



EXECUTIVE SUMMARY OF  
SHADOW REPORT SUBMISSIONS  
COMPILED BY THE US HUMAN RIGHTS NETWORK  
ON BEHALF OF MEMBER AND PARTNER ORGANIZATIONS

TO THE UNITED NATIONS  
COMMITTEE AGAINST TORTURE

October 21, 2014

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## **Introduction**

The following report is an executive summary of shadow reports submitted by members of U.S. civil society to the United Nations Committee against Torture. The reports were submitted through the US Human Rights Network (USHRN), or submitted directly to the CAT Secretariat and shared with the US Human Rights Network. The executive summary is intended to facilitate the preparation of Committee Members for the review of the United States by providing an overview of the key issues addressed in the shadow reports and highlighting recommendations made by civil society. Each chapter is organized as follows: suggested recommendations; basis of the recommendations; CAT articles implicated; correlation to U.S. Government Report; and shadow report/s informing the section. The Executive Summary is organized thematically in the order that is laid out in the Committee against Torture's [List of Issues](#).

The report summaries are divided into general issue areas for readers' convenience, but this is not intended to indicate that the human rights violations they describe neatly fit into these categories. As the breadth of the Convention demonstrates, torture has multiple impacts on people's lives, opportunities, and wellbeing, and it affects both public and private aspects of their existence.

The Executive Summary reflects the perspectives of the organizations that authored the Shadow Reports.

## **Acknowledgements**

The US Human Rights Network (USHRN) would like to thank all our members and partners for the shadow reports that were submitted for the review of the United States Government by the UN Committee Against Torture. Specifically, we thank Aya Fujimura-Fanselow for drafting this Executive Summary. We also thank the USHRN Coordinating Center staff for their dedication and hard work, and our funders for their ongoing support.

## Summaries of Civil Society Submissions

### DEFINITION OF TORTURE

#### Inadequacy of U.S. Laws on Torture

U.S. state and federal laws do not provide appropriate punishment or accountability for perpetrators of torture when these acts occur domestically.

#### Suggested Recommendations:

1. The U.S. Government should enact a federal crime of torture.<sup>1</sup>
2. The U.S. Government should support and take active steps to pass the “Law Enforcement Torture Prevention Act” (H.R. 5688) introduced in 2010.<sup>2</sup>

#### Basis of the Recommendations:

While there are federal laws that criminalize acts of torture that occur within United States territory, none of the statutes brands the criminal acts of torture as torture. Moreover, 18 U.S.C. § 242, the primary federal statute used to bring criminal charges against law enforcement officers requires proof that a law enforcement agent specifically intended to violate an individual’s constitutional rights, rather than that the law enforcement agent merely intended to commit act(s) which resulted in rights violations. This often serves as an obstacle to obtaining convictions.<sup>3</sup>

The short statutes of limitations under federal law – five years for criminal prosecutions for acts amounting to torture but qualifying as non-capital offenses<sup>4</sup> – effectively prohibits bringing perpetrators of torture in the United States to justice,<sup>5</sup> as law enforcement officials can cover up their misconduct for years and in some cases decades.

State laws are insufficient at effectively holding law enforcement officials responsible for crimes of torture. As with federal law, state laws that criminalize acts of torture are subject to short statutes. Moreover, because state laws do not proscribe acts of torture as such, there is a lack of recognition that law enforcement officials commit serious and egregious acts of torture.

#### CAT Articles Implicated: 1, 2, 4, 5

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<sup>1</sup> CAT/C/USA/CO/2 (18 May 2006), para. 13.

<sup>2</sup> H.R. 5688, *available at* <http://www.gpo.gov/fdsys/pkg/BILLS-111hr5688ih/pdf/BILLS-111hr5688ih.pdf>. This legislation proscribes acts of torture committed by law enforcement officials within U.S. territory and it adopts the CAT’s definition of torture. It further provides that such crimes have no statute of limitations so that no law enforcement official is beyond the far reach of the law.

<sup>3</sup> 18 U.S.C. § 242, *available at* <http://www.justice.gov/crt/about/crm/242fn.php>

<sup>4</sup> A “capital” offense” is any crime which *may* be punishable by the death penalty, whether or not the death penalty is sought by the prosecution or actually imposed. 8 C.J.S. Bail § 27. Title 18, Chapter 228 of the U.S. Code explains what offenses are capital crimes, *available at* <http://www.gpo.gov/fdsys/pkg/USCODE-1994-title18/pdf/USCODE-1994-title18-part11-chap228.pdf>.

<sup>5</sup> *United States v. Cote*, 544 F.3d 88, 92 (2d Cir. 2008) (explaining that a five-year statute of limitations applies to non-capital claims under 18 U.S.C. § 242).

## **Correlation to U.S. Government Report:**

Despite assertions by the U.S. Government to the contrary,<sup>6</sup> significant gaps in federal and state laws effectively legalize torture and immunize law enforcement officials who engage in acts of torture within United States territory. The U.S. Government has not made torture a distinct federal crime, except for acts committed outside the territory of the United States.<sup>7</sup>

## **Report Informing this Section:**

Midwest Coalition for Human Rights and the Legal Clinic of the University of Iowa College of Law:  
*Midwest Regional Report on Torture and Cruel, Inhuman and Degrading Treatment*

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# **COUNTRIES EXPELLING INDIVIDUALS TO COUNTRIES WHERE THEY WILL BE TORTURED (THE NON-REFOULEMENT GUARANTEE)<sup>8</sup>**

## **Extradition Proceedings and Judicial Oversight**

United States extradition practice lacks transparency and independent oversight.

### **Suggested Recommendations:**

The U.S. Government should ensure transparency and accountability for determinations of whether an individual is more likely than not to face torture upon extradition by providing: (1) support to abolish the Rule of Non-Inquiry; (2) support for judicial oversight of torture determinations while legislative change is sought.

### **Basis of the Recommendations:**

According to the extradition policy of the United States, a determination of non-refoulement, which prohibits states from returning an individual to a country where there are “substantial grounds” to believe he or she would be subjected to torture, is left to the sole discretion of the State Department, with no substantive judicial oversight.

It is up to a judge to determine whether or not probable cause exists to certify a particular individual for extradition. Because of a common law judicial doctrine, the threat of torture an individual faces upon return to the country requesting extradition is not considered by the judge. Once a judge finds probable cause to certify extradition, the State Department determines whether to issue a warrant of

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<sup>6</sup> *United Nations Committee Against Torture: Convention Against Torture: Periodic Report of the United States of America* [hereinafter “*Periodic Report to the Committee against Torture*”] 5, ¶9 (2013), available at <http://www.state.gov/documents/organization/213267.pdf>.

<sup>7</sup> The statute criminalizing extra-territorial torture, 18 U.S.C. § 2340A, contrary to the U.S. Government (*Periodic Report*, at ¶10), may not be used to prosecute acts of torture committed by law enforcement officials within U.S. territory. *See, e.g.*, Criminal Resource Manual 20: Torture (18 U.S.C. § 2340A), Offices of the United States Attorneys, available at [http://www.justice.gov/usao/cousa/foia\\_reading\\_room/usam/title9/crm00020.htm](http://www.justice.gov/usao/cousa/foia_reading_room/usam/title9/crm00020.htm).

<sup>8</sup> According to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 3: “No State Party shall expel, return (“refouler”) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.”

extradition.<sup>9</sup> While the State Department *may* decide to refuse extradition if there are substantial grounds to believe the individual faces danger of torture, if the State Department does not find that this danger exists, the Secretary of State issues a warrant of extradition.

Under the common law “Rule of Non-Inquiry,” courts refuse to review executive decisions of this torture determination.<sup>10</sup> As a result, there is virtually no transparent review or judicial oversight mechanism to fulfill the non-refoulement obligations laid out by the Committee in the context of extradition.<sup>11</sup> In a recent case from a federal appeals court, the court found “no evidence” that the State Department had reviewed the threat of torture faced by the extraditee.<sup>12</sup> The petitioner presented evidence of torture of the conspirators of the crime for which he was sought in the Philippines. At least one confession made by a conspirator was thrown out because a judge found that it had been made under duress.<sup>13</sup> However, because the court lacked power to review the petitioner’s claim that he would face torture if returned to the Philippines, he could not challenge the State Department’s extradition decision on the basis that he faced the threat of torture.

The executive branch continues to assert the necessity of sole executive discretion over the question of torture in extradition cases.<sup>14</sup> Additionally, the U.S. Government continues to use diplomatic assurances to fulfill its non-refoulement obligations, a practice specifically criticized by the Committee in its last review, and highlighted by civil society.<sup>15</sup>

### **CAT Articles Implicated: 3**

### **Correlation to U.S. Government Report:**

The Government Report notes that decisions by the Secretary of State regarding whether or not to extradite a fugitive are not subject to judicial review, “based upon the longstanding Rule of Non-Inquiry and statutes adopted by Congress.”<sup>16</sup> This includes decisions on whether to seek diplomatic assurances in any particular case as well as on whether to extradite a fugitive subject to such assurances.<sup>17</sup> The U.S. Government further explains the factors upon which the Secretary’s decisions are based.<sup>18</sup> The Government Report also confirms that there continues to be no opportunity to challenge extradition on the basis that an individual is more likely than not to face torture in the country requesting extradition.<sup>19</sup>

### **Report Informing this Section:**

Caroline Stover, Affiliated Researcher, Columbia Law School’s Human Rights Institute: *The Need for Judicial Oversight of CAT Obligations in Extradition Proceedings*

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<sup>9</sup> Fourth Periodic Report of the United States of America to the United Nations Committee on Human Rights Concerning the International Covenant on Civil and Political Rights ¶ 559. Incorporated by reference in 2013 Periodic Report of the United States of America to the United Nations Committee Against Torture ¶ 68.

<sup>10</sup> See generally M. Cherif Bassiouni, International Extradition: United States Law and Practice 569-86 (2002).

<sup>11</sup> Fourth Periodic Report of the United States of America to the United Nations Committee on Human Rights Concerning the International Covenant on Civil and Political Rights ¶ 559. Incorporated by reference in 2013 Periodic Report of the United States of America to the United Nations Committee Against Torture ¶ 68.

<sup>12</sup> *Trinidad y Garcia v. Thomas*, 683 F.3d 952, 957 (9th Cir. 2012), cert. denied, 133 S.Ct. 845 (2013).

<sup>13</sup> Brief for Appellee at 8-9, *Trinidad y Garcia v. Thomas*, 683 F.3d 952 (9th Cir. 2012) (No. 09-56999).

<sup>14</sup> U.S. Opposition to Motion to Stay, Declaration of Clifton M. Johnson at 3, *Trinidad y Garcia v. Benov*, No. 08-cv-07719, 2009 WL4250694 (C.D. Cal. Nov. 17, 2009).

<sup>15</sup> Conclusions and Recommendations of the Committee Against Torture, United States of America, U.N. Doc. CAT/C/USA/CO/2 ¶ 21 (Jul. 25, 2006). See also Promises to Keep: Diplomatic Assurances Against Torture in US Terrorism Transfers, Columbia Law School Human Rights Institute (December 2010).

<sup>16</sup> Fourth Periodic Report of the United States of America to the United Nations Committee on Human Rights Concerning the International Covenant on Civil and Political Rights ¶ 559. Incorporated by reference in 2013 Periodic Report of the United States of America to the United Nations Committee Against Torture ¶ 68.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

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# CRIMINAL INVESTIGATION AND PROSECUTION OF POST-9/11 TORTURE PROGRAM

## Shielding of Senior Officials from Liability for Crimes of Torture

The U.S. Government's criminal program of torture was authorized at the highest levels, and instead of prosecuting senior civilian and military officials responsible for the torture program, the U.S. Government has actively shielded them and has gone to great lengths to block other efforts to secure accountability.

### Suggested Recommendations:

The U.S. Government should promptly and impartially prosecute senior military and civilian officials responsible for authorizing, acquiescing, or consenting in any way to acts of torture committed by their subordinates. These would include, but not be limited to, former President George W. Bush, former Office of Legal Counsel (OLC) at the Department of Justice lawyer John Yoo, and former Central Intelligence Agency (CIA) contractor Dr. James Mitchell.

### Basis of the Recommendations:

Beginning in 2002, civilian and military officials at the highest level created, designed, authorized, and implemented a sophisticated, international criminal program of torture.<sup>20</sup> President Obama has conceded that the United States tortured people as part of its so-called "War on Terror,"<sup>21</sup> yet the current administration continues to shield senior officials from liability for these crimes, which include near-drowning ("waterboarding"), sleep deprivation for days, and forced nudity.<sup>22</sup> They have caused many people intense suffering, including severe mental harm<sup>23</sup> and, in some cases, death.<sup>24</sup>

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<sup>20</sup> The report includes details with respect to the involvement of, among others, then President George W. Bush, then Vice President Dick Cheney, then Director of the Central Intelligence Agency (CIA) George Tenet, then National Security Advisor Condoleezza Rice, then Defense Secretary Donald Rumsfeld, then Secretary of State Colin Powell, and then Attorney General John Ashcroft. *See* Advocates for U.S. Torture Prosecutions: *Shadow Report to the United Nations Committee Against Torture on the Review of the Periodic Report of the United States of America*, p. 3-4.

<sup>21</sup> *See* Press Conference by the President, The White House (Aug. 1, 2014), available at <http://www.whitehouse.gov/the-press-office/2014/08/01/press-conference-president> ("With respect to the larger point of the RDI report itself, even before I came into office I was very clear that in the immediate aftermath of 9/11 we did some things that were wrong. We did a whole lot of things that were right, but we tortured some folks.") [*hereinafter* Press Conference by the President (Aug. 1, 2014)].

<sup>22</sup> *See* U.S. Department of Justice, *Memorandum for John R. Rizzo, Senior Deputy General Counsel, Central Intelligence Agency Re: Standards of Conduct for Interrogation Under 18 U.S.C. §§ 2340-2340A*, 9-15 (May 10, 2005), available at [http://media.luxmedia.com/aclu/olc\\_05102005\\_bradbury46pg.pdf](http://media.luxmedia.com/aclu/olc_05102005_bradbury46pg.pdf) [*hereinafter* Bradbury Memorandum].

<sup>23</sup> *See, e.g.*, PHYSICIANS FOR HUMAN RIGHTS, BROKEN LAWS, BROKEN LIVES: MEDICAL EVIDENCE OF TORTURE BY U.S. PERSONNEL AND ITS IMPACT 91-93 (2008) available at [https://s3.amazonaws.com/PHR\\_Reports/BrokenLaws\\_14.pdf](https://s3.amazonaws.com/PHR_Reports/BrokenLaws_14.pdf) (discussing the "presence of ongoing psychiatric disorders that can reasonably be attributed to [detainees'] experiences while in detention at U.S. facilities"); James Ball, Guantánamo Bay files: Grim Toll on Mental Health of Prisoners, THE GUARDIAN (Apr. 14, 2011), available at <http://www.theguardian.com/world/2011/apr/25/Guantánamo-files-mental-health-suicides>; Tom Ramstack, Guantánamo Judge Rules 9/11 Suspect Should be Tried with Others, REUTERS (Aug. 13, 2014), available at <http://www.reuters.com/article/2014/08/13/us-usa-Guantánamo-idU.S.KBN0GD22J20140813> ("A military judge ruled on Wednesday that one of the men accused of plotting the Sept. 11, 2001, attacks on the United States must at least temporarily rejoin the other four defendants in a single trial despite concerns about his mental health.").

<sup>24</sup> *See, e.g.*, United States Army Criminal Investigations Command, *Army Criminal Investigators Outline 27 Confirmed or Suspected Detainee Homicides for Operation Iraqi Freedom, Enduring Freedom* (Mar. 25, 2005), available at <http://www.cid.army.mil/Documents/OIF-OEF%20Homicides.pdf>; Human Rights Watch, *Afghanistan: Killing and Torture by U.S. Predate Abu Ghraib* (May 21, 2005), available at <http://www.hrw.org/news/2005/05/20/afghanistan-killing-and-torture-us-predate-abu-ghraib> ("Human Rights Watch said that at least six



Instead of prosecuting senior civilian and military officials responsible for the torture program, the United States has actively shielded them, violating the principle of non-derogability.<sup>25</sup> Courts-martial and administrative proceedings for acts of torture have been almost exclusively limited to lower-level private contractors or soldiers.<sup>26</sup> Further, the U.S. Government has blocked or failed to cooperate with pertinent criminal proceedings in foreign courts.<sup>27</sup> The Bush and Obama administrations and the United States Congress have repeatedly blocked attempts at redress in civil courts by torture survivors and the relatives of torture victims.<sup>28</sup> Additionally, the Bush and Obama administrations have also shielded torture psychologists from professional liability.<sup>29</sup>

## CAT Articles Implicated: 12, 13

### Correlation to U.S. Government Report:

In responding to the Committee's Question 23(a) regarding the obligation to investigate acts of torture (Article 12), the Government Report failed to address the Committee's specific request for information related to investigations and prosecutions of "senior military and civilian officials." In responding to questions around prosecutions at senior levels, the Government Report did not respond to the Committee's reference to senior officials, instead pointing to 100 lower-level service members that have been court martialed for mistreatment of detainees.<sup>30</sup>

The Government Report offered little of substance in response to the Committee's question about the mandate given by outgoing Attorney General Holder to prosecutor John Durham for the "preliminary review" into whether laws were violated by the CIA. The Government Report said only that the prosecutor was tasked with examining "whether federal laws were violated in connection

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detainees in U.S. custody in Afghanistan have been killed since 2002, including one man held by the CIA. ...[N]o U.S. personnel have been charged with homicide in any of these deaths, although U.S. Department of Defense documents show that five of the six deaths were clear homicides."); Tim Golden, *The Bagram File: Afghan Prison Abuse*, THE NEW YORK TIMES (May 20, 2005), available at [http://www.nytimes.com/packages/html/international/20050520\\_ABU.S.E\\_FEATURE/index.html](http://www.nytimes.com/packages/html/international/20050520_ABU.S.E_FEATURE/index.html) ("The story of two Afghans' brutal death at the Bagram U.S. military base comes from a nearly 2,000-page Army criminal investigation file, a copy of which was obtained by the New York Times.").

<sup>25</sup> See COMMITTEE AGAINST TORTURE, GENERAL COMMENT NO. 2: IMPLEMENTATION OF ARTICLE 2 BY STATES PARTIES, CAT/C/GC/2, January 24, 2008 at ¶5 ("The Committee considers that amnesties or other impediments which preclude or indicate unwillingness to provide prompt and fair prosecution and punishment of perpetrators of torture or ill-treatment violate the principle of non-derogability.") [*hereinafter* COMMITTEE AGAINST TORTURE, GENERAL COMMENT NO. 2].

<sup>26</sup> The highest-ranked officials who were sanctioned seem to have been a Brigadier General and a Lieutenant Colonel, both of whom received only administrative sanctions. See Advocates for U.S. Torture Prosecutions: *Shadow Report*, Appendix C, *Disposition of Detainee Abuse Allegations*, containing a list compiled by The Constitution Project, an independent Task Force convened by civil society, from press accounts of court martial proceedings and transcripts of those proceedings where available; Eric Schmitt, *Four Top Officers Cleared by Army in Prison Abuses*, THE NEW YORK TIMES (Apr. 23, 2005), available at [http://www.nytimes.com/2005/04/23/politics/23abuse.html?\\_r=0](http://www.nytimes.com/2005/04/23/politics/23abuse.html?_r=0) ("Brig. Gen. Janis Karpinski, an Army Reserve officer who commanded the military police unit at the Abu Ghraib prison, was relieved of her command and given a written reprimand. She has repeatedly said she was made the scapegoat for the failures of superiors.").

<sup>27</sup> See, e.g., CENTER FOR CONSTITUTIONAL RIGHTS, UNIVERSAL JURISDICTION: ACCOUNTABILITY FOR U.S. TORTURE, available at <http://www.ccrjustice.org/case-against-rumsfeld> ("In January 2012, the former investigating magistrate, Sophie Clement, issued a formal request, or 'letter rogatory', to the United States. According to news reports, the French investigative judge requested access to the detention camp at Guantánamo Bay, to relevant documents as well as to all persons who had contact with the three victims during their detention there. The United States still has not replied.").

<sup>28</sup> See, e.g., *Ali v. Rumsfeld*, 649 F.3d 762, 774 (D.C. Cir. 2011) (arguing successfully that detainees did not enjoy the right to freedom from torture under the U.S. Constitution, and that government employees had acted within the scope of their employment and were thus entitled to immunity); *Padilla v. Yoo*, 678 F.3d 748, 750 (9th Cir. 2012) (arguing successfully that Justice Department lawyer John Yoo was entitled to immunity because at the time of José Padilla's detention and interrogation, it was not clearly established under the law that the treatment to which he was subjected amounted to torture); *Arar v. Ashcroft*, 585 F.3d 559, 574 (2d Cir. 2009) (successfully arguing that Maher Arar could not sue government officials for his rendition to Syria, where he was allegedly tortured, because it would "affect diplomacy, foreign policy, and the security of the nation."). See Advocates for U.S. Torture Prosecutions: *Shadow Report*, Appendix D for additional examples.

