appropriate medical and mental health care to survivors of abuse held in immigration detention facilities.

### ***3. Solitary confinement in the U.S. detention system***

The United States must limit, with the goal of eventually eliminating, the use of solitary confinement in immigration detention facilities, national security detention facilities, federal and state prisons, and local jails. Until the practice is eliminated, solitary confinement should be used only rarely, only to protect the safety of those detained and never as a disciplinary measure, and only for a finite period of time that inmates are informed of, and for a duration of no longer than 9 days.

An estimated 80,000 inmates in the United States are held in some form of solitary confinement, such as administrative segregation, disciplinary segregation, and protective custody.<sup>17</sup> Solitary confinement has historically been used to control and discipline detainees in a variety of settings, including federal and state prisons, local jails, and immigration and national security detention facilities. However, unlike incarcerated prisoners, immigration and national security detainees are held not as punishment for a crime but as a preventive measure. For these people, solitary confinement becomes entirely punitive, with dire consequences for their mental and physical health. Immigration and national security detainees are particularly likely to be held in isolation for prolonged periods because their precarious legal status makes them less able to challenge their conditions of confinement, including placement in isolation.

The medical literature on solitary confinement provides convincing evidence that even brief periods in isolation have severe psychological and physical effects. These effects are exacerbated if the person has previously been subject to torture and abuse, as is often the case with immigration and national security detainees. Furthermore, self-harm and suicide is more common in solitary than among the general prison population as a result of the psychological trauma inmates suffer.<sup>18</sup> International and regional human rights bodies have consistently held that solitary confinement should be the very rare exception,

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<sup>17</sup> Christy Fujio. *Buried Alive: Solitary Confinement in the US Detention System*. Boston: Physicians for Human Rights. Apr. 2013, available at [https://s3.amazonaws.com/PHR\\_Reports/Solitary-Confinement-ExecSumm-April-2013.pdf](https://s3.amazonaws.com/PHR_Reports/Solitary-Confinement-ExecSumm-April-2013.pdf)

<sup>18</sup> *Ibid.*

not the rule, and have repeatedly found conditions of solitary confinement to violate international prohibitions against torture.<sup>19</sup>

### **Recommended Questions**

1. Provide comprehensive data tracking the use of solitary confinement in US immigration detention facilities, correctional institutes, state and county jails, and national security detention facilities from the moment of placement in solitary to release including:
  - a. Number of prisoners in Federal Bureau of Prisons custody, national security detainees, and immigration detainees in solitary confinement who have been continuously held in solitary confinement for more than 9 days;
  - b. Number of hunger strikes, suicides, or incidents of self-harm in the last 12 months among detainees held in solitary confinement;
  - c. Measures required by federal, state, and local governments to regulate the imposition of solitary confinement, impose limits on the use of solitary as protective custody, and prohibit the use of punitive isolation, including on vulnerable populations;
  - d. Measures taken to compile and regularly publish comprehensive data on the use of solitary confinement, including related suicide attempts and self-harm.
2. Detail investigations undertaken by the Department of Justice pursuant to the Civil Rights of Institutionalized Persons Act.

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<sup>19</sup> Ibid.