<sup>29</sup> See COLUMBIA UNIVERSITY INSTITUTE ON MEDICINE AS A PROFESSION & THE OPEN SOCIETY FOUNDATION, ETHICS ABANDONED: MEDICAL PROFESSIONALISM AND DETAINEE ABUSE IN THE WAR ON TERROR 58 (2013), available at <http://www.imapny.org/wp-content/themes/imapny/File%20Library/Documents/IMAP-EthicsTextFinal2.pdf>

<sup>30</sup> See *Periodic Report to the Committee against Torture* at ¶129.

with interrogation of specific detainees at overseas locations.”<sup>31</sup> However, previous Government statements suggest a far more limited mandate. Holder announced that the Justice Department “would not prosecute anyone who acted in good faith and within the scope of the legal guidance” given by Justice Department lawyers.<sup>32</sup> The prosecutor ultimately restricted his investigation to the deaths of two men in CIA custody and, by all appearances, was not empowered to consider the criminal liability of senior-level officials. In 2012, Holder formally declined prosecutions, citing insufficient evidence,<sup>33</sup> despite a lengthy paper trail including admissions in published memoirs that the use of torture was authorized at the highest levels.<sup>34</sup>

The Government Report lists several statutes as establishing criminal sanctions for torture, none of which the U.S. Government has actually used to prosecute senior-level officials for the torture of detainees in U.S. custody abroad. Despite the Government Report’s assurance that it can prosecute U.S. military and civilian personnel who commit or attempt to commit torture abroad under the U.S. Extraterritorial Torture Statute (18 U.S.C. 2340A),<sup>35</sup> the Department of Justice has not brought a single prosecution for the torture of detainees in U.S. custody under that statute.<sup>36</sup>

The Government Report omits reference to the War Crimes Act (18 U.S.C. 2441) in its list of laws that provide jurisdiction to prosecute for the torture and ill-treatment of detainees. This omission is the latest in a series of steps to water down the obligation to prosecute war crimes.<sup>37</sup> Despite these attempts to provide immunity, the War Crimes Act remains a possible avenue for prosecution.<sup>38</sup>

Finally, the Government Report’s representation of the availability of civil remedies for torture committed abroad is incomplete and disingenuous, considering the extent to which the U.S. Government invokes jurisdictional and immunity doctrines to shield government officials from civil liability for torture.<sup>39</sup> As a result, victims and survivors of torture have been unable to obtain full redress, compensation, and rehabilitation.

### **Report Informing this Section:**

Advocates for U.S. Torture Prosecutions (Dr. Trudy Bond, Prof. Benjamin Davis, Dr. Curtis F. J. Doebbler, and The International Human Rights Clinic at Harvard Law School): *Shadow Report to the United Nations Committee Against Torture on the Review of the Periodic Report of the United States of America*

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<sup>31</sup> *Id.* at ¶135.

<sup>32</sup> U.S. Department of Justice, *Statement of Attorney General Eric Holder on Closure of Investigation into the Interrogation of Certain Detainees* (Aug. 30, 2012), available at <http://www.justice.gov/opa/pr/statement-attorney-general-eric-holder-closure-investigation-interrogation-certain-detainees>.

<sup>33</sup> *Id.* (“Based on the fully developed factual record concerning the two deaths, the Department has declined prosecution because the admissible evidence would not be sufficient to obtain and sustain a conviction beyond a reasonable doubt.”).

<sup>34</sup> See, e.g., George W. Bush, *Hard Decisions* 168-181 (2010) (“Had I not authorized waterboarding on senior al Qaeda leaders, I would have had to accept a greater risk that the country would be attacked.”); John Rizzo, *Company Man* 181-191 (2014) (“Above all, I wanted a written OLC memo in order to give the Agency—for lack of a better term—legal cover.”).

<sup>35</sup> See *Periodic Report to the Committee against Torture* ¶127. See also U.S. DEPARTMENT OF STATE, *COMMON CORE DOCUMENT OF THE UNITED STATES OF AMERICA* §158 (2011), available at <http://www.state.gov/j/drl/rls/179780.htm>.

<sup>36</sup> The Department of Justice has prosecuted only a single person for perpetrating torture under the extraterritorial torture statute: Roy M. Belfast, son of Charles Taylor, the former president of Liberia. See *United States v. Belfast*, 611 F.3d 783 (11th Cir. 2010).

<sup>37</sup> Enacted in 1996, the War Crimes Act allowed for the prosecution of war crimes—which it defined as any violation of the Geneva Conventions—when either the victim or the perpetrator was a U.S. national or a member of the U.S. armed services. War Crimes Act, 18 U.S.C. 2441 (1996). The Military Commissions Act narrowed the scope of the War Crimes Act in order to exclude all conduct save a set of domestically-defined “grave breaches”: torture; cruel or inhuman treatment; performing biological experiments; murder, mutilation, or maiming; intentionally causing serious bodily injury; rape; sexual assault or abuse; and hostage-taking. MCA § 6(b). Further, the MCA sought to immunize military and intelligence personnel from criminal prosecution for acts of torture or cruel or inhuman treatment committed as part of certain “authorized interrogations” committed between September 11, 2001, and the enactment of the Detainee Treatment Act in 2005. MCA § 8.

<sup>38</sup> See WORLD ORG. FOR HUMAN RIGHTS USA & AMERICAN UNIVERSITY, WASH. COLLEGE OF LAW INT’L HUMAN RIGHTS CLINIC, *INDEFENSIBLE: A REFERENCE FOR PROSECUTING TORTURE AND OTHER FELONIES COMMITTED BY U.S. OFFICIALS FOLLOWING SEPTEMBER 11TH* 115-117 (2012), available at [http://www.wcl.american.edu/clinical/documents/Indefensible\\_A\\_Reference\\_for\\_Prosecuting\\_Torture.pdf](http://www.wcl.american.edu/clinical/documents/Indefensible_A_Reference_for_Prosecuting_Torture.pdf).

<sup>39</sup> See Advocates for U.S. Torture Prosecutions: *Shadow Report*, Appendix D.

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# INVESTIGATIONS AND PROSECUTION RELATING TO THE ALLEGATIONS OF TORTURE IN THE CHICAGO POLICE DEPARTMENT

Despite the systematic torture of African American men and women by former police commander Jon Burge and the detectives under his command, most of the officers involved have not been prosecuted and few of the survivors have been able to obtain compensation.

## **Suggested Recommendations:**

1. The U.S. Government should seek support for the passage of the City Council Ordinance entitled Reparations for the Chicago Police Torture Survivors. This Ordinance, which is pending in Chicago's City Council, would seek to provide adequate redress to the torture survivors and their family members as provided for by General Comment 3.
2. The U.S. Government 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 their crimes related to the cover up of these violations and bring perpetrators to justice. The State party should also provide the Committee with information on the ongoing investigations and prosecutions relating to such cases.
3. The U.S. Government should pass the Law Enforcement Torture Prevention Act (LETPA). Moreover, the crime of torture, like the crime of murder, should be free of any statute of limitations due to the grave nature of the offense and the importance of deterring others from committing these crimes and human rights violations.
4. The U.S. Government should 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 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."<sup>40</sup>
5. The U.S. Government should promptly and effectively investigate the continuous violation of the Convention Against Torture as it relates to torture victim Keith Walker and other individuals who remain behind bars on the basis of their tortured or physically coerced confessions.
6. The U.S. Government should impose, at the federal level, a moratorium on the torture of inmates in its prison system resulting solitary confinement.

## **Basis of the Recommendations:**

Former Police Commander Jon Burge, and the detectives under his command, systematically tortured at least 110 African American men and women from 1972 to 1991 at Area 2 and 3 Police Headquarters in Chicago.<sup>41</sup> Many of the victims of this torture conspiracy continue to languish

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<sup>40</sup> 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," General Assembly, Sixtieth session, Agenda item 71(a), 21 March 2006, Resolution adopted by the General Assembly on 16 December 2005.

<sup>41</sup> CHICAGO JUSTICE MEMORIALS, <http://chicagotorture.org/history/> (last visited May 1, 2012).

behind bars based on confessions beaten and tortured out of them.<sup>42</sup> One such example is that of Keith Walker who was 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.

Despite mountains of evidence and ample admissions made by the City of Chicago that this pattern and practice of torture was committed by CPD detectives, no one from the CPD, including Burge, was ever criminally charged for the nineteen years of systematic torture.<sup>43</sup> It was only after the Committee called on the U.S. Government to bring the perpetrators to justice in 2006,<sup>44</sup> that Burge was indicted for one count of perjury and two counts of obstruction of justice for the lies he told under oath that neither he or other detectives engaged in acts of torture.<sup>45</sup> To date, he has been the only person incarcerated for his role in the systematic torture, and no other perpetrator has ever been charged with any crime. Furthermore, Burge was released from prison to a half-way house on October 2. While the U.S. Government has claimed that they are investigating others, there have been no additional indictments despite having made this assertion for years.<sup>46</sup>

The City of Chicago and the U.S. Government have persistently failed to take necessary and effective measures to ensure that the torture survivors and family members have access to medical care and rehabilitation, restitution, commemoration and tributes, and other necessary steps to restore their dignity and reputation.<sup>47</sup>

Included in “Mothers of Chicago Police Torture Victims Speak” is a series of handwritten letters and family photographs submitted by mothers of boys and young men who were arrested, tortured, threatened, and in some cases killed by members of the Chicago Police Department. The letters document, in meticulous detail, the circumstances of the arrests and the multiple obstacles and injustices faced as their cases moved through the judicial system.

The personal experiences of the mothers speak to the utter devastation, despair and horror that entire families have suffered not only as a result of the torture that their sons have endured but also as a result of the continued impunity enjoyed by the CPD. In many cases, these mothers have lived with this pain for decades. The mothers talk about their extreme pain and heartache, the fact that they are depressed and hopeless to the point of seeking assistance from psychologists, the sacrifices their families have made, the tremendous pain resulting from their loved ones not being able to leave prison, even to attend the funerals of immediately family members, and children having to grow up without their parents. As one mother, Jeanette Plummer, says, “The police motto is to protect and to serve. Who are they protecting and serving when they are beating and framing innocent young black teenage kids?” Another mother, Anabel Perez, says: “It's not one life taken to prison or killed, it's the whole family that is impacted,” and goes on to say, “my son was tortured wrongfully convicted and so was I and his daughter, the rest of my family.” Also included in the submission are affidavits of some of the individuals who are imprisoned, including their experiences of being physically and psychologically tortured, as well as newspaper articles documenting the practices of the CPD.

### **CAT Articles Implicated: 1, 12, 13, 14, 16**

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<sup>42</sup> Salim Muwakkil, “Torture in the Homeland”, In These Times, December 10, 2005. [www.InTheseTimes.com](http://www.InTheseTimes.com)

<sup>43</sup> Joey Mogul, *The Chicago Police Torture Cases: 1972 to 2011*, THE PEOPLE'S LAW OFFICE 3.

<sup>44</sup> COMMITTEE AGAINST TORTURE, REPORT OF THE COMMITTEE AGAINST TORTURE § 25, p. 71-72 (2006), A/61/44.

<sup>45</sup> U.S. *Indicts Former Chicago Police Cmdr. On Perjury, Obstruction of Justice Charges Related to Alleged Torture and Physical Abuse*, DEPARTMENT OF JUSTICE, (Oct. 28, 2008), <http://www.justice.gov/opa/pr/2008/October/08-crt-938.html>.

<sup>46</sup> *Feds Investigate Jon Burge's detectives, Ex-Cook County Prosecutors, sources say: Former Police Commander is Imprisoned for Lying About Torture*, Chicago Tribune, Steve Mills and Todd Lightly, July 14, 2001, [http://articles.chicagotribune.com/2011-07-14/news/ct-met-confession-investigation-20110714\\_1\\_jon-burge-chicago-police-cmdr-torture-allegations](http://articles.chicagotribune.com/2011-07-14/news/ct-met-confession-investigation-20110714_1_jon-burge-chicago-police-cmdr-torture-allegations) (last visited September 5, 2014).

<sup>47</sup> See United Nations Committee Against Torture, General Comment, No. 3, CAT/C/CG/3 (13 Dec. 2012) (“General Comment 3”), ¶¶ 3, 16. The Committee's jurisprudence clearly notes that victims includes the “immediate family or dependents” of those tortured.

## **Correlation to U.S. Government Report:**

Despite the Committee's Concluding Observations in 2006 to "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,"<sup>48</sup> specifically with respect to the Chicago Police Department, the U.S. Government has failed to do so. This failure to investigate and prosecute has allowed the Statute of Limitations to expire on additional serious crimes, such as assault, battery, attempted murder, and conspiracy to commit the above crimes.

In addition, despite the U.S. Government's claim, in its own Report, that "Investigations into allegations of abuse by other CPD officers, and related false statements by those officers, are ongoing,"<sup>49</sup> because of the Statute of Limitations, prosecutions of other serious offenses related to the police torture of civilians has been barred, with the only remaining option being obstruction of justice or perjury, and even these charges were not and have not been brought.

## **Report Informing this Section:**

Bertha Escamilla, Jeanette Plummer, Armanda Shackelford, Shirley Burgess, Anabel Perez Special letter - Joyce Evison Brown – son killed by Harvey police, Mothers Against Torture: *Mothers of Chicago Police Torture Victims Speak, Secondary Victims*

Midwest Coalition for Human Rights and the Legal Clinic of the University of Iowa College of Law: *Midwest Regional Report on Torture and Cruel, Inhuman and Degrading Treatment*

National Conference of Black Lawyers (NCBL) and Black People Against Police Torture (BPAPT): *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*

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# **THE RIGHT TO REHABILITATION**

## **Unmet Need for Rehabilitative Services for Torture Survivors**

The U.S. Government is not ensuring that survivors of torture have access to rehabilitative services, partly as a result of insufficient funding contributions to these services.

### **Suggested Recommendations:**

1. The U.S. Government should substantially increase funding for rehabilitative services in an effort to reach as many survivors as possible and to meet the needs of the growing numbers of torture survivors arriving in the United States annually as refugees or asylum seekers.<sup>50</sup>
2. The U.S. Government should increase its own contribution to \$8 million annually to the United Nations Voluntary Fund for Victims of Torture (UNVFVT) and use its leverage as a global

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<sup>48</sup> Committee Against Torture, Consideration of Reports Submitted by States Parties Under Article 19 of the Convention, Conclusions and Recommendations of the Committee against Torture: United States of America, CAT/C/USA/CO/2 (July 25 2006), at para. 25 [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fUSA%2fCO%2f2&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fUSA%2fCO%2f2&Lang=en) (hereinafter "2006 CAT Committee Recommendations").

<sup>49</sup> *Periodic Report to the Committee against Torture* at ¶ 142.

<sup>50</sup> U.S. Department of Homeland Security, Refugees and Asylees: 2013, available at [http://www.dhs.gov/sites/default/files/publications/ois\\_rfa\\_fr\\_2013.pdf](http://www.dhs.gov/sites/default/files/publications/ois_rfa_fr_2013.pdf).

leader to encourage peer countries to increase their contributions to the fund to maximize its reach and impact throughout the world.

3. The U.S. Government should take steps to ensure that all survivors of torture perpetrated by the United States have access to rehabilitative services.
4. The U.S. Government should include specific information on the amount of funding allocated to torture rehabilitation programming, as well as examples of how these services have benefitted survivors in their reports to United Nations treaty monitoring bodies.
5. The U.S. Government should endeavor to produce an accurate estimate of the number of survivors that are currently living in the United States, with breakdowns by state. At a minimum, the U.S. Government should put in place systems for tracking the number of new survivors of torture being admitted to the United States annually through the refugee resettlement program and granted asylum status by either the immigration courts or the U.S. Citizenship and Immigration Services.
6. The U.S. Government should ensure that identified survivors of torture who enter the United States as refugees are resettled in cities where there are torture treatment centers.

### **Basis of the Recommendations:**

In recent years, the funding provided to United States torture treatment centers has been stagnant and has not been sufficient to meet the demand for rehabilitative services needed to treat survivors of torture. With a conservative estimate of 350,000 to 1,050,000 survivors of torture living in the United States<sup>51</sup> and additional refugees and asylum seekers continuing to arrive from at least 125 countries,<sup>52</sup> including countries in which the practice of torture is pervasive, the need for rehabilitative services is greater than ever. Despite the staggering unmet need for rehabilitation services, the U.S. Government contribution levels through the Department of Health and Human Services' Office of Refugee Resettlement (ORR) have remained flat, at approximately \$11 million since 2010. Regrettably, this stagnation in funding has forced a number of torture treatment centers to cease operations.

### **CAT Articles Implicated: 14**

### **Correlation to U.S. Government Report:**

Although the response from the United States on item 27(a) of the Committee against Torture's List of Issues outlines the legal mechanisms for redress and compensation, it does not comment on the mechanisms for rehabilitation.<sup>53</sup> There are no details on psychological treatment and other rehabilitation programs or the allocation of sufficient resources to support such programs. The omission of this information is a step backward from the content that was provided in previous reports by the United States, including its 2005 CAT Report which detailed the financial contributions for domestic and international assistance programs, and also described how this funding supported survivors of torture. It was notable that the 2005 CAT Report called on States "to make available other forms of remedial benefits to victims of torture, including medical and psychiatric treatment as well as social and legal services."<sup>54</sup> This draws attention to the importance of rehabilitative programming, and should be included in future reports.

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<sup>51</sup> Modvig J, Jaranson J. A global perspective of torture, political violence, and health. In: Wilson JP, Drozdek B, eds. *Broken Spirits: The Treatment of Traumatized Asylum Seekers, Refugees, War and Torture Victims*. New York, NY: Brunner-Routledge Press; 33-52, 2004.

<sup>52</sup> National Consortium of Torture Treatment Programs, Data Project, <http://ncttp.org/research.html>.

<sup>53</sup> *Periodic Report to the Committee against Torture* at ¶ 147.

<sup>54</sup> United States 2005 CAT Report. Section 83.

**Report Informing this Section:**

The National Consortium of Torture Treatment Programs: *Shadow Report Article 14: The Right to Rehabilitation*

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## **PREVENTION OF OTHER ACTS OF CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT**

### **Prolonged Death Row Detention Constitutes Torture**

Lengthy and undue delays for hundreds of individuals incarcerated under a death sentence result in conditions of torture.

**Suggested Recommendations:**

The U.S. Government should improve prison conditions for death row inmates so that they comply with the Standard Minimum Rules for the Treatment of Prisoners.

**Basis of the Recommendations:**

A prolonged death row sentence adds mental anguish and physical hardships beyond the sentence of death and amounts to cruel and unusual punishment. California's death penalty system is grossly dysfunctional, plagued with excessive delay in the appointments of counsel for direct appeals and habeas corpus petitions, and a severe backlog in the review of appeals and habeas petitions before the California Supreme Court. Accordingly, the vast majority of those sentenced to death in California will not actually be executed by the State. The most common way out of California's Death Row is not death by State execution, but death by other means. California is not unique in its lengthy delays regarding death row inmates; lengthy and undue delays resulting in conditions of torture for hundreds of individuals who have been sentenced to death are common.

**CAT Articles Implicated:** 16

**Correlation to U.S. Government Report:**

The U.S. Government does not address the issue of prolonged death row detention.

**Report Informing this Section:**

Professor Speedy Rice on behalf of Death Penalty Focus: *Undue Delay as Torture in Death Penalty Cases*

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## **The Shackling of Incarcerated Pregnant Women**

Many incarcerated women are shackled or otherwise restrained throughout pregnancy, including

during labor, delivery, and post-partum recovery. Shackling is harmful to women's health and may result in permanent injury to the baby.

### **Suggested Recommendations:**

1. The U.S. Government should enact federal legislation to prohibit the practice of shackling incarcerated women during the second and third trimesters of pregnancy, during labor and delivery, and for six weeks postpartum, including any time in transport to medical facilities or court.
2. The U.S. Government should conduct a federal investigation into the practice of shackling incarcerated pregnant women at the federal, state, and local levels.
3. The U.S. Government should create a federal oversight body to receive reports on and to investigate incidents of shackling pregnant women.

### **Basis of the Recommendations:**

Roughly 1.3 million women are under the authority of the United States' criminal justice systems, and approximately 5 percent of women are pregnant when they enter prison or jail.<sup>55</sup> Many incarcerated women are shackled or otherwise restrained throughout pregnancy, including during labor, delivery, and post-partum recovery.<sup>56</sup> Shackling involves restricting a women's movement by securing shackles or handcuffs around her ankles or wrists—and sometimes heavy chains around her stomach. In some cases, shackling occurs despite the existence of policies or laws that prohibit the practice.

In 2013, the Federal Court of Appeals for the Sixth Circuit in the United States held that the shackling of pregnant detainees while in labor violates the Eighth Amendment to the U.S. Constitution.<sup>57</sup> However, many states do not require training to inform correctional officers that shackling pregnant women violates the prohibition against cruel, inhuman, and degrading treatment or punishment. In addition, although a number of states have laws or policies that prohibit the shackling of pregnant women during various stages of pregnancy, these laws and policies are often not adhered to because of a lack of awareness or a misunderstanding of their content.<sup>58</sup>

**CAT Articles Implicated:** 10, 11, 16

### **Correlation to U.S. Government Report:**

The Committee against Torture has noted with disapproval the shackling of incarcerated pregnant women in the United States. In its 2006 Concluding Observations, the Committee expressed concern over “the treatment of detained women,” including “incidents of shackling of women detainees during childbirth.”<sup>59</sup> In its response, the U.S. Government “provided the Committee with

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<sup>55</sup> U.S. DEPT. OF JUSTICE (DOJ), BEST PRACTICES IN THE USE OF RESTRAINTS WITH PREGNANT WOMEN AND GIRLS UNDER CORRECTIONAL CUSTODY 3 (2014), available at <http://www.asca.net/system/assets/attachments/6989/Best%20Practices%20Use%20of%20Restraints%20Pregnant%5B2%5D.pdf?1398115554>; Ginette Gosselin Ferszt, *Giving Birth in Shackles: It's Time to Stop Restraining Pregnant Inmates during Childbirth*, 110 AMERICAN J. NURSING 11 (2010). See also AMERICAN COLLEGE OF NURSE-MIDWIVES, POSITION STATEMENT: SHACKLING/RESTRAINT OF PREGNANT WOMEN WHO ARE INCARCERATED 1 (2012), available at <http://www.midwife.org/ACNM/files/ACNMLibraryData/UPLOADFILENAME/000000000276/Anti-Shackling%20Position%20Statement%20June%202012.pdf>.

<sup>56</sup> See *Branley v. State of Washington*, 712 F. Supp. 2d 1208 (W.D. Wash. 2010); *Zaborowski v. Dart*, 2011 WL 6660999 (N.D. Ill. 2011).

<sup>57</sup> *Villegas v. Metro Gov't of Nashville*, 709 F.3d 563 (6th Cir. 2013).

<sup>58</sup> See Audrey Quinn, *In Labor, in Chains: The Outrageous Shackling of Pregnant Inmates*, N.Y. TIMES, July 26, 2014, available at [http://www.nytimes.com/2014/07/27/opinion/sunday/the-outrageous-shackling-of-pregnant-inmates.html?\\_r=1](http://www.nytimes.com/2014/07/27/opinion/sunday/the-outrageous-shackling-of-pregnant-inmates.html?_r=1); Amy Fettig, *\$4.1 Million Settlement Puts Jails on Notice: Shackling Pregnant Women Is Unlawful*, ACLU (MAY 24, 2012), <https://www.aclu.org/blog/content/41-million-settlement-puts-jails-notice-shackling-pregnant-women-unlawful>; ACLU, IMPLEMENTATION OF THE HEALTHY BIRTH FOR INCARCERATED WOMEN ACT: DETAILS OF DUVALL PROJECT'S DATA COLLECTION PROCESS (2013), [http://www.aclupa.org/files/1314/0016/3605/2\\_-\\_Memo\\_with\\_Data\\_Collection\\_Details\\_-\\_with\\_logo.pdf](http://www.aclupa.org/files/1314/0016/3605/2_-_Memo_with_Data_Collection_Details_-_with_logo.pdf).

<sup>59</sup> U.N. Comm. against Torture, *Conclusions and Recommendations, United States of America*, ¶ 33, U.N. Doc. CAT/C/USA/CO/2 (July 2006).



information about its efforts to ensure appropriate treatment of women in detention facilities, including action taken against gender-based violence and sexual abuse.”<sup>60</sup> However, no specific information regarding its efforts to prevent shackling was included. Instead, the U.S. Government stated that “incidents of shackling of female detainees during childbirth are extremely rare and are not a standard procedure.”<sup>61</sup>

The U.S. Government further emphasized the role of policies, as opposed to explicit legislation, that regulate the shackling of pregnant women, noting that “both the federal and some state governments have announced policy changes that improve the standards for treatment of women during labor and delivery.”<sup>62</sup> It further stated the American Correctional Association’s policy regarding restraints on pregnant women.<sup>63</sup> However, this policy is nonbinding and does not prohibit shackling; it merely lists factors for limiting its use.<sup>64</sup> The U.S. Government also named several federal agencies that have adopted policies prohibiting the use of restraints on pregnant women and women in postpartum recovery, including the Federal Bureau of Prisons, the Department of Homeland Security, the Department of Justice, and Immigration and Customs Enforcement.<sup>65</sup> With respect to state governments, the U.S. Government simply declared that “[s]ome states are also adopting similar rules.”<sup>66</sup> The Government Report does not mention any attempt to pass federal legislation.

### Report Informing this Section:

International Human Rights Clinic at the University of Chicago Law School, The National Prison Project of the ACLU Foundation (NPP), Chicago Legal Advocacy for Incarcerated Mothers–Cabrini Green Legal Aid, and Rachel Roth, PhD, Independent Scholar and Consultant: *The Shackling of Incarcerated Pregnant Women*

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## Children in Adult Jails and Prisons

Subjecting children to adult criminal punishments gives rise to serious violations because children in adult prisons and jails around the country face higher rates of physical<sup>67</sup> and sexual assault,<sup>68</sup> placement in solitary confinement,<sup>69</sup> and suicides<sup>70</sup> than children in youth facilities.

### Suggested Recommendations:

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<sup>60</sup> U.S. DEPT. OF STATE, UNITED STATES RESPONSE TO SPECIFIC RECOMMENDATIONS IDENTIFIED BY THE COMMITTEE AGAINST TORTURE 8–9 (2006).

<sup>61</sup> *Id.*

<sup>62</sup> *Periodic Report to the Committee against Torture* ¶ 190.

<sup>63</sup> *Id.* at ¶ 191.

<sup>64</sup> See American Correctional Association, Public Correctional Policy on Use of Restraints with Pregnant Offenders (Jan. 4, 2012).

<sup>65</sup> *Periodic Report to the Committee against Torture* ¶ 190–192 (2013).

<sup>66</sup> *Id.* at ¶ 191. The Committee has repeatedly recommended that the United States withdraw its reservations to CAT. In 2000, the Committee expressed concern that the United States’ reservation to article 16 was “in violation of the Convention, the effect of which is to limit the application of the Convention.” U.N. Comm. against Torture, *Conclusions and Recommendations of the Committee against Torture*, ¶ 179(b), U.N. Doc. A/55/44 (May 2000).

<sup>67</sup> Martin Forst, Jeffrey Fagan and T. Scott Vivona, Youth in Prisons and Training Schools: Perceptions and Consequences of the Treatment-Custody Dichotomy, *Juvenile and Family Court Journal*, 40 (1) (1989).

<sup>68</sup> See, e.g., U.S. Department of Justice, Bureau of Justice Statistics, Sexual Victimization in Prisons and Jails Reported by Inmates, Survey 2011–12 (May 2013) available at: <http://www.bjs.gov/content/pub/pdf/svpjri1112.pdf>.

<sup>69</sup> Human Rights Watch and American Civil Liberties Union, *Growing Up Locked Down: Youth in Solitary Confinement in Jails and Prisons Across the United States*, (October 2012) available at: <http://www.aclu.org/criminal-law-reform/growing-locked-down-youth-solitary-confinement-jails-and-prisons-across-united>; New York Civil Liberties Union, *Boxed In: The True Cost of Extreme Isolation in New York’s Prisons* (2012) available at: [http://www.nyclu.org/files/publications/nyclu\\_boxedin\\_FINAL.pdf](http://www.nyclu.org/files/publications/nyclu_boxedin_FINAL.pdf).

<sup>70</sup> See, e.g., Arya Neelum, *Jailing Juveniles: The Dangers of Incarcerating Youth in Adult Jails in America* (2007), Campaign for Youth Justice, available at: [http://www.campaignforyouthjustice.org/documents/CFYJNR\\_JailingJuveniles.pdf](http://www.campaignforyouthjustice.org/documents/CFYJNR_JailingJuveniles.pdf).

1. The U.S. Government should ensure that children under 18 are not criminally tried in adult courts and are separated from adults during pretrial detention and after sentencing and encourage states to consider raising the extended age of juvenile court jurisdiction to 24.
2. The U.S. Government should reauthorize and strengthen the federal Juvenile Justice Delinquency Prevention Act (JJDP) by extending the Jail Removal and Sight and Sound protections to all children under the age of 18 held pre-trial whether they are awaiting trial in juvenile or adult court and revise the definition of “adult inmate” to explicitly exclude children who were under 18 at the time of the offense charged if they have not yet reached the allowable age to be held in juvenile facilities under state law.
3. The U.S. Government should create meaningful incentives and penalties to ensure that there is full compliance with the Prison Rape Elimination Act (PREA) and issue guidance that removal of children under 18 from adult jails and prisons is the best practice for complying with the Youthful Offender standard.
4. The U.S. Government should prohibit the use of solitary confinement for children and other vulnerable populations and encourage states to adopt comprehensive reforms of their policies around solitary confinement like the Humane Alternatives to Long Term (HALT) Solitary Confinement Act, A. 8588A / S. 6466A that is currently proposed in New York.
5. The U.S. Government should implement training programs that teach law enforcement officers, particularly police, prison administration, and correction officers the unique needs of children in conflict with the law especially pertaining to identifying signs of torture and the use of force only in extreme situations.
6. The U.S. Government should require that states track the frequency and mechanisms by which children are tried in the adult criminal justice system and develop nationwide statistical data on children in the adult system that is disaggregated by race, ethnicity, disability, gender and sexual orientation. The U.S. Government should improve data collection and reports on incidents of violence against children in adult facilities. Such reports should pay particular attention to intersections of age, race, ethnicity, disability, gender, and sexual orientation and should address factors that may discourage or inhibit children from reporting violence.

### **Basis of the Recommendations:**

In the United States, there is no constitutional provision or national law prohibiting states from subjecting children under age 18 to the adult criminal justice system, imposing adult criminal sentences, or incarcerating children in adult prison facilities. As a result, on any given day, more than 6,000 children are detained in adult jails and prisons.<sup>71</sup> The majority of children tried in the adult criminal justice system are charged with low-level, non-violent offenses.<sup>72</sup> Additionally, all 50 states allow children to be transferred to adult courts in some manner.<sup>73</sup> These laws have resulted in

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<sup>71</sup> The combined single day count for youth in adult jails and prisons in 2012 was over 6,800. This figure combines counts of children in adult prisons on December 31, 2012 and children in adult jails on June 30, 2012. *See e.g.*, Todd D. Minton, U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, JAIL INMATES AT MIDYEAR 2012 – STATISTICAL TABLES, p. 5, tbl. 2 (2013) available at: <http://www.bjs.gov/content/pub/pdf/jim12st.pdf>; E. Ann Carson, U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, PRISONERS IN 2012: TRENDS IN ADMISSIONS AND RELEASES, 1991-2012, 26 (2013) available at: <http://www.bjs.gov/content/pub/pdf/p12tar9112.pdf>.

<sup>72</sup> National Juvenile Justice and Delinquency Prevention Coalition, Promoting Safe Communities: Recommendations for the Obama Administration, p. 15 (2013-2014).

<sup>73</sup> Patrick Griffin, Sean Addie, Benjamin Adams, and Kathy Firestone, *Trying Juveniles as Adults: An Analysis of State Transfer Laws and Reporting*, U.S. DEP'T OF JUSTICE, OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION NATIONAL REPORT SERIES, BULLETIN, p. 1 (Sept. 2011).

approximately 200,000 children being tried as adults each year.<sup>74</sup> The vast majority of the children who are criminalized and incarcerated in adult facilities are racial and ethnic minorities.<sup>75</sup>

### *Sexual Violence:*

The Department of Justice (DOJ) has recognized the increased risk of sexual violence faced by children in adult facilities,<sup>76</sup> and reports from the federal Bureau of Justice Statistics (BJS) confirm the increased risk.<sup>77</sup> Non-heterosexual individuals across all demographic groups reported much higher incidents of sexual victimization, placing gay, lesbian or bi-sexual children at a higher risk.<sup>78</sup>

While the federal Prison Rape Elimination Act (PREA) continues to allow children to be incarcerated in adult jails and prisons, it creates national standards requiring that individuals under 18 be separated from adult inmates in housing units. PREA is only legally binding on federal facilities and the only mechanism for state compliance is through a funding incentive; only two states have certified that they are in compliance with PREA.<sup>79</sup>

### *Staff Physical Abuse and Use of Electroshock Devices*

Children in adult facilities are twice as likely to be physically harmed by staff than their counterparts in juvenile facilities.<sup>80</sup> They are routinely beaten in the presence of other staff, including medical staff and teachers, who turn a blind eye to avoid reporting the violence for fear of reprisal.<sup>81</sup> Also troubling is the use of electro-shock devices, also known as Thomas A. Swift Electric Rifle [TASERS], used to control behavior where there is no immediate threat to safety.

### *Solitary Confinement*

Children in adult facilities are *more likely* to be placed in isolation than adults. Additionally, state data shows high rates of solitary confinement of children.<sup>82</sup> It is impossible to determine the exact number of juveniles subjected to solitary confinement because the states and the federal government do not publish data regarding the number of children held in solitary confinement.<sup>83</sup> Children of color are disproportionately subjected to solitary confinement.<sup>84</sup>

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<sup>74</sup> *Id.* at 20-1. This figure combines the estimated number of youth transferred from juvenile to adult criminal court and the estimated number of youth prosecuted as adults in states that exclude 16 and 17 year olds from juvenile court jurisdiction. The conservative estimate of youth who are tried as adults in states that try all 16 and 17 year olds as adults is 175,000. *Id.* at 21. There were 14,000 reported transfers of youth into the adult system in 2007, but most states do not track or report the data. *Id.* at 20.

<sup>75</sup> For instance, in the state of Michigan, persons of color made up 56% of the adult prison population and 76.5% of the youthful prison population MDOC data as of November 2013, analyzed by the ACLU Michigan/JLWOP Initiative.

<sup>76</sup> 42 U.S.C. § 15601(4).

<sup>77</sup> From 2009-2011 children under 18 were .4 % of substantiated incidents of inmate on inmate sexual victimization in prison and .112% of the population in 2011 (1790 of 1,598,780), making them more than three and half times as likely to be a victim of sexual abuse. Bureau of Justice Statistics, *Sexual Victimization Reported By Adult Correctional Authorities, 2009-11*, p. 8 (January 2014) Bureau of Justice Statistics, *Prisoners 2011*, p. 1, 13 and Appendix 16, p. 33 (Dec. 2012). Recent BJS reports show youth are at greater risk of sexual victimization than adults in prisons (4.5%-youth, 4% adults) and jails (4.7%-youth, 3.2% adults). Bureau of Justice Statistics, *Sexual Victimization in Prisons and Jails Reported by Inmate, 2011-12*, p. 21 (May 2013).

<sup>78</sup> *Id.* at 30.

<sup>79</sup> See, Department of Justice List for PREA State Certifications (May 28, 2014) available at: <http://www.wcl.american.edu/endsilence/documents/PREAStateList.pdf>.

<sup>80</sup> M. Forst et al. *Youth in Prisons and Training Schools*, JUVENILE & FAMILY COURT, vol. 4 (1989) (finding that youth were twice as likely to be physically harmed by staff).

<sup>81</sup> *Id.* at 74.

<sup>82</sup> In Michigan, 35% of children in prison have been placed in isolation at least once. This figure reflects the 3-year period from July 26, 2010-July 25, 2013. MDOC data as of July 2013, analyzed by the ACLU Michigan/JLWOP Initiative; In New York State, nearly 10% of the people in the extreme isolation cells are under the age of 21 and nearly 30% are under the age of 25. New York Civil Liberties Union, *Boxed In: The True Cost of Extreme Isolation in New York's Prisons 22* (2012) available at: [http://www.nyclu.org/files/publications/nyclu\\_boxedin\\_FINAL.pdf](http://www.nyclu.org/files/publications/nyclu_boxedin_FINAL.pdf).

<sup>83</sup> See ACLU/HRW, *Growing Up Locked Down*, *supra* note 69, at 63.

<sup>84</sup> Testimony of Scott Paltrowitz, CORRECTIONAL ASSOCIATION OF NEW YORK, Public Meeting, p. 6 (July 10, 2014).

Solitary confinement can have long-term serious impact on children during a crucial time in their emotional and cognitive development. According to a Human Rights Watch /American Civil Liberties Union report, children in U.S. prisons reported physical harm,<sup>85</sup> self-harm (including cutting themselves and suicide attempts),<sup>86</sup> hallucinations,<sup>87</sup> and anxiety from solitary confinement.<sup>88</sup> Evidence suggests that the psychological harm that accompanies solitary confinement affects girls at an even higher rate than boys.<sup>89</sup> Furthermore, many children enter the adult criminal justice system with high rates of mental disabilities, which can exacerbate the psychological harm inflicted by solitary.<sup>90</sup>

### *Other Cruel and Degrading Treatment*

Incarceration in adult facilities places tremendous stress on youth and fails to provide adequate mental health services and programming. As a result, children in adult facilities are much more likely to commit suicide than youth in juvenile facilities.<sup>91</sup> Placing children in adult jails and prisons also separates them from their families and communities and deprives them of appropriate educational, health and rehabilitative services, in violation of international law standards.

**CAT Articles Implicated:** 2, 10, 11, 12, 13, 16

### **Correlation to U.S. Government Report:**

While the Government Report describes efforts to implement PREA in federal facilities,<sup>92</sup> the vast majority of prisoners and detainees in the United States are in state facilities and state implementation continues to be a substantial challenge. The Government Report inaccurately asserts that “[s]tates must certify that all facilities in the state under the operational control of the state’s executive branch are in compliance with the regulations.”<sup>93</sup> In reality, states may choose not to certify compliance and simply lose some federal funding or issue an assurance letter to delay certification. Currently only 2 states (New Jersey and New Hampshire) have submitted certifications.<sup>94</sup>

With respect to paragraph 32(b) in the list of issues, PREA requires that the Bureau of Justice Statistics (BJS) report on the sexual victimization of prisoners. For individuals incarcerated in adult prisons, BJS issues reports based on inmate self-reporting, information reported by correctional authorities and information reported by former state prisoners.<sup>95</sup> While it is commendable that the U.S. Government is trying to obtain this data, it is difficult to get accurate information on sexual victimization of children under 18 because children are less likely to report abuse.<sup>96</sup> The Government Report lists 2 individual cases in Ohio and New York and a class action lawsuit brought by 500 female prisoners in Michigan.<sup>97</sup> Although victims have brought successful lawsuits, fear of retaliation and federal and state laws that restrict access to the courts make it difficult for victims to seek

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<sup>85</sup> See ACLU/HRW, *Growing Up Locked Down*, *supra* note 69, at 37.

<sup>86</sup> *Id.* at 36.

<sup>87</sup> *Id.* at 33.

<sup>88</sup> *Id.* at 26.

<sup>89</sup> *Id.* at 29.

<sup>90</sup> *Id.* at 32. (noting how one Florida juvenile “was always biting on his hands and wrists” while in solitary confinement. Another Florida juvenile who experienced solitary confinement said, “I became a cutter [in solitary confinement]. I like to take staples and carve letters and stuff in my arm. Each letter means something to me. It is something I had lost.”).

<sup>91</sup> Arya Neelum, *Jailing Juveniles*, *supra* note 70, p. 10.

<sup>92</sup> *Periodic Report to the Committee against Torture* at ¶ 169-75.

<sup>93</sup> *Id.* at ¶ 170.

<sup>94</sup> See, Department of Justice List for PREA State Certifications (May 28, 2014) available at: <http://www.wcl.american.edu/endsilence/documents/PREASStateList.pdf>.

<sup>95</sup> *Periodic Report to the Committee against Torture* at ¶ 176.

<sup>96</sup> See e.g. Preet Bahara, CRIPA Investigation of the New York City Department of Correction Jails on Rikers Island, US Department of Justice, US Attorney, Southern District of NY, p. 10 (2014). (expressing concern that Riker’s may be underreporting sexual assault and encourages the New York Department of Corrections to examine and comply with PREA).

<sup>97</sup> *Periodic Report to the Committee against Torture* at ¶ 182-183.

redress.

Further, there is a general lack of data on children under 18 in adult jails and prisons. Only 13 states report to the federal government the number of children who enter the adult criminal system. Prison and jail data on the number of children in adult jails and prisons is limited to a one-day count (i.e. the number of individuals in custody on a given day) and there is no annual count.

The Government Report describes important provisions in the PREA regulations that prohibit cross-gender pat, strip and cavity searches, limit cross-gender viewing of inmates showering and dressing to exigent situations and require staff members of the opposite gender to announce their presence in housing units.<sup>98</sup> However, the limitations on cross gender supervision do not go into effect until 2015 for facilities with over 50 inmates and 2017 for smaller facilities.<sup>99</sup> As discussed above, only 2 states have certified that they are in compliance with PREA, and many states that have refused to comply have specifically criticized these requirements as too costly and onerous.

With respect to paragraph 34 in the list of issues, the federal Juvenile Justice Delinquency Prevention Act (JJDP A)<sup>100</sup> requires removal of children who are tried in the juvenile justice system from adult jails and lock ups in all but very limited circumstances. In the limited circumstances when they are in adult jails, there must be “sight and sound” separation from “adult inmates.” However, the JJDP A’s protections do not apply to the 200,000 children who are tried as adults in state courts each year.

While recent U.S. Supreme Court decisions barring life without parole (LWOP) sentences for children convicted of non-homicide offenses (*Graham v. Florida*), and barring mandatory LWOP sentences for children convicted of homicide offenses (*Miller v. Alabama*) described in the Government Report<sup>101</sup> are a positive step, thousands of individuals continue to serve LWOP sentences for crimes committed as children. *Miller* does not categorically prohibit juvenile LWOP sentences in homicide cases. Post-*Miller*, two children have been sentenced to LWOP sentences in the state of Michigan alone. There are currently 5 youth serving LWOP sentences in Michigan that were imposed post-*Miller*. All are in various stages of the appellate process. Many state courts have refused to give *Miller* retroactive effect.<sup>102</sup> Pennsylvania and Michigan courts have ruled that *Miller* is not retroactive and continue to enforce LWOP sentences for nearly 1,000 individuals.

Although the federal Bureau of Prisons limits its use of electro-shock devices, inmates in state prisons, including children, are routinely subject to Electro-Muscular Disruption devices (EMDs), also known as Thomas A. Swift Electric Rifle (TASERS).<sup>103</sup> Despite federal court cases holding that use of EMDs must be justified by a government interest that compels the use of force such as an “immediate threat to the safety of the officers or others,”<sup>104</sup> state correctional officers use EMDs when there is no threat to safety as a method to intimidate and control prisoners, including children.

Although the U.S. Constitution creates certain due process protections prior to placing an inmate into solitary confinement for punitive purposes,<sup>105</sup> there is no constitutional prohibition on

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<sup>98</sup> *Periodic Report to the Committee against Torture* at ¶ 186.

<sup>99</sup> 28 C.F.R. 115.15 (b).

<sup>100</sup> *Periodic Report to the Committee against Torture* at ¶ 193.

<sup>101</sup> *Periodic Report to the Committee against Torture* at ¶ 202.

<sup>102</sup> *State v. Tate*, 2012-2763 (La. 11/5/13), *People v. Carp*, 496 Mich. 440; \_\_\_N.W.2d\_\_\_ (2012), *Chambers v. State*, 831 N.W.2d 311 (Minn. 2013); *Commonwealth v. Cunningham*, No. 38 EAP 2012, 2013 WL 5814388 (Pa. Oct. 30, 2013) (same). Other state courts have held that *Miller* is retroactive. *State v. Null*, 836 N.W.2d 41 (Iowa 2013), *People v. Morfin*, 981 N.E.2d 1010, 1022 (Ill. App. Ct. 2012), *Jones v. State*, 2009-CT-02033-SCT (Miss. 2013); 2013 WL 3756564 (en banc) (same). In cases before the Second and Eighth Circuit Courts of Appeal, the federal government conceded that *Miller* is retroactive. See *Wang v. United States*, No. 13-2426 (2d Cir. July 16, 2013) (order granting successive 28 U.S.C. § 2255 motion); *Johnson v. United States*, 720 F.3d 720 (8th Cir. 2013) (per curiam).

<sup>103</sup> *Periodic Report to the Committee against Torture* at ¶ 204.

<sup>104</sup> *Periodic Report to the Committee against Torture* at ¶ 203.

<sup>105</sup> *Periodic Report to the Committee against Torture* at ¶ 209.

subjecting children to solitary confinement or a requirement that age be taken into consideration. In fact, in adult jails and prisons, a disproportionate number of children end up in solitary confinement because of alleged misconduct or for protection.

Also, while the PREA regulations recognize that solitary confinement is also often used as a means to protect inmates from sexual violence and separate children from adult inmates, the use of solitary confinement to achieve these goals raises human rights concerns. The PREA regulations state that agencies should “make best efforts to avoid placing youthful inmates in isolation to comply” with the separation requirement but does not prohibit placing children in isolation.

Paragraph 42 in the list of issues raises questions about racial profiling and discrimination in the criminal justice system. While the Government Report states that steps have been taken to address this,<sup>106</sup> severe disparities in the criminal justice system persist and are the most extreme in the treatment of children.

Finally, despite the increased vulnerability to discrimination and harm that result when age intersects with other identities, the Government Report does not provide uniform data on children under 18 in the criminal justice, jail and prison systems broken down by race, ethnicity, gender and sexual orientation.

**Report Informing this Section:**

International Women’s Human Rights Clinic at City University of New York Law School, ACLU Michigan/Juvenile Life Without Parole Initiative, Campaign for Youth Justice, Correctional Association of New York, The Project on Addressing Prison Rape at American University, Washington College of Law and University of Miami Human Rights Clinic: *Children in Adult Jails and Prisons*

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## Juvenile Life Without Parole (JLWOP)

Juvenile offenders continue to be sentenced to life without parole.

**Suggested Recommendations:**

1. The U.S. Government should categorically ban juvenile life without parole.
2. The U.S. Government should review the life sentences for all juveniles already sentenced to life without parole.

**Basis of the Recommendations:**

According to the Supreme Court’s holding in *Graham v. Florida*, juveniles cannot be sentenced to life in prison without parole for a non-homicide offense;<sup>107</sup> according to a second holding in *Miller v. Alabama*, mandatory life without possibility of parole sentences for homicide offenses committed by children under the age of 18 are unconstitutional.<sup>108</sup> As a result of these decisions, if a juvenile commits a homicide crime and the court decides, based on assessing the juvenile’s characteristics as well as the circumstances of the specific crime, that it is warranted, then life without parole sentences

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<sup>106</sup> *Periodic Report to the Committee against Torture at ¶ 247-49.*

<sup>107</sup> *Graham v. Florida*, 130 S.Ct. 2011 (2010).

<sup>108</sup> *Miller v. Alabama*, 132 S.Ct. 2455 (2012).

can be imposed on children in most U.S. states, including all Midwest states.<sup>109</sup> In addition, with the exception of certain states,<sup>110</sup> children already serving the sentence are currently without any remedy.<sup>111</sup>

The majority of JLWOP sentences were imposed in states with mandatory statutory schemes; that is, in states where judges were required to sentence children convicted of certain crimes to life in prison without the possibility of parole without any consideration of factors relating to the child's age or life circumstances.<sup>112</sup> As of March 2012, approximately 2,300 juvenile offenders in the United States are serving JLWOP.<sup>113</sup> In the Midwest<sup>114</sup> alone, 540 juveniles are currently serving JLWOP.<sup>115</sup> Illinois and Michigan account for more than three-quarters of these sentences (346 juveniles in Michigan and approximately 100 juveniles in Illinois.)<sup>116</sup> In Illinois, children as young as 13 can be sentenced to JLWOP. In many cases this sentence was mandatory.<sup>117</sup>

### **CAT Articles Implicated: 16**

### **Correlation to U.S. Government Report:**

The Government Report responds to the Committee's question about sentencing of juveniles to life imprisonment by citing to *Graham v. Florida* and *Miller v. Alabama*.<sup>118</sup>

### **Report Informing this Section:**

Midwest Coalition for Human Rights and the Legal Clinic of the University of Iowa College of Law: *Midwest Regional Report on Torture and Cruel, Inhuman and Degrading Treatment*

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## **Use of Electroshock Devices by Law Enforcement**

Law enforcement officers routinely and unnecessarily use electroshock devices on unarmed and even unresisting subjects, whether young, old, or pregnant.

### **Suggested Recommendations:**

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<sup>109</sup> Although the definition of what states comprise the "Midwest" varies slightly, the Midwest Coalition for Human Rights considers Michigan, Illinois, Minnesota, Iowa, Wisconsin, North Dakota, Ohio, Indiana, and Nebraska within its focus as part of the "Midwest." The complete list of states includes Alabama, Arkansas, California, Connecticut, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Louisiana, Maine, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Vermont, Virginia, Washington, and Wisconsin. *State-By-State Legal Resource Guide*, USF SCHOOL OF LAW (Nov. 28, 2012), [http://www.usfca.edu/law/jlwop/resource\\_guide/](http://www.usfca.edu/law/jlwop/resource_guide/) (based on work by Michelle Leighton & Brian Foley, included in the Connie De La Vega & Michelle Leighton, *Sentencing Our Children to Die in Prison: Global Law and Practice*, 42 U.S.F. L. Rev. 983, 1031-45 (2008)).

<sup>110</sup> *State-By-State Legal Resource Guide*; *People v. Davis*, 2014 IL 115595; *Diatchenko v. District Att'y for Suffolk Dist.*, 1 N.E.3d 270 (Mass. 2013); *State v. Ragland*, 836 N.W.2d 107 (Iowa 2013); *Jones v. State*, 122 So.3d 698 (Miss. 2013); *State v. Mantich*, 842 N.W.2d 716 (Neb. 2014); *Petition of State of New Hampshire*, 2014 WL 4253359 (2014); *Ex Parte Maxwell*, 424 S.W.3d 66 (Tex. Crim. App. 2014).

<sup>111</sup> For a breakdown of the applicable statutes and number of JLWOP in each state see *State-By-State Legal Resource Guide*.

<sup>112</sup> ASHELY NELLIS, THE SENTENCING PROJECT, THE LIVES OF JUVENILE LIFERS; FINDINGS FROM A NATIONAL SURVEY 3 (2012).

<sup>113</sup> Transcript of Oral Argument at 13, *Miller v. Alabama* 132 S.Ct. 548 (2011); see also NELLIS, *supra* note 112, at 7 (noting that 1,579, or 68.4%, of juveniles serving life without parole sentences responded to the Project's survey).

<sup>114</sup> Although the definition of what states comprise the "Midwest" varies slightly, the Midwest Coalition for Human Rights considers Michigan, Illinois, Minnesota, Iowa, Wisconsin, North Dakota, Ohio, Indiana, and Nebraska within its focus as part of the "Midwest."

<sup>115</sup> *Sentencing Juveniles*, N.Y. TIMES (Apr. 20, 2011).

<sup>116</sup> *Id.*

<sup>117</sup> 705 ILCS 405/5-130(4)(a) (providing for the mandatory transfer of children as young as thirteen to adult court when that child is charged with first degree murder committed during the course of either aggravated criminal sexual assault, criminal sexual assault, or aggravated kidnapping).

<sup>118</sup> *Periodic Report to the Committee against Torture* at ¶ 202.

1. Thomas A. Swift Electric Rifle (TASER)<sup>119</sup> use should be exclusively restricted to “substitution for lethal weapons”<sup>120</sup> and there should be uniform and strict TASER regulation.
2. A TASER law explicitly framing a comprehensive, uniform TASER Policy in conjunction with a comprehensive, uniform Use of Force Policy, should be implemented to promote transparency between private individuals and law enforcement agencies, as well as create strict parameters for TASER use. A suggested uniform policy would prohibit the use of drive stun mode, restrict multiple and extended charges on the same person, require law enforcement to verbally warn an individual before deploying a TASER, and limit the use of TASERs on vulnerable individuals such as pregnant women, the elderly, juveniles, and persons who are restrained, unconscious, at risk for falling, suffering from heart or respiratory problems, mentally ill, or near flammable objects.<sup>121</sup>

### **Basis of the Recommendations:**

Electronic Control Devices (“ECDs”)—commonly referred to as TASERs—have become commonly carried police tools. Although some courts have held that law enforcement officers should restrict their use of TASERs to subduing criminal suspects<sup>122</sup> “who are exhibiting active aggression or who are actively resisting in a manner . . . likely to result in injuries to themselves or others,”<sup>123</sup> that standard is far from universal and research shows that many law enforcement agencies have much lower standards on who is subjected to TASER use.<sup>124</sup> This is despite the fact that recent research shows “ECDs have caused serious injury and death in a number of cases. . . .”<sup>125</sup> For example, Amnesty International reports that 540 people in the United States died after being shocked by an ECD in the years 2001 to 2013.<sup>126</sup>

### **CAT Articles Implicated: 16**

### **Correlation to U.S. Government Report:**

The U.S. Government responds to the Committee’s question with respect to electroshock devices by stating that, according to the policy of U.S. Customs and Border Protection (CBP), there are limitations placed on when Electro Muscular Disruption Devices can be used.<sup>127</sup>

### **Report Informing this Section:**

Midwest Coalition for Human Rights and the Legal Clinic of the University of Iowa College of Law: *Midwest Regional Report on Torture and Cruel, Inhuman and Degrading Treatment*

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<sup>119</sup> Electronic Control Devices (“ECDs”)—commonly referred to as TASERs, the leading brand of ECDs—have become commonly carried police tools. The Thomas A. Swift Electric Rifle (“TASER”) was developed in the 1960s as a non-lethal alternative to the handgun. Midwest Coalition for Human Rights and the Legal Clinic of the University of Iowa College of Law: *Racial Discrimination in Housing and Homelessness in the United States*, p. 17.

<sup>120</sup> List of issues prior to the submission of the fifth periodic report of United States of America, Art. 16 § 36

<sup>121</sup> ACLU-IA REPORT.

<sup>122</sup> Vidisha Barua Worley, Michael S. Vaughn, & Robert M. Worley, “*Shocking*” *Consequences: Police Officer Liability for the Use of TASERs and Stun Guns*, 48 CRIM. L. BULLETIN 4 (2012) [hereinafter *Shocking Consequences*].

<sup>123</sup> Ian A. Mance, *Power Down: TASERs, the Fourth Amendment, and Police Accountability in the Fourth Circuit*, 91 N.C. L. REV. 606, 609 (2013) [hereinafter *Power Down*].

<sup>124</sup> ACLU-MN TASER REPORT; ACLU-IA TASER REPORT.

<sup>125</sup> ACLU of Minnesota, *Shocking: The Lack of Responsible Taser Policy in Minnesota*, available at [http://www.aclu-mn.org/index.php/download\\_file/view/93/46/](http://www.aclu-mn.org/index.php/download_file/view/93/46/).

<sup>126</sup> *Annual Report 2013: United States of America*, AMNESTY INTERNATIONAL, <http://www.amnesty.org/en/region/usa/report-2013>.

<sup>127</sup> *Periodic Report to the Committee against Torture* at ¶ 206.



## “Super-Maximum Security Prisons” and Prolonged Solitary Confinement

The U.S. Government continues to impose solitary confinement in its jails, prisons, and detention centers, the prolonged use of which has been shown to have devastating psychological and physical effects. Further, it is disproportionately people of color<sup>128</sup> who are held in such confinement.

### Suggested Recommendations:

1. The U.S. Government should ban the practice of prolonged solitary confinement (more than 15 days) in prisons, jails, and detention centers, except under exceptional circumstances.
2. The U.S. Government should abolish the use of solitary confinement for pretrial detainees, individuals with mental illness and other disabilities, youth under the age of 18, pregnant women and new mothers, the elderly, LGBTI individuals and immigrants detained in civil detention. Some organizations who authored reports for this topic recommend that the use of solitary confinement should be abolished for individuals under 21.
3. When solitary confinement is used, its duration should be as short as possible (up to 15 days) and for a definite term that is properly announced and communicated. Additionally, separation should be used only if there is a significant and unreasonable risk to the safety and security of other individuals.
4. The U.S. Government should develop standards to ensure that the decision to impose solitary confinement must never be based on and does not discriminate based on factors such as actual or perceived race, political affiliation, religion, association, vulnerability to sexual abuse and assault, and that incarcerated persons who challenge their conditions of incarceration are not subject to retaliation by being placed in solitary confinement.
5. The U.S. Government should require that all federal, state, and local prisons, jails, detention centers, and juvenile facilities report publicly and to the Bureau of Justice Statistics (BJS) on the number of people in isolated confinement, the characteristics of people in such confinement (including related to age, race, gender, mental health, health, pregnancy, and LGBTI status), as well as the lengths of stay in isolated confinement and the effect of isolation on detainees. In turn, the BJS should be required to compile such information and at least annually publish the data and a statistical analysis of the data so that the public is able to have an understanding of how solitary confinement and/or alternatives are being utilized around the country.
6. The U.S. Government should create an independent monitoring body to monitor conditions and statistics of those in solitary confinement.
7. The Federal Bureau of Prisons and state and local departments of correction should provide transitional services to ensure successful re-entry for those returning from incarceration.
8. Appropriate and substantial amounts of congregate out-of-cell time, meaningful human contact, treatment and access to programs and recreation, including meaningful programs and services aimed at addressing their underlying needs, must be provided to incarcerated persons. This includes access to a full range of rehabilitation services, including mental health treatment and counseling. Those expressing interest in religion must have access to chaplains appropriate to their faith tradition.
9. Staff must be better equipped to work with people who are incarcerated, including those with the most serious needs or who engage in the most difficult behaviors, and the processes that result in solitary confinement must be fairer, more transparent, and conducted with more accountability.
10. The U.S. Government should close abusive federal prisons (these include United States Penitentiary, Administrative Maximum Facility (ADX) in Florence, Colorado).<sup>129</sup> In addition,

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<sup>128</sup> Margo Schlanger, *Prison Segregation: Symposium Introduction and Preliminary Data on Racial Disparities*, 18 MICHIGAN JOURNAL OF RACE & LAW, at 241 (2013) [hereinafter Schlanger 2013]. [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2237979#](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2237979#)

Congress should prohibit the Bureau of Prisons (BOP) from opening any supermax prisons in the future and should prohibit the BOP from using the recently acquired facility at Thomson, Illinois as a supermax prison.

11. The U.S. Government should empower independent, non-profit or community entities with access to monitor conditions of confinement, including the use of solitary confinement, in federal, state, and local facilities.
12. The U.S. Department of State should grant the request by the U.N. Special Rapporteur on Torture to visit prisons in the United States to investigate the use of solitary confinement, and the Department must help facilitate full-access site visits to all federal, state, and local prisons, jails, and detention requested by the Special Rapporteur.

### **Basis of the Recommendations:**

Solitary confinement, whether termed “segregation, isolation, separation, cellular, lockdown, supermax, the hole, [or a] Secure Housing Unit”<sup>129</sup> constitutes torture when used excessively because it foreseeably induces temporary and/or permanent severe physical and psychological suffering in many of the prisoners who are so held.<sup>131</sup> Research has found that inmates in solitary confinement develop psychopathologies at a rate nearly double of the general population.<sup>132</sup> Further, prolonged solitary confinement is used as a form of punishment, rather than for the limited purposes of security or safety.

It is estimated that there are over 80,000 prisoners in a form of solitary confinement in the United States, and at least 25,000 of those are in “supermax” facilities, where prisoners are kept in extreme isolation, usually for 23-24 hours a day.<sup>133</sup> This figure likely fails to capture the breadth of the use of prolonged solitary confinement in U.S. prisons and jails, and does not include those held in solitary confinement in immigrant detention. People are regularly and routinely held in solitary confinement for months and years, and even decades. Many cells are perpetually illuminated, and inmates are often denied any timekeeping devices, reading materials, or even basic personal hygiene items.<sup>134</sup> Visitation is extremely limited<sup>135</sup> and other restrictions such as barring a prisoner’s attorney and family members from sharing any information received from that prisoner with third parties under threat of criminal sanction, are placed on individuals subjected to Special Administrative Measures (SAMs).<sup>136</sup> The processes resulting in solitary confinement are often arbitrary and unfair, involving under-equipped staff, and occurring with little transparency or accountability.

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<sup>129</sup> See, e.g., Pardiss Kebriyaii, “The Torture that Flourishes from Gitmo to an American Supermax,” Jan. 30, 2014, *available at*: <http://www.motherjones.com/politics/2013/05/10-worst-prisons-america-part-1-adx>; James Ridgeway and Jean Casella, “America’s 10 Worst Prisons: ADX: A Federal isolation facility that’s ‘pretty close’ to hell,” May 1, 2013, *available at*: <http://www.motherjones.com/politics/2013/05/10-worst-prisons-america-part-1-adx>.

<sup>130</sup> *Solitary Confinement Should Be Banned In Most Cases, UN Expert Says*, UN NEWS CENTRE (Oct. 18, 2011), <http://www.un.org/apps/news/story.asp?NewsID=40097#.UL7tz-2dF8w>.

<sup>131</sup> See, e.g., Craig Haney & Mona Lynch, *Regulating Prisons of the Future: A Psychological Analysis of Supermax and Solitary Confinement*, 23 N.Y.U. REV. L. & SOC. CHANGE 477 (1997); Stuart Grassian, *Psychiatric Effects of Solitary Confinement*, 22 J. LAW & POLICY 325, 333-34 (2006), *available at*

<http://law.wustl.edu/journal/22/p325grassian.pdf> (“inmates...will likely suffer permanent harm as a result of such confinement”).

<sup>132</sup> Andersen et al., *A Longitudinal Study of Prisoners on Remand: Psychiatric Prevalence, Incidence, and Psychopathology in Solitary vs. Non-Solitary Confinement*, 102(1) ACTA PSYCHIATRICA SCANDINAVICA 19 (2000).

<sup>133</sup> The Vera Institute of Justice estimated that there were 81,622 prisoners in some form of segregated confinement in 2005. Angela Browne, Allissa Cambier, & Suzanne Agha, *Prisons Within Prisons: The Use of Segregation in the United States*, Vera Institute of Justice (2011), *available at* <http://www.jstor.org/stable/pdfplus/10.1525/fsr.2011.24.1.46.pdf?acceptTC=true>; *FAQ, SOLITARY WATCH*, <http://solitarywatch.com/facts/faq/> (last visited Sep. 12, 2014).

<sup>134</sup> Elizabeth Vasilades, *Solitary Confinement and International Human Rights: Why the U.S. Prison System Fails Global Standards*, 21 AM. U. INT’L L. REV. 71, 95-99 (2005) (in one facility the only personal hygiene item was a “small box of baking soda” instead of toothpaste).

<sup>135</sup> New York City Bar Committee on International Human Rights, *Supermax Confinement in U.S. Prisons*, NEW YORK CITY BAR ASSOCIATION (Sept. 2011), <http://www2.nycbar.org/pdf/report/uploads/20072165-TheBrutalityofSupermaxConfinement.pdf>;

<sup>136</sup> Special Administrative Measures (“SAMs”), are an additional set of contact and communication restrictions that can be imposed by the US Department of Justice on federal prisoners already in solitary confinement, including in pre-trial detention. Center for Constitutional Rights, *Legal Services for Prisoners with Children*, and California Prison Focus: *The Use of Prolonged Solitary Confinement in United States Prisons, Jails, and Detention Centers*, p. 2.

That serious and “irreversible psychological damage”<sup>137</sup> and physical harm results from prolonged solitary confinement is beyond doubt.<sup>138</sup> Half of inmates in solitary self-mutilate, a condition recognized as a “secondary effect of prison isolation and segregation.”<sup>139</sup> By one estimate, a third of prisoners in solitary confinement “develop acute psychosis with hallucinations.”<sup>140</sup> The incidence of suicides, attempted suicides and the development of mental illness are much higher among those in solitary confinement as compared to those held in the general population.

Additionally, people of color face incarceration at profoundly disproportionate rates.<sup>141</sup> Limited data reported on racial ethnic identity and solitary confinement suggests that solitary confinement disproportionately impacts people of color.<sup>142</sup>

Though several states, including Alaska, Connecticut, Maine, Oklahoma and West Virginia, have issued an outright ban on the punitive solitary confinement of youth, the placement of youth in solitary confinement is not subject to a prohibition in most states and the federal system, and the practice persists widely. Children who are tried as adults and sent to adult prisons and transgender women who are housed in prisons for men are put in solitary confinement not as punishment but presumably “for their own protection.” The conditions in protective custody generally resemble conditions in the Secure Housing Units or Special Housing Units (SHU) or other forms of isolated confinement. Moreover, often the isolation that is connected with such confinement may lead to additional abuse by staff, rather than protection.

New York State represents one example of the failure of the U.S. Government to take effective measures to address the widespread torture of solitary confinement and other forms of isolation.<sup>143</sup>

**CAT Articles Implicated:** 1, 2, 4, 16

### **Correlation to U.S. Government Report:**

In its Government Report, the U.S. Government notes that courts have interpreted the U.S. Constitution to prohibit the practice of solitary confinement under certain circumstances (including with regard to inmates with serious mental illness or juvenile detainees) and to restrict its use under additional circumstances (in the case of juvenile inmates and inmates who are victims of sexual violence). The U.S. Government also notes that the Department of Justice and Federal Bureau of Prisons meet their constitutional and statutory mandates by confining prisoners in facilities that are

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<sup>137</sup> Mike Corradini, *UN Advisor Says Solitary Confinement in the US is Torture*, PHYSICIANS FOR HUMAN RIGHTS (Oct. 16, 2012), <http://physiciansforhumanrights.org/blog/un-advisor-says-solitary-confinement-in-us-is-torture.html>.

<sup>138</sup> A report by the Special Rapporteur of the Human Rights Council lists 27 distinct and negative “[e]ffects of solitary confinement” including panic attacks, major depression, and psychosis. *Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, Note by Secretary-General, Annex A/66/268 (Aug. 5, 2011).

<sup>139</sup> Haney & Lynch, *supra* note 131 (“In sum, studies of the secondary effects of prison isolation and segregation indicate that such confinement is associated with increases in psychiatric complaints, self-mutilation, [and] suicide...”).

<sup>140</sup> Atul Gawande, Hellhole, THE NEW YORKER (Mar. 30, 2009), <http://www.newyorker.com/magazine/2009/03/30/hellhole>.

<sup>141</sup> THE SENTENCING PROJECT, *Shadow Report of The Sentencing Project to the Committee on the Elimination of Racial Discrimination Regarding Racial Disparities in the United States Criminal Justice System*, at 1 (2014).

[http://sentencingproject.org/doc/publications/rd\\_CERD\\_Shadow\\_Report\\_2014.pdf](http://sentencingproject.org/doc/publications/rd_CERD_Shadow_Report_2014.pdf)

<sup>142</sup> Schlanger 2013, *supra* note 128, at 241.

<sup>143</sup> In New York State, many individuals are confined in double cells and are held in conditions of isolation with that second person. People in such confinement are still locked in their cells 23 or 24 hours per day, without meaningful human interaction or programming, and the negative effects of such isolation have been shown to be as harmful or sometimes more harmful than solitary confinement of a single person. In this testimony we will thus sometimes use the term “isolated confinement” in place of solitary confinement. See also proposed legislation in New York State, the Humane Alternatives to Long Term (HALT) Solitary Confinement Act, A. 8588A / S. 6466A as a model for reform Humane Alternatives to Long Term (HALT) Solitary Confinement Act, A. 8588A / S. 6466A, *available at*: [http://assembly.state.ny.us/leg/?default\\_fld=&bn=A08588&term=2013&Summary=Y&Memo=Y&Text=Y](http://assembly.state.ny.us/leg/?default_fld=&bn=A08588&term=2013&Summary=Y&Memo=Y&Text=Y)

“safe, humane, and appropriately secure;” and that “there is no systematic use of solitary confinement in the United States.”<sup>144</sup>

According to the Government Report, “Inmates cannot be subjected to solitary confinement absent an administrative hearing and other procedures protective of their right to due process.”<sup>145</sup> However, given that the procedures resulting in solitary confinement are often biased, unfair, and carried out by non-neutral decision-makers, and that incarcerated persons facing solitary confinement also are not allowed to have legal representation, this does not amount to real “due process.” The U.S. Government also claims that the Americans with Disabilities Act of 1990 (ADA) and the Rehabilitation Act of 1973 “prohibit the use of solitary confinement in a manner that discriminates on the basis of disability instead of making reasonable modifications to provide persons with disabilities access to services, programs, and activities, including mental health services.”<sup>146</sup> However, the large numbers of disabled persons in solitary confinement needs to be addressed and corrected. There are three times as many men and women with mental illness in United States prisons as there are in mental health hospitals. In New York, nearly 8500 people in prison and over 650 people in isolated confinement are recognized as needing treatment for mental illness. Prisons, as well as solitary confinement units, serve as de facto mental health centers because appropriate treatment facilities are not available.

The U.S. Government also argues that the Prison Rape Elimination Act (PREA) establishes conditions for placement in segregated housing of adults who are at high risk for sexual victimization and that these conditions include access to programs, education, work opportunities, and other services.<sup>147</sup> However, the requirements of PREA only apply to a small segment of the incarcerated population and are not being implemented in many jurisdictions,<sup>148</sup> so that most individuals in solitary still do not have the required access to programs and services.

In its letter to the Special Rapporteur on Torture about conditions in the ADX facility,<sup>149</sup> the U.S. Government argued that those conditions do not amount to solitary confinement because the people incarcerated there can speak with (but not touch) one another in the recreation yards; can communicate with the incarcerated persons housed on either side of their cells; can speak to staff when they make their rounds; or can receive visits from medical, educational, religious and mental health staff when requested. These possibilities do not constitute meaningful social interaction or communication and do not do nearly enough to mitigate the devastating harm caused by isolation.

### **Report Informing this Section:**

The Campaign for Alternatives to Isolated Confinement: *United States’ Widespread and Systematic Practices of Torture by the Use of Abusive, Long Term Solitary Confinement*

Center for Constitutional Rights, Legal Services for Prisoners with Children, and California Prison Focus: *The Use of Prolonged Solitary Confinement in United States Prisons, Jails, and Detention Centers*

The Correctional Association of NY: *The Torture of Solitary Confinement in the United States: The Example of New York State*

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<sup>144</sup> Letter from Eileen Chamberlain Donahoe, US Ambassador to the United Nations Human Rights Council, Geneva, 30 November 2011.

<sup>145</sup> *Periodic Report to the Committee against Torture* at ¶209.

<sup>146</sup> *Id.* at ¶ 210.

<sup>147</sup> *Id.* at ¶211.

<sup>148</sup> See, e.g., Texas Governor Rick Perry, *Letter to the Attorney General, US DOJ*, March 28, 2014, available at: <https://docs.google.com/file/d/0B6HJLeMEu3hlUUctaWxnQWVUeDA/edit>.

<sup>149</sup> Letter from Eileen Chamberlain Donahoe, US Ambassador to the United Nations Human Rights Council, Geneva, 30 November 2011.

Midwest Coalition for Human Rights and the Legal Clinic of the University of Iowa College of Law:  
*Midwest Regional Report on Torture and Cruel, Inhuman and Degrading Treatment*

National Religious Campaign Against Torture (NRCAT), *Torture in U.S. Prisons: Interfaith Religious Coalition Calls for End to Widespread Use of Prolonged Solitary Confinement*

T'ruah: The Rabbinic Call for Human Rights: *It is not good for human beings to be alone*

Victorious Black Women: *The Use of Isolated Confinement: The case of my brother Leo McShan*

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## Immigration Detention and Deportation

Adult immigrant detainees in U.S. detention facilities suffer mistreatment and abuse including widespread and deplorable conditions of detention, the use of solitary confinement, and the serious problem of sexual violence in detention, among others. Furthermore, expedited removal and other similar procedures at borders may result in asylum seekers and others in need of protection being returned to torture or other types of persecution.

### Suggested Recommendations:

1. The U.S. Department of Homeland Security (DHS) should end the civil detention of immigrants, except in the most egregious cases, and adopt, in consultation with immigrant stakeholder communities, humane alternatives to detention. These alternatives should focus on release on recognizance. And only for those few cases in which it is necessary to restrict or monitor movement should other “alternatives” such as supervised release or the use of ankle bracelets or other restrictions on liberty be pursued.
2. DHS should make the 2011 Performance-Based National Detention Standards (PBNDS) legally binding and actionable and terminate contracts with non-compliant detention facilities. Congress should create an independent monitoring body to oversee the compliance with the 2011 PBNDS of every detention facility that houses any immigration detainee. The U.S. Government should ensure detention center conditions are humane. Many immigration detention facilities are not compliant with the most current detention standards from 2011. Some facilities are still governed by outdated 2000 and 2008 detention standards, which are much weaker overall and do not include robust protections against sexual assault. Moreover, none of these standards are legally binding or enforceable by private actors.
3. The U.S. Government should ensure that the Prison Rape Elimination Act (PREA) is applicable to all immigration detainees in every facility in the United States. The U.S. Government should implement robust regulations to prevent sexual assault in immigration detention. In March of 2014, DHS released long-overdue regulations under the PREA of 2003 to ensure protections against sexual assault in immigration detention. However, DHS does not have adequate plans to fully implement regulations in all detention centers and the Department of Health and Human Services (HHS) has delayed promulgation of its regulations that would apply to unaccompanied immigrant children detained in their shelters. The U.S. Government should ensure that all claims of rape and abuse are documented and investigated.
4. The U.S. Government should ratify the Optional Protocol to CAT and allow full and unfettered access to its detention facilities to United Nations officials, as well as other oversight bodies.
5. The U.S. Government should create an office of an independent Detention Centers monitor to ensure full transparency and accountability in respecting the human rights of all detainees. The

U.S. Government should ensure independent evaluation by this or other external (non-Immigration and Customs Enforcement (ICE)) organizations of any and all allegations of physical, sexual, or serious verbal abuse to ensure fair and just investigations and outcomes. The results of these evaluations should be made public.

6. The U.S. Government should ensure greater oversight of Customs and Border Protection (CBP), including requiring CBP to submit public information at regular intervals, and to ensure that an oversight body is able to review and sanction CBP for any violations against non-citizens in its custody.
7. The U.S. Government should ensure access to counsel for all detainees. Immigrants currently have no right to government-appointed counsel and many detained non-citizens are forced to navigate the complex immigration system with little or no assistance. Without counsel, immigrants are at significantly greater risk of being deported even if they may face torture or persecution in their home country, or they have other strong claims for relief from deportation.
8. The U.S. Government should ensure all detainees have meaningful opportunities to express fear of return and seek release from detention. CBP and other officials are not properly screening non-citizens for asylum eligibility and legitimate asylum seekers are being denied access to credible fear interviews. DHS must ensure that the U.S. Government does not deport people back to torture or other situations of persecution.
9. The U.S. Government should improve training for all officers, officials, and any other staff who have access to or are in any way involved in the detention and care of immigration detainees.
10. Each facility where a non-citizen is detained for immigration purposes must have a full-time medical doctor on staff and on-site for detainees' consultations. A mental health provider must be available to detainees at least several times a week, and at all times for emergencies. The mental health professional should be involved in the decision-making process by facility staff regarding the restriction of movement and/or housing conditions of detainees with mental disabilities, to ensure that adjustments to the detainees' living conditions are appropriate given their individual situation.
11. The U.S. Government should generally prohibit the use of solitary confinement, and it should never be used in prolonged or indefinite situations. The Special Rapporteur on Torture called for a worldwide ban on prolonged isolation, which he loosely defined as in excess of fifteen days.<sup>150</sup> Placement in solitary confinement and/or uses of force should never be used as retaliation against or punishment for detainees seeking to exercise their fundamental rights, including the right of free speech and redress for violations of their rights. It is also inappropriate to utilize prolonged solitary confinement to detain immigrants with mental illness or who identify as LGBT.
12. Uses of force by detention center staff should be employed only when *absolutely necessary* to prevent imminent serious bodily injury to a detainee or center staff member. Any act of use of force must automatically trigger an investigation of the incident by an independent oversight body, and consider sanctions or changes if necessary.
13. The U.S. Government should create an independent reporting process, tracking system, and Civilian Review Board for all claims of abuse, excessive use of force, torture, or denial of basic needs by detention center officials. This system will also be used to report inmate on inmate violence or threat of violence.
14. All detainee deaths should be reported to the DHS Office for Civil Rights and Civil Liberties (OCRCL) or another independent body within 24 hours. Information about deaths in detention should be made public.
15. When a detainee is accused of disciplinary violations, detainees should be given free and full access to any videos, reports, witnesses, or other information held by the facility or others that may or may not contain exculpatory evidence. The detainee should be allowed to present this

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<sup>150</sup> Special Rapporteur on Torture Tells Third Committee Use of Prolonged Solitary Confinement on Rise, Calls for Global Ban on Practice, GA/SHC/4014, 18 October 2011, *available at* <http://www.un.org/press/en/2011/gashe4014.doc.htm>

evidence in his/her defense, employ the assistance of counsel if desired, and have it fairly adjudicated by an impartial body.

16. The U.S. Government should institute a system of accountability for ICE officers and medical doctors who violate their roles in detention center.

### **Basis of the Recommendations:**

Non-citizens, including asylum seekers, are held in immigrant detention facilities for indefinite periods of time and in conditions violating their fundamental human rights. Asylum seekers in search of safety and protection often find themselves arrested and imprisoned upon entry to the United States.<sup>151</sup> Some are returned to their home countries without having access to asylum procedures in the U.S. Once detained, non-citizens, including asylum seekers and other survivors of torture, are dehumanized by harsh detention conditions.<sup>152</sup> They are held in prison-like facilities, where they arrive in handcuffs, often wear prison uniforms, are guarded by officers in prison attire, visit family through glass barriers, and have little to no freedom of movement within the facilities.<sup>153</sup> Many detention facilities are overcrowded, expose immigrants to extreme temperatures, and serve detainees food that lacks adequate nutrition, content, and hygiene standards. Some non-citizen detainees are subject to prolonged use of solitary confinement, excessive use of force, and are denied due process. In addition, as the number of children and family members fleeing to the United States increases, the degrading treatment children suffer due to being placed in inappropriate facilities while in Immigration and Customs Enforcement (ICE) detention is also expected to rise.<sup>154</sup>

#### *Impact of Detention on Asylum Seekers and Torture Survivors*

According to the U.S. Department of Homeland Security in Fiscal Year 2010, 15,769 asylum seekers were held in detention, approximately 25% of all asylum applicants.<sup>155</sup> The Center for Victims of Torture has estimated that 6,000 torture survivors were detained while seeking asylum protection between October 2010 and February 2013.<sup>156</sup> The long-term impacts of torture in combination with the resulting trauma from being detained can be re-traumatizing.<sup>157</sup> Particularly for survivors whose torture occurred in a confinement setting, immigration detention can lead to reliving the experiences of torture, contributing to further psychological damage including anxiety and mental distress.<sup>158</sup>

#### *Right of Non-refoulement<sup>159</sup>*

There are violations inherent in the deportation process, including the use of “expedited removals” to return non-citizens to their country of origin, raising the specter of refoulement of torture survivors and other asylum seekers. An increasing number of children and families entering the U.S. after fleeing violence in Central America have been immediately detained in facilities entirely

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<sup>151</sup> The Center for Victims of Torture, The Unitarian Universalist Service Committee & The Torture Abolition and Survivor Support Coalition, Int'l, *Tortured & Detained: Survivor Stories of U.S. Immigration Detention 2* (2013), available at [http://www.cvt.org/sites/cvt.org/files/Report\\_TorturedAndDetained\\_Nov2013.pdf](http://www.cvt.org/sites/cvt.org/files/Report_TorturedAndDetained_Nov2013.pdf) [“*Tortured & Detained*”].

<sup>152</sup> *Id.*

<sup>153</sup> Human Rights First, *U.S. Detention of Asylum Seekers: Seeking Protection, Finding Prison 1* (2009), <http://www.humanrightsfirst.org/wp-content/uploads/pdf/090429-RP-hrf-asylum-detention-report.pdf> [“*Human Rights First*”].

<sup>154</sup> Human Rights Watch, *US: Surge in Detention of Child Migrants* (June 25, 2014), available at <http://www.hrw.org/news/2014/06/25/us-surge-detention-child-migrants>.

<sup>155</sup> U.S. Department of Homeland Security, *Detained Asylum Seekers: Fiscal Year 2009 and 2010 Report to Congress* (August 2012), available at <http://www.ice.gov/doclib/foia/reports/detained-asylum-seekers2009-2010.pdf>.

<sup>156</sup> *Tortured & Detained*, supra note 151, at 5.

<sup>157</sup> *Id.* at 2.

<sup>158</sup> *Id.* at 10.

<sup>159</sup> According to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 3: “No State Party shall expel, return (“refouler”) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.”

inappropriate for these populations. Questions about due process give rise to concerns about potentially returning these people to situations that may amount to persecution or torture.

### *The Use of Solitary Confinement in Immigration Detention*

Despite the fact that immigration detention is not supposed to be punitive, many detainees are held in jails or other facilities that are indistinguishable from jails, and employ similar correctional policies, including the widespread use of solitary confinement.<sup>160</sup> In addition, staff often segregate individuals with mental illnesses, or those who identify as lesbian, gay, bisexual, or transgender, rather than addressing their unique circumstances and vulnerabilities.<sup>161</sup>

### *Sexual Violence in Immigration Detention*

The problem of sexual abuse in ICE detention facilities is widespread and indicates a systematic problem, rather than isolated incidents.<sup>162</sup> The National Prison Rape Elimination Commission (NPREC) has reported that persons in immigration detention facilities are especially vulnerable to sexual abuse in particular by detention facility staff, as detainees are confined by the same agency that has the power to deport them.<sup>163</sup> Immigrants are also vulnerable to sexual assault and abuse from other detainees, and unlike inmates in the prison system, they are not protected against sexual assault. While Congress passed the Prison Rape Elimination Act (PREA) in 2003 to combat the epidemic of sexual violence in detention centers across the United States, when the regulations were finally promulgated, immigration detention centers were excluded.<sup>164</sup>

### *Lack of Access to Counsel*

Detainees are separated from family members and face significant barriers in accessing counsel. As a result, many non-citizens are detained longer than necessary and are not able to adequately represent themselves in their removal proceedings, putting them at risk of being returned to dangerous conditions in some cases. Since immigrants in removal proceedings have no right to government-appointed counsel and because immigration proceedings are complex, legal representation often means the difference between receiving relief or being removed – in some case, to a country where the non-citizen will face persecution. Additionally, some asylum seekers and other non-citizens abandon their asylum claims altogether because of detention conditions. The lack of counsel often makes it difficult for detainees to make complaints, obtain redress, and receive fair compensation. Further, they may face retaliatory measures from detention staff when they do submit formal complaints on detention conditions.<sup>165</sup>

### *Arizona Case Study*

The state of Arizona is home to particularly anti-migratory policies, partly as a result of passing laws and immigration policies that specifically target and criminalize immigrants.

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<sup>160</sup> Nat'l Immigrant Justice Ctr, *Invisible in Isolation: The Use of Segregation and Solitary Confinement in Immigration Detention* 3 (Sept. 2012), available at [https://www.immigrantjustice.org/sites/immigrantjustice.org/files/Invisible%20in%20Isolation-The%20Use%20of%20Segregation%20and%20Solitary%20Confinement%20in%20Immigration%20Detention.September%202012\\_7.pdf](https://www.immigrantjustice.org/sites/immigrantjustice.org/files/Invisible%20in%20Isolation-The%20Use%20of%20Segregation%20and%20Solitary%20Confinement%20in%20Immigration%20Detention.September%202012_7.pdf) [“*Invisible in Isolation*”].

<sup>161</sup> *Id.*

<sup>162</sup> See Stop Prison Rape, *No Refuge Here: A First Look at Sexual Abuse in Immigration Detention* (2004), available at <http://www.justdetention.org/pdf/NoRefugeHere.pdf> [“*Stop Prison Rape*”]; Human Rights Watch, *Detained and At Risk: Sexual Abuse and Harassment in United States Immigration Detention* (2010), <http://www.hrw.org/sites/default/files/reports/us0810webwcover.pdf>.

<sup>163</sup> *Id.*

<sup>164</sup> ACLU, DOJ PREA Regulations Encouraging but Fail to Protect Immigration Detainees, <https://www.aclu.org/immigrants-rights-lgbt-rights-prisoners-rights/doj-prea-regulations-encouraging-fail-protect>.

<sup>165</sup> ACLU, Conditions of Confinement in Immigration Detention Facilities 12-13, available at [https://www.aclu.org/files/pdfs/prison/unsr\\_briefing\\_materials.pdf](https://www.aclu.org/files/pdfs/prison/unsr_briefing_materials.pdf).



**CAT Articles Implicated:** 1, 2, 3, 7, 10, 11, 13, 14, 16

**Correlation to U.S. Government Report:**

While the Government Report does not directly address the above-mentioned issues with respect to individuals held in immigrant detention, the Report does address the issue of (1) the registration of all individuals detained in immigration matters and the Online Detainee Locator System which enables attorneys, family, and friends to find a detainee in ICE custody;<sup>166</sup> (2) current efforts as well as proposed standards to address alleged sexual abuse incidents;<sup>167</sup> (3) DHS/ICE commitment to preventing and responding aggressively and swiftly to sexual assault in immigration detention;<sup>168</sup> (4) assurance that the U.S. reviews assurances of human treatment given by other States when transferring an individual to that State<sup>169</sup>; (5) training in recognizing signs of torture is provided to ICE officers as well as state and local law enforcement personnel engaging in enforcement of immigration law; (6) attending to the needs of unaccompanied migrant children by ICE and CBP personnel and youth being transferred to the Department of Health and Human Services within 48 hours of apprehension;<sup>170</sup> and (4) DHS's efforts to improve health services for those in custody, including HIV-positive and female detainees.<sup>171</sup>

**Report Informing this Section:**

Human Rights Clinic, University of Miami School of Law, American Friends Service Committee, Law Offices of Sara Elizabeth Dill, The Center for Constitutional Rights: *Written Statement on Immigration Detention and Deportation in the United States of America*

Sarah Dávila-Ruhaak and Steven D. Schwinn, The John Marshall Law School International Human Rights Clinic and Jennifer Chan, National Immigrant Justice Center, Heartland Alliance for Human Needs & Human Rights: *Concerning the United States' Mistreatment of Immigrant Detainees in Violation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*

Midwest Coalition for Human Rights and the Legal Clinic of the University of Iowa College of Law: *Midwest Regional Report on Torture and Cruel, Inhuman and Degrading Treatment*

Puente Human Rights Movement: *Torture and Human Rights Abuses Within Arizona Immigration Detention Centers*

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## **Violations against Immigrants in Criminal Custody**

Immigrants' rights are eroded through the use of racial profiling, detainers, and an overbroad definition of "conviction" and denial of protection against refoulement.

**Suggested Recommendations:**

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<sup>166</sup> *Periodic Report to the Committee against Torture* at ¶ 20.

<sup>167</sup> *Periodic Report to the Committee against Torture* at ¶ 172.

<sup>168</sup> *Periodic Report to the Committee against Torture* at ¶ 180.

<sup>169</sup> *Periodic Report to the Committee against Torture* at ¶ 79.

<sup>170</sup> *Periodic Report to the Committee against Torture* at ¶ 197.

<sup>171</sup> *Periodic Report to the Committee against Torture* at ¶ 224-225.

1. The Department of Homeland Security should terminate the use of state and local criminal justice systems, including detainers, to enforce immigration laws. Collaboration between local law enforcement and immigration authorities interferes with non-citizens' ability to receive equal treatment in the criminal justice system.
2. The U.S. Government should end all programs that share data between local law enforcement and immigration, including but not limited to Secure Communities, given the well-documented problem of racial profiling by local law enforcement and the increased risk of deportation for non-citizens that encounter the criminal justice system.
3. The U.S. Government should end disproportionate double punishment by changing the definition of "conviction" under immigration law to comport with the definition of conviction under state law.
4. The U.S. Government should expand the definition of "torture" to ensure that U.S. interpretation is consistent with the Convention against Torture and also conforms with international human rights standards.

### **Basis of the Recommendations:**

Immigrants in detention face major violations including: (1) racial profiling; (2) prolonged detention because of ICE detainers; (3) lack of access to rehabilitative or diversion programs; and (4) deportation as a result of the narrow definition of "torture" under United States law.

Law enforcement officials use racial profiling to target noncitizens that appear or sound foreign,<sup>172</sup> a practice which has disproportionately affected Latinos as well as other immigrants of color and also has a chilling effect on crime reporting within immigrant communities.<sup>173</sup> A second violation suffered by immigrants is in the use of detainers: a detainer is a request by ICE to local and state enforcement agencies to maintain custody of a person against whom ICE seeks enforcement action.<sup>174</sup> An individual who is subject to an ICE detainer can remain in custody of a local law enforcement agency until he or she is arrested by ICE which, in some cases, amounts to a prolonged period of detention. Thirdly, noncitizens face barriers to participation in therapeutic courts and this puts their physical and mental health at grave risk. Finally, according to the U.S. Government, torture must include a *specific intent* to inflict severe physical or mental pain or suffering<sup>175</sup> and mental pain must include "prolonged mental harm."<sup>176</sup> This limits the reality of what constitutes torture by failing to recognize some instances where an individual may experience mental pain or suffering. In addition, the U.S. Government uses a "more likely than not to be tortured"<sup>177</sup> standard in U.S. non-refoulement procedures. This improperly limits protection against refoulement, or expelling individuals to countries where there are substantial grounds to believe they will be tortured, by not protecting individuals who fear torture by private entities that the government is unable to control.<sup>178</sup>

<sup>172</sup> ACLU, Racial Profiling, 2011, available at <https://www.aclu.org/racial-justice/racial-profiling>

<sup>173</sup> American Immigration Council, Immigration Impact, Local Immigration Enforcement Harms Community Policing and Public Safety, September 13, 2013, available at <http://immigrationimpact.com/2013/09/13/local-immigration-enforcement-harms-community-policing-and-public-safety/>

<sup>174</sup> See 8 C.F.R. 287.7(a)-(e).

<sup>175</sup> SEN. EXEC. RPT. 101-30, Resolution of Advice and Consent to Ratification, (1990) [hereinafter "Sen. Resolution"].

<sup>176</sup> Sen. Resolution. (1) (a) That with reference to article 1, the United States understands that, in order to constitute torture, an act must be specifically intended to inflict severe physical or mental pain or suffering and that mental pain or suffering refers to prolonged mental harm caused by or resulting from (1) the intentional infliction or threatened infliction of severe physical pain or suffering; (2) the administration or application, or threatened administration or application, of mind altering substances or other procedures calculated to disrupt profoundly the senses or the personality; (3) the threat of imminent death; or (4) the threat that another person will imminently be subjected to death, severe physical pain or suffering, or the administration or application of mind altering substances or other procedures calculated to disrupt profoundly the senses or personality.

<sup>177</sup> See 8 CFR 208.17

<sup>178</sup> See *Zheng v. Ashcroft*, 332 F.3d 1186 (9<sup>th</sup> circ. 2003); *Ochao v. Gonzales*, 406 F.3d 1166 (9<sup>th</sup> circ. 2005); *Perez v. Loy*, 356 F. Supp.2d 172 (D. Conn. 2005).

**CAT Articles Implicated:** 1, 2, 3, 14

**Correlation to U.S. Government Report:**

In its prior recommendations, the Committee advocated that the U.S. Government enact a federal crime of torture in accordance with Article 1 of the Convention, including a more expansive reading of “mental harm.”<sup>179</sup> However, the U.S. Government did not address its restrictive definition of torture or allegations that law enforcement personnel act with impunity and commit torture and other degrading acts. In response to the Committee’s concerns about the failure of the U.S. Government to protect detainees from being returned to a State where there are substantial grounds to believe they would be in danger of being subjected to torture, the U.S. Government stated that CAT has limited applications and that the test for non-refoulement is the “more likely than not” rather than the “real risk” of torture.<sup>180</sup>

**Report Informing this Section:**

The Immigrant Defense Project (IDP), *Human Rights Violations Against Immigrants in Criminal Custody*

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## **Violations of Reproductive Rights in Immigration Detention**

Women in immigration detention are subjected to cruel and inhumane practices such as shackling during pregnancy and have been routinely denied access to medically necessary reproductive health care due to lack of enforcement of federal standards for medical care in immigration detention facilities.<sup>181</sup>

**Suggested Recommendations:**

1. The U.S. Government should promote humane alternatives to immigration detention, especially for women and children, developed in consultation with immigrant stakeholder communities.
2. The U.S. Government should enact legally binding regulations modeled on the 2011 Performance-Based National Detention Standards to apply to all immigration detention facilities contracted through the Department of Homeland Security, and terminate contracts with non-compliant detention facilities.
3. The U.S. Government should create an independent monitoring body to oversee U.S. Immigration and Customs Enforcement detention facility compliance with the 2011 Performance-Based National Detention Standards.
4. The U.S. Government should repeal the Aderholt Amendment to ensure access to abortion for immigrant women in detention whose health may be at risk from continuation of the pregnancy.

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<sup>179</sup> Convention Against Torture, Conclusions and recommendations of the Committee against Torture, 2006, available at <http://www.ushrnetwork.org/sites/ushrnetwork.org/files/catrecommendations2006.pdf>

<sup>180</sup> U.S. Response to Specific Recommendation Identified by the Committee Against Torture, 2006, available at [http://www.ushrnetwork.org/sites/ushrnetwork.org/files/us\\_response\\_to\\_cat\\_conclusions\\_and\\_observations\\_2006.pdf](http://www.ushrnetwork.org/sites/ushrnetwork.org/files/us_response_to_cat_conclusions_and_observations_2006.pdf)

<sup>181</sup> See HUMAN RIGHTS WATCH, *Detained and Dismissed: Women’s Struggles to Obtain Health Care in United States Immigration Detention*, 11 (2009), [http://www.hrw.org/sites/default/files/reports/wrd0309web\\_1.pdf](http://www.hrw.org/sites/default/files/reports/wrd0309web_1.pdf) [hereinafter HUMAN RIGHTS WATCH, *Detained and Dismissed*]; AMERICAN CIVIL LIBERTIES UNION (ACLU), *Written Statement Submitted to the House Judiciary Subcommittee on Immigration Policy and Enforcement for a Hearing on “Holiday on ICE: The U.S. Department of Homeland Security’s New Immigration Detention Standards,”* 25-26 (Mar. 28, 2012), available at [https://www.aclu.org/files/assets/aclu\\_detention\\_standards\\_hearing\\_statement\\_final\\_2.pdf](https://www.aclu.org/files/assets/aclu_detention_standards_hearing_statement_final_2.pdf) [hereinafter ACLU, *Written Statement Submitted to the House Judiciary*].

## Basis of the Recommendations:

Immigrant women account for at least 10% of all immigrants in civil detention.<sup>182</sup> A 2009 report by U.S. Immigration and Customs Enforcement (ICE) revealed that women and their children were often detained in prison-like facilities that create inappropriate conditions for women and families.

Immigration detainees are routinely denied adequate medical treatment.<sup>183</sup> Shortages of qualified personnel, lack of funding, delays in care, and neglect are commonplace.<sup>184</sup> Women in immigration detention face “delays in getting requested medical attention, compromised doctor-patient relationships, unnecessary use of restraints and strip searches, interruptions in care, [and] unwarranted denials of testing and treatment.”<sup>185</sup> While federal prisons and Immigration and Customs Enforcement (ICE) purportedly do not permit “shackling of pregnant inmates during the birthing process,” pregnant women are often placed on “detainer,” which puts them in the custody of state and local authorities.<sup>186</sup> State laws vary regarding shackling of pregnant women, and only a few specifically prohibit it.<sup>187</sup>

While ICE policy dictates that “absent extraordinary circumstances” pregnant or nursing immigrants should not be detained,<sup>188</sup> reports reveal that since 2012, 559 pregnant women have been detained in just six of ICE’s 250 detention facilities.<sup>189</sup> Although reports of shackling pregnant women in immigration detention have decreased in recent years, incidents continue as a result of barriers to enforcing ICE issued “Performance-Based National Detention Standards” and the absence of laws banning shackling of pregnant women in 32 states.<sup>190</sup>

Given the low economic status and health insurance coverage of many immigrant detainees, and the high cost of an abortion, a federal law prohibiting funding to cover abortions for immigrant women in detention, even when a woman’s health is at risk,<sup>191</sup> effectively bars their access to abortion. Moreover, while ICE must continue to escort women who arrange and pay for an abortion outside

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<sup>182</sup> HUMAN RIGHTS WATCH, *Detained and Dismissed*; Michelle Brane, *Written Testimony before Committee on the Judiciary: Subcommittee on Immigration Policy and Enforcement* (Mar. 26, 2012), available at <http://www.aila.org/content/fileviewer.aspx?docid=39089&linkid=244976>.

<sup>183</sup> See, e.g., *Cesar v. Achim*, 542 F. Supp. 2d 897, 907 (E.D. Wisc. 2008); *Dahlan v. Dept. of Homeland Sec.*, 215 Fed. Appx. 97 (3d Cir. 2007).

<sup>184</sup> *Id.*

<sup>185</sup> HUMAN RIGHTS WATCH, *Detained and Dismissed*.

<sup>186</sup> *State Birth-Shackling Laws Cause Controversy*, IMMIGRATION DIRECT (Oct. 10, 2012), <http://www.immigrationdirect.com/immigration-news/immigration/state-birth-shackling-laws-cause-controversy/>.

<sup>187</sup> New America Media, *Nationwide, states move to ban Shackling*, available at <http://newamericamedia.org/2012/02/nationwide-states-move-to-ban-shackling.php>.

<sup>188</sup> JOHN MORTON, ASSISTANT DIRECTOR, U.S. DEP’T OF HOMELAND SEC., IMMIGRATION AND CUSTOMS ENFORCEMENT, *Memorandum for All ICE Employees: Civil Immigration Enforcement: Priorities for the Apprehension, Detention, and Removal of Aliens* (June 30, 2010), available at <http://www.ice.gov/doclib/news/releases/2010/civil-enforcement-priorities.pdf>.

<sup>189</sup> Esther Yu-His Lee, *Immigration Officials Detained Hundreds of Pregnant Women Despite Policy Change*, THINKPROGRESS, July 28, 2014, <http://thinkprogress.org/immigration/2014/07/28/3464729/ice-559-pregnant-detainees/>.

<sup>190</sup> See, e.g., UNIV. OF ARIZONA, *Unseen Prisoners: A Report on Women in Immigration Detention Facilities in Arizona*, 21 (2009), available at [http://www.law.arizona.edu/depts/bacon\\_program/pdf/Unseen\\_Prisoners.pdf](http://www.law.arizona.edu/depts/bacon_program/pdf/Unseen_Prisoners.pdf). In 2008, an immigrant woman was detained by local police enforcement in Maricopa County, Arizona, on immigration-related charges and shackled during labor under a 72-hour “detainer” protocol that allows ICE 72 hours to investigate the detainee’s immigration status before transferring them to an ICE-contracted facility. Arizona is one of 32 states that has not enacted anti-shackling legislation and provides a loophole for police enforcement to shackle pregnant immigrant women. See also Cristina Costantini, *It’s Still Legal to Shackle Women During Childbirth in America*, FUSION, Oct. 14, 2013, <http://fusion.net/justice/story/legal-shackle-women-childbirth-immigration-detention-11308>; Joanne Lin, *End Near for Shackling of Pregnant Women*, ACLU (Jan. 21, 2014), available at <https://www.aclu.org/blog/immigrants-rights-reproductive-freedom/end-near-shackling-pregnant-women>.

<sup>191</sup> Under a provision called the Aderholt Amendment, an amendment to the Department of Homeland Security Appropriations Act, federal funds may not be used to pay for a detained woman’s abortion except in cases of rape, incest, and life endangerment (the latter is defined narrowly to exclude a health exception). U.S. HOUSE OF REPRESENTATIVES COMM. ON APPROPRIATIONS, *Appropriations Committee Approves Fiscal Year 2014 Homeland Security Appropriations Bill* (May 22, 2013), available at <http://appropriations.house.gov/news/documentsingle.aspx?DocumentID=334987>; H.R. 2217, 113<sup>th</sup> Congress, 1st Session, § 563-65 U.S. Senate (June 13, 2013), available at <http://www.gpo.gov/fdsys/pkg/BILLS-113hr2217rfs2/pdf/BILLS-113hr2217rfs2.pdf> [hereinafter H.R. 2217].

of the detention facility, the law includes language that makes it possible for ICE employees to refuse to do so.

**CAT Articles Implicated:** 12, 13, 14, 16

**Correlation to U.S. Government Report:**

The issue of reproductive rights and other health care violations of immigrant women in detention is not addressed in the Government Report.

**Report Informing this Section:**

Center for Reproductive Rights, The National Latina Institute for Reproductive Health, and Women Enabled International: *Violations of Reproductive Rights amounting to Torture and Ill Treatment*

Midwest Coalition for Human Rights and the Legal Clinic of the University of Iowa College of Law: *Midwest Regional Report on Torture and Cruel, Inhuman and Degrading Treatment*

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## **Violence against Women**

Women continue to suffer from various forms of violence perpetrated against them despite the Violence against Women Act.

**Suggested Recommendations:**

1. The U.S. Government should enact the International Violence Against Women Act.
2. The U.S. Government should ratify the Convention on the Elimination of All Forms of Discrimination against Women.
3. The U.S. Government should ratify the Convention on the Rights of the Child.
4. The U.S. Government should provide free and adequate services to survivors of gender abuse and their children so that they may live independent and healthy lives.
5. The U.S. Government should hold accountable those who engage in gender violence and those who provide a culture where such violence is permitted.
6. The U.S. Government should undertake extensive and ongoing public education and services so that the root sources of gender abuse may be eliminated.

**Basis of the Recommendations:**

While the Violence Against Women Act (VAWA) has expanded the choices available to abused women seeking safety, there are areas that are unaddressed. For example, culturally specific populations suffer from inadequate resources as well as inappropriate state responses.<sup>192</sup> These populations include African American women, immigrant survivors, and LGBTQ survivors. While VAWA has provided some funds to improve culturally diverse access to domestic violence resources, those resources are not comprehensive.

Two particularly profound but under acknowledged problems experienced by abused women include the following: first, due to state action, abused mothers frequently lose custody of their children to

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<sup>192</sup> The many serious barriers faced by abused women of color are addressed in the shadow reports submitted for the CERD review, as well as in the subsequent observations.

the abusive parent which places the children at risk.<sup>193</sup> Even when unsupervised access does not end in death, the results can be the ongoing terrorization of mother and children. Domestic violence lawyers and advocates report that the greatest legal need for battered women is legal representation in custody suits. A second problem is the issue of women raped within marriage.<sup>194</sup> Despite the extreme harm and risk posed by marital rape, women's allegations are often met with extreme skepticism or devalued and trivialized.

Other issues associated with gender violence include the following: (1) women on college campuses are sexually violated at a rate higher than the general population; (2) rape and other sexual coercion and harassment of male and female soldiers by other military personnel occur at a rate higher than the general population; (3) it is estimated that between 200,000 and 300,000 U.S. children are forced into prostitution each year; (4) prison sexual assault continues to be a serious problem despite the passage of the Prison Rape Elimination Act in 2003;<sup>195</sup> (5) incarcerated individuals who experience mental illness, transgender individuals and juveniles are particularly vulnerable to sexual assault;<sup>196</sup> and (6) violence against transgender women is facilitated by the states' failure to enact and enforce laws that would protect transgendered individuals.

### **CAT Articles Implicated: 16**

### **Correlation to U.S. Government Report:**

While the Government Report addresses issues of violence and abuse of women,<sup>197</sup> the issues addressed here remain of concern.

### **Report Informing this Section:**

Associate Professor Margaret Drew, University of Massachusetts School of Law. Contributors: Darakshan Raja, Washington Peace Center and Falling Walls Initiative; Prof. Joan Meier, Domestic Violence Legal Empowerment and Appellate Project; Attorney Lynn Hecht Schafran. National Judicial Education Program, Legal Momentum: *Shadow Report on Intimate Partner Abuse and Sexual Assault in the United States*

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## **Police Violence against Black Women**

Black women continue to suffer from rape, sexual assault and sexual misconduct at the hands of the police at higher rates than white women.

### **Suggested Recommendations:**

1. The Committee against Torture should continue the work of the special rapporteurs on Torture and other regional jurisprudence to acknowledge that police rape, and the rape of Black women, is torture
2. The U.S. Government should open a federal investigation into the Oklahoma cases involving Daniel Holtzclaw, similar to other civil rights investigations undertaken by the Department of Justice

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<sup>193</sup> Same sex partners experience abuse in much the same ways and at the same rates as do survivors in different sex relationships. The reported custody decisions for abused parents involve women. Now that same sex adoptions and same sex marriage are sanctioned or are soon to be sanctioned in many states, data may begin to appear on same sex survivor child custody cases. In terms of numbers, abuse against an intimate partner is overwhelmingly by a man against a woman.

<sup>194</sup> Because same sex marriage is a relatively recent state sanctioned union, the data on marital rape does not include different sex marriages.

<sup>195</sup> <http://www.bjs.gov/index.cfm?ty=tp&tid=20>

<sup>196</sup> *Id.*

<sup>197</sup> *Periodic Report to the Committee against Torture* at ¶ 230-235.

3. The U.S. Government should amend the Prison Rape Elimination Act to say Prisoners instead of Prison and redefine “in custody” to include the moment of seizure by a police officer or relevant public officials.

### **Basis of the Recommendations:**

According to a survey by the U.S. Department of Justice, 60 to 80 percent of rapes go unreported.<sup>198</sup> When victims do report, those incidents are systematically undercounted by at least one million cases by police departments.<sup>199</sup>

Sexual misconduct by police officers, or public officials, is the second most prevalent form of police crimes as noted by a 2010 annual report conducted by the CATO Institute.<sup>200</sup> The number is likely higher as victims tend to underreport in general, police officials tend to use a limited definition to assess incidents of rape,<sup>201</sup> officers tend to profile victims whose credibility will likely be doubted, and victims of police crimes are reluctant to report the crime to their perpetrators, the police.

According to the Women’s Prison Association (WPA), nationwide, the number of female arrests has increased by over 800 percent from 1977-2007 while the male prison population grew by 416 percent during this same time period.<sup>202</sup> WPA cites that 93 out of every 100,000 white women were incarcerated in 2008 while the number for Black women is 349 out of every 100,000; these rates are disproportionate to the Black population in the United States.

Despite the fact that 22 percent of Black women and 50 percent of racially mixed Black women experience rape in higher amounts when compared to white women,<sup>203</sup> the long-standing legacy and continued devaluing of Black women as legitimate victims of rape and assault generally compound Black women’s continued victimization and likelihood of getting a conviction against a police officer.

While there is a dearth in resources allocated for the collection of data and consequently a lack of information and statistical data specific to the incidences of rape and sexual assault on Black women, the number of sexual assaults and those that go unreported are considerably higher in Black communities than in other communities.

**CAT Articles Implicated:** 1, 2, 4, 10, 12, 13, 14

### **Correlation to U.S. Government Report:**

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<sup>198</sup> Fenton, Justin. “FBI Seeks to update definition of Rape.” 19 September 2011, available at [http://articles.baltimoresun.com/2011-09-29/news/bs-md-ci-fbi-rape-definition-20110929\\_1\\_sexual-assaults-definition-fbi-plans](http://articles.baltimoresun.com/2011-09-29/news/bs-md-ci-fbi-rape-definition-20110929_1_sexual-assaults-definition-fbi-plans). See also the following report from the Department of Justice’s Bureau of Justice Statistics, available at <http://www.bjs.gov/content/pub/pdf/cv11.pdf>; and also similar information from the Rape, Abuse, and Incest National Network (RAINN): <https://www.rainn.org/get-information/statistics/reporting-rates>.

<sup>199</sup> Chemaly, Soraya. “How Did the FBI Miss Over 1 Million Rapes?” *The Nation*. N.p., 27 June 2014. 22 Sept. 2014. <http://www.thenation.com/article/180441/how-did-fbi-miss-over-1-million-rapes>.

<sup>200</sup> This submission is accompanied by an addendum, “Special Report – Invisible Betrayal Police Rapists in America: Criminal Offenders,” which compiles a variety of reports and data on police rapes. This addendum provides statistical insight into the impact of police rape on all women, including Black women.

<sup>201</sup> Note that as of 2012, the FBI’s Criminal Justice Information Services (CJIS) Advisory Policy Board with approval by the U.S. Attorney General Eric Holder has approved a new definition of rape as “the penetration, no matter how slight, of the vagina or anus with anybody part or object, or oral penetration by a sex organ of another person, without the consent of the victim” (pg. 5). This is a change that law enforcement officials note will cause a “big increase” in reported (which is not the same as recorded) cases of rape (pg. 31). For more information, see [http://www.policeforum.org/assets/docs/Critical\\_Issues\\_Series/improving%20the%20police%20response%20to%20sexual%20assault%202012.pdf](http://www.policeforum.org/assets/docs/Critical_Issues_Series/improving%20the%20police%20response%20to%20sexual%20assault%202012.pdf).

<sup>202</sup> See [http://www.wpaonline.org/wpaassets/Quick\\_Facts\\_Women\\_and\\_CJ\\_Sept09.pdf](http://www.wpaonline.org/wpaassets/Quick_Facts_Women_and_CJ_Sept09.pdf)

<sup>203</sup> According to the National Intimate Partner and Sexual Violence Survey, 2010 Summary Report, Centers for Disease Control and Prevention (CDC), in the US, nearly 1 in 5 women have been raped at some time in their lives, including completed forced penetration, attempted forced penetration, or alcohol/drug facilitated completed penetration. Further, 47,220 women reported experiencing rape in 2013. Black women experience rape at a rate of 22 percent higher than white women in New York City, for example, and women who were half Black (or racially mixed with Black) experienced sexual assault at a rate 50 percent higher than white women.

While the Government Report states that various avenues for seeking redress in cases of torture and other violations of constitutional and statutory rights relevant to the Convention are available,<sup>204</sup> and provides illustrative cases of victims of sexual violence obtaining redress,<sup>205</sup> it is not clear whether police sexual violence prior to being taken into custody counts as “official torture.” While the Government Report states that the rate of intimate partner violence and the estimated rate of female rape or sexual violence have both declined,<sup>206</sup> police rape is not acknowledged as torture.

#### **Report Informing this Section:**

Black Women’s Blueprint, Yolande M. S. Tomlinson, Ph.D. with a special report compiled by Women’s All Points Bulletin: *Invisible Betrayal: Police Violence and the Rapes of Black Women in the United States*

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## **Sexual Violence in the United States Military**

Despite the fact that sexual violence and rape in the United States military is perpetrated at alarming rates, the U.S. military justice system fails to impartially and meaningfully investigate, prosecute, and punish such violence; bars survivors from seeking redress in federal courts when the military violates their rights; and often denies them disability compensation after they are discharged for mental health conditions that arise from sexual violence.

#### **Suggested Recommendations:**

1. The U.S. Government should undertake all necessary means to prevent sexual violence and to ensure a safe working environment.
2. The U.S. Government should adopt the same evidentiary standard for disability claims arising from Post-Traumatic Stress Disorder based on military sexual trauma as for other stressors.
3. The U.S. Government should ensure impartial and effective investigation, prosecution and redress of sexual violence allegations by removing the decision whether to investigate, prosecute and punish alleged perpetrators from the survivors’ or perpetrators’ chain of command.
4. The U.S. Government should provide access to U.S. federal courts so that survivors of sexual assault may seek effective remedies when the military violates their rights.

#### **Basis of the Recommendations:**

Sexual violence and rape in the United States military is perpetrated at alarming rates: according to the 2013 Annual Report on Sexual Assault in the Military, the U.S. Department of Defense (DoD) stated that there were 5,061 reports of sexual assault in the military between 2013 and 2014, a nearly fifty percent increase across all services over the same period a year earlier.<sup>207</sup> The actual number of sexual assaults in the military is impossible to determine, however, as most incidents are never reported.<sup>208</sup> The number of men and women who experience sexual violence in the military is

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<sup>204</sup> *Periodic Report to the Committee against Torture* at ¶ 147.

<sup>205</sup> *Id.* at ¶ 182-183.

<sup>206</sup> *Id.* at ¶ 230-241.

<sup>207</sup> Department of Defense, Sapro, Fiscal Year 2013 Annual Report on Sexual Assault in the Military 2 (2014), *available at* [http://sapr.mil/public/docs/reports/FY13\\_DoD\\_SAPRO\\_Annual\\_Report\\_on\\_Sexual\\_Assault.pdf](http://sapr.mil/public/docs/reports/FY13_DoD_SAPRO_Annual_Report_on_Sexual_Assault.pdf).

<sup>208</sup> *See* UN HUMAN RIGHTS COUNCIL, REPORT OF THE SPECIAL RAPPORTEUR ON VIOLENCE AGAINST WOMEN, ITS CAUSES AND CONSEQUENCES, Ms. RASHIDA MANJOO, Addendum, Mission to the United States of America (June 1, 2011), UN Doc. A/HRC/17/26/Add.5, ¶ 24.



disproportionate relative to the civilian population, and female service members are disproportionately targeted compared to males.<sup>209</sup>

Despite this, the DoD lacks a comprehensive framework to oversee compliance and ensure effective implementation of its prevention strategies against military sexual assault.<sup>210</sup> In its failure to adequately prevent and address incidents of sexual violence in the U.S. military, the DoD fosters a culture of impunity.<sup>211</sup>

The military justice system is an exceptionally closed system that investigates, prosecutes and punishes any criminal allegations by and against its members. When a service member reports an incident of sexual violence through the unrestricted reporting system, the commander in the accused's chain of command has broad power to determine whether to investigate and prosecute claims, thus limiting survivors' ability to achieve impartial and meaningful redress.<sup>212</sup> The military judicial system prosecutes only eight percent of those alleged to have engaged in rape or sexual assault, as compared to the civilian system, which prosecutes forty percent of those alleged to have committed these crimes.<sup>213</sup> Additionally, some survivors do not report sexual violence to their commanders because they reasonably fear that they will face retaliation.<sup>214</sup>

In addition, survivors do not have access to federal courts to seek redress, a right afforded to all other civilian citizens<sup>215</sup> and protected under CAT,<sup>216</sup> because they are barred from bringing civil rights or personal injury claims against the military or military officials in civilian federal courts. Therefore, when they are unable to achieve redress through the military system, they find themselves once again denied a meaningful remedy.

The U.S. then often discriminates against these survivors another time, by denying them disability compensation after they are discharged for mental health conditions that arise from the sexual violence.<sup>217</sup>

**CAT Articles Implicated:** 1, 2, 12, 13, 14, 16

### **Correlation to U.S. Government Report:**

The U.S. Government addressed the issue of the implementation and effectiveness of mechanisms for victims of acts of torture, including sexual violence, to obtain redress, compensation, and

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<sup>209</sup> See DEPARTMENT OF DEFENSE, SAPRO, FISCAL YEAR 2013 ANNUAL REPORT ON SEXUAL ASSAULT IN THE MILITARY 46 (2014), available at [http://sapr.mil/public/docs/reports/FY13\\_DoD\\_SAPRO\\_Annual\\_Report\\_on\\_Sexual\\_Assault.pdf](http://sapr.mil/public/docs/reports/FY13_DoD_SAPRO_Annual_Report_on_Sexual_Assault.pdf); DEFENSE MANPOWER DATA CENTER, 2012 WORKPLACE AND GENDER RELATIONS SURVEY OF ACTIVE DUTY MEMBERS: STATISTICAL METHODOLOGY REPORT, 2 (2012); Joachim Hagopian, *Sexual Assault against Women in the U.S. Armed Forces*, GLOBAL RESEARCH (Mar. 23, 2014), available at <http://www.globalresearch.ca/sexual-assault-against-women-in-the-us-armed-forces/5374784>.

<sup>210</sup> See UNITED STATES GOVERNMENT ACCOUNTABILITY OFFICE, *Testimony Before the Subcommittee on National Security and Foreign Affairs, Committee on Oversight and Government Reform, House of Representatives: Military Personnel: Preliminary Observations on DoD's and the Coast Guard's Sexual Assault Prevention and Response Programs*, (2008), available at <http://www.gao.gov/assets/130/120948.html>.

<sup>211</sup> See *id.*

<sup>212</sup> 32 C.F.R. §635.28.

<sup>213</sup> See American Association of University Women, *STOP Act Aims to End Sexual Assault in the Military*, April 24, 2013, available at <http://www.aauw.org/article/stop-act-aims-to-end-sexual-assault-in-the-military/>; Bill Briggs, *Civil Rights Commission urged to order audit of military sex-assault cases*, NBNEWS.com, Jan. 11, 2013, available at [http://usnews.nbcnews.com/\\_news/2013/01/11/16469177-civil-rights-commission-urged-to-order-audit-of-military-sex-assault-cases?lite](http://usnews.nbcnews.com/_news/2013/01/11/16469177-civil-rights-commission-urged-to-order-audit-of-military-sex-assault-cases?lite).

<sup>214</sup> For example, after U.S. Marine Stephanie Schroeder reported to her command that she had been raped, her command accused her of lying, punished her for "Conduct Unbecoming," had to forfeit her pay and allowance, was put on restriction for two weeks, could not be promoted, and experienced verbal and sexual harassment. See First Amen. Compl., *Cioca v. Rumsfeld*, 11-CV-00151 (E.D. Va. Sep. 6, 2011), ¶¶ 164-65, available at <http://www.scribd.com/doc/109560203/First-Amended-Complaint-Cioca-v-Rumsfeld>. When another fellow Marine later assaulted her, she did not report the incident for fear that she would again face retaliation. *Id.* at ¶¶ 172-73.

<sup>215</sup> *Chappell v. Wallace*, 462 U.S. 296, 301 (1983).

<sup>216</sup> CAT, Art. 14.

<sup>217</sup> See American Civil Liberties Union et al., *Battle For Benefits: VA Discrimination Against Survivors of Military Sexual Trauma* (2013), available at <https://www.aclu.org/womens-rights/battle-benefits-va-discrimination-against-survivors-military-sexual-trauma>.

rehabilitation<sup>218</sup> by noting that there are multiple avenues of redress available to victims through criminal prosecution and civil remedies.<sup>219</sup> However, the fact that these remedies are out of reach for military service members, who are jurisdictionally barred from pursuing claims in federal or state court, was not addressed.<sup>220</sup> The U.S. Government also addressed steps taken to prevent and punish violence and abuse of women by affirming its commitment to addressing violence against women and highlighting the third reauthorization of the Violence Against Women Act of 1994 (VAWA)<sup>221</sup> and reporting a decrease of incidents of sexual assault, rape, and intimate partner violence from 1994 to 2010.<sup>222</sup> However, the U.S. Government did not provide disaggregation by population group in order to know what the change in rates of sexual violence has been for members of the U.S. military nor did it acknowledge that the reauthorization of VAWA fails to address military personnel as a population particularly vulnerable to acts of sexual violence.

### **Report Informing this Section:**

American Civil Liberties Union (ACLU), Avon Global Center for Women and Justice at Cornell Law School, Equality Now, Global Gender Justice Clinic at Cornell Law School, Military Rape Crisis Center (MRCC), Service Women’s Action Network (SWAN): *Sexual Violence in the U.S. Military*

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## **Vulnerability of LGBTI Individuals to Sexual and Emotional Abuse in Institutionalized Settings**

Lesbian, gay, bisexual, transgender, and intersex (LGBTI) individuals face particular vulnerabilities in institutionalized settings, partly as a result of the lack of implementation of laws that are aimed at protecting them.

### **Suggested Recommendations:**

1. Placing a detainee in a housing facility that is based on gender identity should be the primary goal. The Department of Homeland Security (DHS) should also, however, consistent with public safety, employ detainees in alternatives to detention much more than it currently does. While the Department has done so in the past, there appears to be no consistent policy as it pertains to transgender detainees.
2. DHS should limit the use of administrative segregation to situations where the detainee’s safety is in jeopardy and there is no available alternative to detention.
3. The U.S. Government must fully implement the Prison Rape Elimination Act (PREA). In the immigration context, this requires concerted effort by DHS to implement its regulations and ensure that an LGBTI individual’s assessment with respect to his or her safety, and the need for housing in facilities consistent with gender identity, is a paramount consideration. Until full implementation occurs, DHS should continue to find ways to employ alternatives to detention for more detainees than those who currently qualify. Other federal agencies that have

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<sup>218</sup> See Committee against Torture, List of Issues Prior to the Submission of the Fifth Periodic Report (2009), UN Doc. CAT/C/USA/Q/5 (January 20, 2010) [hereinafter *List of Issues*], at ¶ 27(a).

<sup>219</sup> *Periodic Report to the Committee against Torture* at ¶ 147.

<sup>220</sup> *Id.* at ¶¶ 147-148. The U.S. report notes that any claims against the DoD (i.e., the military) are resolved exclusively through Military Departments. Furthermore, although the Committee requested disaggregated statistical data on the number of requests for redress made and granted to victims of torture, including sexual violence, the U.S. report does not provide such data nor does it address the efficacy of these avenues for redress for military survivors of sexual violence. The U.S. only mentions three examples in which detainees received proper redress for sexual violence by state actors.

<sup>221</sup> *Id.* at ¶¶ 231, 239-240.

<sup>222</sup> *Id.* at ¶¶ 237.

confinement facilities under their authority, such as the Departments of Justice and Health and Human Services, should also implement their regulations during the next reporting period.

4. Congress should remove the deadline under federal law which requires that individuals seeking asylum apply within one year of last entry into the United States. Many individuals are unaware of this deadline, and the consequences are particularly acute for LGBTI individuals who often do not know that persecution for being LGBTI can serve as a sufficient basis to apply for asylum.
5. The U.S. Government should ensure that those who play a role in the asylum process, including U.S. government officials, possess cultural competency and understanding with respect to issues faced by LGBTI individuals and reasons why they might be seeking asylum on this basis.

### **Basis of the Recommendations:**

Lesbian, gay, bisexual, transgender, and intersex (LGBTI) individuals are particularly vulnerable to abuse when they enter into institutionalized settings. As a result of a Presidential Memorandum issued by President Obama in May 2012, agencies with federal confinement facilities that are not subject to DOJ's final rule,<sup>223</sup> including the Department of Homeland Security (DHS), were directed to promulgate agency regulations with respect to the Prison Rape Elimination Act (PREA). In the immigration context, this requires concerted effort by DHS to implement PREA. DHS's regulations have not worked to protect LGBTI detainees<sup>224</sup> and in fact potentially provide less protection to LGBTI detainees than the DOJ's regulations.<sup>225</sup>

Instead, LGBTI detainees have been placed in administrative segregation for their "own safety." Even when administrative segregation is used by DHS as a non-punitive measure,<sup>226</sup> studies have shown that it can have lasting emotional and psychological harm<sup>227</sup> on a detainee. This therefore presents an untenable dilemma for many transgender detainees: speak out about a reasonable fear to one's safety and risk being segregated, which, if placed there for too long, can potentially cause lasting emotional and psychological harm.

An additional issue faced by LGBTI detainees is the slow pace of policy changes that will help to prevent, and thereby alleviate, the need for redress in the aftermath of a sexual assault, and the lack of education of the unique issues that LGBTI detainees face.

### **CAT Articles Implicated: 16**

#### **Correlation to U.S. Government Report:**

In its Government Report, the U.S. Government claims that the Department of Justice strengthened many of its regulations under PREA that were issued as a final rule and that this includes greater

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<sup>223</sup> In its summary of the final rule, DOJ recognized "the particular vulnerability of inmates who are LGBTI or whose appearance or manner does not conform to traditional gender expectations." 28 C.F.R. § 115 (2012).

<sup>224</sup> DHS's regulations require detention centers to "consider the detainee's gender self-identification as gay, lesbian, bisexual, transgender, intersex, or gender non-conforming." 6 C.F.R. § 115.42(2014) (emphasis added).

<sup>225</sup> The DOJ's regulations state that "A transgender or intersex inmate's own views with respect to his or her own safety shall be given serious consideration." 28 C.F.R. § 115.42 (emphasis added).

<sup>226</sup> Review of the Use of Segregation for ICE Detainees (September 4, 2013) available at [http://www.ice.gov/doclib/detention-reform/pdf/segregation\\_directive.pdf](http://www.ice.gov/doclib/detention-reform/pdf/segregation_directive.pdf) (last visited Sept. 19, 2014).

<sup>227</sup> See generally Human Rights Watch, *Ill-Equipped: U.S. Prisons and Offenders with Mental Illness*, available at [http://www.hrw.org/reports/2003/usa1003/18.htm#\\_ftn516](http://www.hrw.org/reports/2003/usa1003/18.htm#_ftn516) (last visited Sept. 19, 2014), David Kaiser and Lovisa Stannow, *The Shame of Our Prisons: New Evidence*, *The New York Review of Books* (Oct. 24, 2013), available at <http://www.nybooks.com/articles/archives/2013/oct/24/shame-our-prisons-new-evidence/> (last visited Sept. 19, 2014), and Peter Scharff Smith, *The Effects of Solitary Confinement on Prison Inmates: A Brief History and Review of the Literature*, *Crime and Justice* Vol. 34 No. 1, 441, 455 (2006), available at <http://www.jstor.org/stable/10.1086/500626> (last visited Sept. 19, 2014). ("While it is often very difficult to compare prison populations, prison conditions (segregation is not necessarily solitary confinement), and health issues across national borders, it is reasonable to conclude that significantly higher rates of psychiatric morbidity should be expected among prisoners in disciplinary or administrative segregation/isolation compared with the general prison population.")

protections for lesbian, gay, bisexual, transgender, intersex, and gender non-conforming inmates.<sup>228</sup> Also according to the Government Report, “DHS Office for Civil Rights and Civil Liberties (CRCL) has investigated a number of complaints alleging disparate treatment of individuals based on sexual orientation while in DHS custody and is working collaboratively with ICE to improve conditions for lesbian, gay, bisexual, and transgender detainees.”<sup>229</sup>

#### **Report Informing this Section:**

The Human Rights Campaign (HRC): *Report on the United States’ Compliance with the Convention against Torture*

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## **Law Enforcement**

### **Brutality and Use of Excessive Force by Law Enforcement Officials and Ill-Treatment of Vulnerable Groups**

Transgender women are harassed, assaulted and unlawfully arrested by police officers based on their gender identity.

#### **Suggested Recommendations:**

1. States should have a policy in place that disallows searching in order to determine a persons’ gender, and gender should be self-determined by the individual being stopped, searched or arrested, not by their identification or genitals.
2. States should have a system in place that is not affiliated with law enforcement that monitors reports of police brutality against transgender women. Accountability to an outside force is needed.
3. States should not permit solo police officers to transport transgender arrestees to booking. It should be required that another officer or an advocate be present in the car.
4. States should provide comprehensive training to law enforcement officers on transgender issues, including information on why an individual’s gender presentation and gender marker on their identification might not match, sensitivity to transgender issues and awareness that breaking policies in place will be taken seriously.

#### **Basis of the Recommendations:**

Transgender women<sup>230</sup> who experience violence, including by law enforcement officers, have very few legal protections. Some examples of the violence that transgender women face include unlawful arrest, sexual and physical assault, degradation, forced nudity, public humiliation and harassment. While one of the most prevalent reasons transgender women, particularly transgender women of color, are unlawfully stopped by police is based on the assumption that they are sex workers,<sup>231</sup> police also stop them for supposedly violating vague laws that are infrequently enforced against non-transgender people.

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<sup>228</sup> *Periodic Report to the Committee against Torture* at ¶ 170.

<sup>229</sup> *Periodic Report to the Committee against Torture* at ¶ 261.

<sup>230</sup> Transgender refers to people whose gender identity does not correlate with the sex assigned to them at birth. This can be expressed through clothing, gender affirming medical treatment, a change of name, or other alterations, visual and non-visual, that a person chooses in order to express their gender identity.

<sup>231</sup> Sex worker refers to a person who exchanges sexual acts for money, gifts or other resources.

There are few laws or regulations in place providing protections for transgender women, especially transgender women of color, despite studies showing that they are at a higher risk of violence from police.

**CAT Articles Implicated:** 16

**Correlation to U.S. Government Report:**

The Government Report mentions two Acts that allow the Attorney General to bring civil actions to eliminate patterns or practices of law enforcement misconduct. The Report also states that the Department of Justice has the authority to initiate criminal investigations of excessive force used by law enforcement and that the law prohibiting such excessive force protects vulnerable populations as it would protect any individual. The Government Report also mentions increased training.<sup>232</sup> There has been no known action, however, by the Department of Justice on this problem.

**Report Informing this Section:**

The Transformative Justice Law Project of Illinois (TJLP): *Police in the United States Harassing, Assaulting and Unlawfully Arresting Transgender Women Based On Their Gender Identity*

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**Excessive Force and Police Brutality against Communities of Color and Immigrant Communities**

The killing of Israel “Reefa” Hernandez Llach at the hands of a police officer and the lack of accountability for his killing is an example of the excessive force and police brutality on communities of color and immigrant communities in the United States.

**Suggested Recommendations:**

1. Miami Beach Officer Jorge Mercado should be suspended without pay and prosecuted for the murder of Israel “Reefa” Hernandez Llach.
2. The U.S. Department of Justice should immediately open a federal investigation into the death of Israel “Reefa” Hernandez Llach at the hands of Miami Beach Police Officer Jorge Mercado and open a “policies and practices” investigation into the Miami Beach Police Department. In addition, the Department of Justice should investigate the Miami-Dade Office of State Attorney Katherine Fernandez-Rundle’s role in systematically failing to hold police officers accountable for their crimes.
3. The U.S. Government should enact strict federal regulations on law enforcement’s use of electroshock/TASER devices, including prompt and transparent investigatory and accountability procedures when law enforcement officers are accused of excessive force, given the mounting evidence of their lethal capacity. In particular, these policies should ensure that law enforcement agencies limit their use of electroshock/TASER devices to incidents where they are threatened with deadly force and are only used as an alternative to more lethal means of defense.
4. The U.S. Government, with input from communities of color and others vulnerable to police brutality, should develop national use of force standards that acknowledge and combat the role of implicit bias and overt forms of racial discrimination in policing.

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<sup>232</sup> *Periodic Report to the Committee against Torture* at ¶ 242 and 244.

5. The DOJ should work with local departments, such as the Miami Beach Police Department, to train law enforcement officers on these regulations and guidelines.

### **Basis of the Recommendations:**

Israel “Reefa” Hernandez Llach, an 18 year-old artist and asylee, was killed at the hands of the Miami Beach Police Department by the unwarranted use of an electroshock device in August 2013. Following his killing, his family, friends and witnesses suffered a litany of indignities; additionally, local, state and federal government agencies have failed to provide any accountability for either this or similar incidents. Since 2012, at least eleven additional victims have lost their lives as a result of police electroshock devices in Florida and yet none of these cases have led to a criminal prosecution or a federal investigation into the officers or departments involved.

This incident is part of the disproportionate impact of excessive force and police brutality on communities of color and immigrant communities in the United States. Members of these marginalized groups also face additional obstacles when seeking redress through the U.S. court system. The inability of Israel’s family to obtain justice or redress is yet another demonstration of the pervasiveness of these structural and institutional problems.

**CAT Articles Implicated:** 1, 12, 14, 16

### **Correlation to U.S. Government Report:**

The CAT Committee’s 2006 Concluding Observations included several recommendations relevant to Hernandez’s killing by Miami Beach Police Officer Jorge Mercado’s use of an electroshock device. In paragraph 25, in response to the allegation of impunity for acts of torture or cruel, inhuman or degrading treatment or punishment by officers from the Chicago Police Department, the Committee recommended that the U.S. “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.”<sup>233</sup>

The U.S. Government did not respond to this recommendation in its 2006 response.<sup>234</sup> In paragraph 35, the Committee expressed its ongoing concern about the extensive use of electroshock devices by law enforcement, particularly because of the issues it raises as to compatibility with article 16 of the Convention.<sup>235</sup> It called upon the U.S. Government to review the use of these devices and regulate their use, restricting their use to substitutes for lethal weapons. The U.S. Government did not respond to this recommendation in its 2006 response and more than eight years later they have yet to enact regulations on the use of electroshock devices.<sup>236</sup>

In its List of Issues, the Committee asked the U.S. whether it “reviewed the use of electroshock devices and regulated their use, restricting it to substitution for lethal weapons, as recommended by the Committee in its previous concluding observations (para. 35)” and whether “such devices still

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<sup>233</sup> Committee Against Torture, Consideration of Reports Submitted by States Parties Under Article 19 of the Convention, Conclusions and Recommendations of the Committee against Torture: United States of America, CAT/C/USA/CO/2 (July 25 2006), at para. 25 [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fUSA%2fCO%2f2&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fUSA%2fCO%2f2&Lang=en) (hereinafter “2006 CAT Committee Recommendations”)

<sup>234</sup> Committee Against Torture, Consideration of Reports Submitted by States Parties Under Article 19 of the Convention, Comments by the Government of the United States of America to the conclusions and recommendations of the Committee against Torture, CAT/C/USA/CO/2/Add. 1 (November 6, 2007), at [http://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/USA/CAT\\_C\\_USA\\_CO\\_2\\_Add-1\\_528\\_E.doc](http://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/USA/CAT_C_USA_CO_2_Add-1_528_E.doc) (hereinafter “2006 U.S. Government Response”)

<sup>235</sup> 2006 CAT Committee Recommendations, para. 35

<sup>236</sup> 2006 U.S. Government Response

used to restrain persons in custody?”<sup>237</sup> In response, the U.S. Government cited one instance of enforcing the limitation on the use of electroshock devices and a review being conducted by the Department of Justice’s National Institute of Justice of “instances in which individuals died after law enforcement officers used [Electro-Muscular-Disruption devices] to subdue them, and stated that it was “work[ing] with local law enforcement agencies in their policy development regarding the use of EMD devices.”<sup>238</sup> However, such general statements should be viewed as insufficient by the Committee.

### **Report Informing this Section:**

The Family of Israel “Reefa” Hernandez Llach, Dream Defenders, and Community Justice Project of Florida Legal Services: *Written Statement on the Death of Israel “Reefa” Hernandez Llach due to Miami Beach Law Enforcement’s Use of an Electroshock Weapon and Lack of Accountability*

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## **Police Violence against People with Disabilities**

People with disabilities are particularly vulnerable to police violence.

### **Suggested Recommendations:**

1. The U.S. Government should conduct a national accounting of cases of police violence and police killings that include the disability status of victims.
2. National and state policies should require that police officers wear cameras that document their actions as this has been shown to lead to a sharp decline in police violence.
3. The U.S. Government should conduct increased training for police departments on working with people with disabilities.
4. The U.S. Government should develop independent review boards to monitor police responses to peoples with disabilities, evaluate disability protocols and provide recommendations. People with disabilities should be included in these review boards.
5. The U.S. Government should develop changes in emergency response protocols so that when families call an emergency number for mental health support, the police are not automatically called unless requested.
6. The U.S. Government should increase funding for People of Color Disability organizations.

### **Basis of the Recommendations:**

There is very little data collected on a national level about police because police departments either do not collect or report this data. According to one report (Portland Press Herald/Maine Sunday Telegram investigation), although there is no federal accounting of or reliable national data on police shootings of those with psychiatric disabilities, half of those who suffer from police violence have psychiatric disabilities.<sup>239</sup> Because cities are increasingly criminalizing homelessness through laws that forbid loitering on public streets, panhandling, etc.<sup>240</sup> and because close to 40% of homeless people

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<sup>237</sup> See Committee against Torture, List of Issues Prior to the Submission of the Fifth Periodic Report (2009), UN Doc. CAT/C/USA/Q/5 (January 20, 2010) [hereinafter *List of Issues*], at ¶ 36.

<sup>238</sup> *Periodic Report to the Committee against Torture* at ¶ 203-207.

<sup>239</sup> Kelley Bouchard, “Across Nation, Unsettling Acceptance When Mentally Ill in Crisis are Killed,” *Portland Press Herald* December 12, 2013 found in <http://www.pressherald.com/news/Shoot-Across-nation-a-grim-acceptance-when-mentally-ill-shot-down.html?pagenum=1>

<sup>240</sup> National Law Center on Homelessness and Poverty, *Criminalizing Crisis: The Criminalization of Homelessness in U.S. Cities*, Report. Washington DC (November 2011). 208 pp. available at [www.nlchp.org](http://www.nlchp.org)

have a disability,<sup>241</sup> this trend towards criminalization further increases the likelihood that people with disabilities will have more contact with the police, and thus be more likely subject to police violence. Additionally, there have been no national efforts to document the prevalence of police violence or to develop policies to address the problem.

### **CAT Articles Implicated: 16**

#### **Correlation to U.S. Government Report:**

The U.S. Government does not address the issue of police violence against people with disabilities in its Government Report.

#### **Report Informing this Section:**

Idriss Stelley Foundation, Poor Magazine, and National Black Disability Coalition: *Police Violence Against People with Disabilities*

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## **Chicago Police Department Violence against Chicago's Youth of Color**

The Chicago Police Department disproportionately and systemically practices violence against Chicago's youth of color.

#### **Suggested Recommendations:**

1. Chicago Police Department's ("CPD") treatment of young people of color should be recognized as torture and as cruel, inhuman and degrading treatment (CIDT).
2. The CPD should be required to provide information regarding the steps it will take both to end this treatment and to fully compensate the individuals, families, and communities impacted by this violence.
3. The U.S. Department of Justice should open a pattern and practice investigation of the CPD's treatment of youth of color and seek the entry of a consent decree that requires the CPD to document, investigate and punish acts of torture and cruel, inhuman and degrading treatment, and implement other necessary reforms.

#### **Basis of the Recommendations:**

Young people of color in communities across Chicago are consistently profiled, targeted, harassed, and subjected to excessive force by the (predominantly White) Chicago Police Department ("CPD")—leaving far too many physically injured, killed, and emotionally scarred<sup>242</sup> through persistent surveillance and harassment; abusive and unwarranted searches; use of excessive force, including beatings and killings; and sexual assaults. In addition, there is no systematic process in place to track the instances of police harassment and abuse that disproportionately impact young people of color. The absence of a federal nationwide data collection system also limits efforts to effectively monitor police misconduct, detect trends and patterns, or take action to prevent further violations.

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<sup>241</sup>U.S. Department of Housing and Urban Development, The 2010 Annual Homeless Assessment Report to Congress, Washington, D.C., June 14, 2011. *available at* [http://portal.hud.gov/hudportal/HUD?src=/press/press\\_releases\\_media\\_advisories/2011/HUDNo.11-121](http://portal.hud.gov/hudportal/HUD?src=/press/press_releases_media_advisories/2011/HUDNo.11-121)

<sup>242</sup>Ashkenas, Jeremy and Haeyoun Park. 2014. The Racial Gap in America's Police Departments." *New York Times*, September 4, 2014. ([http://www.nytimes.com/interactive/2014/09/03/us/the-race-gap-in-americas-police-departments.html?mc=edit\\_th\\_20140904&nl=todaysheadlines&nid=65757435&r=2](http://www.nytimes.com/interactive/2014/09/03/us/the-race-gap-in-americas-police-departments.html?mc=edit_th_20140904&nl=todaysheadlines&nid=65757435&r=2))



The prevalence of harassment, involuntary searches, and verbal abuse are not the result of unusual transgressions by select, individual CPD officers but are illustrative of institutional racial bias and systemic endorsement of targeting and harassment of young people of color. The cruel and degrading treatment of Chicago's youth of color serves to silence, traumatize, and control entire communities. The use of excessive force is endemic to the CPD—it implicates hundreds of officers and leads to thousands of violations every year. A further problem is the disproportionate use of TASERS against people of color.<sup>243</sup>

Chicago not only has a pervasive culture of police violence, but it also has an intractable culture of police impunity and opacity.<sup>244</sup> That is, police inaction also takes the form of the CPD's negligence in promptly investigating allegations of police violence and holding officers accountable.

Furthermore, rape, sexual assault, and sexual harassment of women—including transgender women, as well as transgender and gender non-conforming individuals who do not identify as women—is committed with alarming frequency by the CPD. CPD officers also target young sex workers and homeless youth (among others), and extort sexual favors in exchange for youth not being arrested or subjected to further police violence.<sup>245</sup> Street searches, the CPD's holding facilities, and Illinois juvenile detention facilities are additional sites where youth of color experience sexual violence. Youth who are detained in Illinois are exposed to juvenile facilities with exceptionally high rates of sexual abuse, including by staff. Further, detention facilities reserve the right to confine these youth in prolonged isolation.

**CAT Articles Implicated:** 2, 10, 11, 12, 13, 14

#### **Correlation to U.S. Government Report:**

The Government Report fails to substantially acknowledge or provide solutions for the widespread reports of police violence against minorities that the Committee has identified.<sup>246</sup> The scope, frequency, and persistence of police torture and CIDT against young Chicagoans of color effectively undermines the U.S. Government's claims that the measures in place are adequate to prevent torture and meet its obligations under Article 2 of the Convention.

The U.S. Government refers to a variety of law enforcement training programs at the federal, state, and local levels in its current report to the Committee, claiming that “[i]n order to address police brutality and discriminatory conduct, the United States has *stepped up* its training of law enforcement officers with a view to combating prejudice that may lead to violence (emphasis added).”<sup>247</sup> However, the continued prevalence of Chicago police abuse and misconduct against predominantly youth of color indicates that the training measures in place are not effective. The U.S. Government's claim that it has “stepped up” its law enforcement training programs is severely undermined by the failure of current law enforcement training standards to reduce torture and CIDT. The expected response from law enforcement officials—that reported incidents of police violence are not illustrative of

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<sup>243</sup> Hinkel, Dan and Alex Richards. 2012. “Jolt of reality: Shootings persist as Chicago police Taser use skyrockets.” *Chicago Tribune*, July 2012 ([http://articles.chicagotribune.com/2012-07-20/news/ct-met-chicago-tasers-20120720\\_1\\_taser-michael-partipilo-hundreds-officers](http://articles.chicagotribune.com/2012-07-20/news/ct-met-chicago-tasers-20120720_1_taser-michael-partipilo-hundreds-officers))

<sup>244</sup> Eisen, Arlene. 2013. *Operation Ghetto Storm: 2012 Annual Report on the Extrajudicial Killings of 313 Black People by Police, Security Guards, and Vigilantes*. Malcolm X Grassroots Movement. The report's findings singled out the CPD as “especially opaque” for offering “very incomplete reports on their killings.”

[http://www.operationghettostorm.org/uploads/1/9/1/1/19110795/operation\\_ghetto\\_storm\\_updated\\_october\\_2013.pdf](http://www.operationghettostorm.org/uploads/1/9/1/1/19110795/operation_ghetto_storm_updated_october_2013.pdf)

<sup>245</sup> See Submission to the Committee Against Torture: In the Shadows of the War on Terror: Persistent Police Brutality and Abuse in the United States, April 2006, Section III; and Young Women's Empowerment Project, *Denied Help!: How Youth in the Sex Trade & Street Economy are Turned Away from Systems Meant to Help Up & What We are Doing to Fight Back*. IL: YWEP, 2012. Page 28.

<sup>246</sup> CAT/C/USA/CO/2 (20 January 2010), ¶ 42.

<sup>247</sup> *Periodic Report to the Committee against Torture* at ¶ 244.

systemic endorsement of racialized brutality or violent police officers, but rather undertrained officers or an under-resourced department—is inconsistent with the pervasiveness and racial specificity of Chicago’s police violence against young people of color.

The U.S. Government admits that the majority of convicted officers and officials were found guilty of abusing minority victims—an admission that further supports this report’s claims of the racial nature of police violence. Yet, the U.S. Government intentionally fails to promptly investigate acts of torture and CIDT by police departments such as the CPD by refusing to establish a federal data system to document and review the demographics, scope, and nature of police misconduct.<sup>248</sup> The Initial U.S. Report conceded that “the absence of reliable national statistics precludes an accurate statistical description of the frequency with which incidents of abuse and brutality by law enforcement officers take place.” Yet the U.S. Government has made no offer, either in the Initial or subsequent reports, to address this critical lack of basic documentation and systemic review of evidence and allegations of torture and CIDT by law enforcement in Chicago and nation-wide.<sup>249</sup> The U.S. Government’s insistence that current practices are adequate indicates a false assurance and intentions for continued noncompliance with Article 11 of the Convention.

Further, the Government Report’s dismissive statement that “U.S. law provides various avenues for seeking redress in cases of torture” is deeply deficient.<sup>250</sup> As documented here, and by other NGOs, even when individuals are willing to come forward and make claims, redress is unlikely due to inhibiting elements of U.S. definitions of torture and legal procedures.<sup>251</sup> In response to the Committee’s request for information regarding its compliance with Article 12,<sup>252</sup> the U.S. Government referenced 254 law enforcement officials who have been prosecuted in 177 cases of civil rights violations (including, but not limited to, police-specific abuses) over the course of four years.<sup>253</sup> The report later cites that, since 2005, 165 officers and public officials have been convicted or taken plea-bargains in cases of police brutality and excessive force.<sup>254</sup> However, it has been widely documented, in this and other reports, that police violence occurs at extraordinarily high rates.<sup>255</sup> Thus, the extremely limited number of prosecuted cases presented in the Government Report is insufficient evidence of the U.S.’s compliance with the Convention against Torture.

### **Report Informing this Section:**

We Charge Genocide, *Police Violence against Chicago’s Youth of Color*

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<sup>248</sup> *Id.* at ¶ 259.

<sup>249</sup> CAT/C/28/Add.5. (9 February 2000), ¶ 89.

<sup>250</sup> *Periodic Report to the Committee against Torture* at ¶ 147.

<sup>251</sup> See Submission to the Committee Against Torture: In the Shadows of the War on Terror: Persistent Police Brutality and Abuse in the United States, April 2006, Section VI-E.

<sup>252</sup> CAT/C/USA/CO/2 (20 January 2010), ¶ 42.

<sup>253</sup> *Periodic Report to the Committee against Torture* at ¶ 246.

<sup>254</sup> *Id.* at ¶ 259.

<sup>255</sup> See Submission to International Covenant on Civil and Political Rights: Raising the Issue of Continued Discrimination via Police Misconduct and Extra-judicial/Summary Executions Committed with Impunity on American Born People of Afrikan Descent, September 2013; Submission to the Committee Against Torture: In the Shadows of the War on Terror: Persistent Police Brutality and Abuse in the United States, April 2006

## Lack of “Prompt and Impartial” Investigation of Law Enforcement Misconduct

### Suggested Recommendations:

1. The recommendations made in the Committee’s previous review relating to cruel, inhuman, and degrading treatment and punishment, should be reissued, with particular emphasis on the CAT requirement to provide prompt and independent investigations.
2. The recommendations for prompt and independent investigations of cruel, inhuman, and degrading treatment and punishment made by other human rights monitoring bodies (the CERD and the Human Rights Committee) that have addressed these conditions in terms relevant to their particular treaties should be reinforced.
3. The U.S. Government should authorize an independent national human rights institution to develop a national plan of action and comprehensively coordinate and advance implementation of the CAT (and the other ratified human rights treaties) at all levels of U.S. government, including federal, state, and local.

### Basis of the Recommendations:

In several cases of police misconduct (including the Michael Brown case<sup>256</sup> and local Minnesota examples, Terrance Franklin<sup>257</sup>, Al Flowers<sup>258</sup>, Chris Lollie<sup>259</sup>, Maria Iñamagua<sup>260</sup> and innumerable other similar but less well-known cases of police misconduct), local officials have failed to provide and at times even actively interfered with prompt and impartial investigations of reported police misconduct.

An additional root of police misconduct at the local level is the failure of the U.S. Government to ensure education and information regarding federal, state, and local government responsibilities under the CAT to, among others, news media and public officials.

### CAT Articles Implicated: 10, 12, 16

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<sup>256</sup> NAACP calls for special prosecutor in Michael Brown shooting case, Washington Post By Mark Berman August 21, 2014 at <http://www.washingtonpost.com/news/post-nation/wp/2014/08/21/naACP-calls-for-special-prosecutor-in-michael-brown-shooting-case/> For more, see Endnote 1.

<sup>257</sup> See “What really happened to Terrance Franklin? Three months and counting “ By Mary Turck, News Day, August 15, 2013, at <http://www.tcdailyplanet.net/news/2013/08/15/what-really-happened-terrance-franklin-three-months-and-counting> For more, see Endnote 2.

<sup>258</sup> The Al Flowers case raises issues of whether official investigations of police misconduct by local officials are adequate in scope, prompt, and impartial. For more, see Endnote 3

<sup>259</sup> New St. Paul skyway arrest video released by police, St. Paul Pioneer Press, by Mara H. Gottfried, [mgottfried@pioneerpress.com](mailto:mgottfried@pioneerpress.com), 09/10/2014 12:01:00 AM CDT, Updated: 09/10/2014 09:24:55 PM CDT [http://www.twincities.com/crime/ci\\_26505612/st-paul-skyway-arrest-video-released-by-police](http://www.twincities.com/crime/ci_26505612/st-paul-skyway-arrest-video-released-by-police)

This report includes the surveillance video of Chris Lollie and the confrontation with police in the downtown St. Paul skyway. NOTE: To provide more comprehensive coverage, the footage is overlaid with the audio recording from Lollie's cell phone that he uploaded to YouTube.

<sup>260</sup> The only hearing held in the US Senate to-date regarding US implementation of the Human rights treaties was a hearing conducted on December 16, 2009 by the US. Senate Judiciary Committee’s Subcommittee on Human Rights and The Law. For the hearing, encouragingly entitled “THE LAW OF THE LAND: U.S. IMPLEMENTATION OF HUMAN RIGHTS TREATIES”, extensive comments were provided by NGOs across the country, including by the *Maria Iñamagua Campaign for Justice*, whose comments addressed government failures to comply with the “prompt and impartial” investigation requirements of the CAT. For more, see Endnote 5.

## **Correlation to U.S. Government Report:**

The Government Report does not address the issue of investigations of police misconduct.

## **Report Informing this Section:**

Ad-Hoc Work Group-Minnesota: *Shadow Report from Minnesota: A Human Rights Perspective on “Prompt and Independent” Investigations of Law Enforcement Misconduct*

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## **Police Violence in the Case of Michael Brown in Ferguson, Missouri**

Michael (“Mike”) Brown, an 18 year-old unarmed black male was shot and killed by a police officer in Ferguson, Missouri. In the weeks following Brown’s killing, police officers used excessive force on peaceful protesters.

## **Suggested Recommendations:**

### *Ferguson-Specific Recommendations:*

1. Immediately arrest Officer Darren Wilson, the police officer who killed Michael Brown.
2. Urge political accountability for the killing of Michael Brown and the excessive force on protesters by: (i) calling for the resignation of Ferguson Police Chief Thomas Jackson; (ii) placing the Ferguson Police Department under federal receivership to hold it accountable for systematically targeting and harassing residents of color in a predatory and degrading manner; (iii) calling upon Missouri Governor Jay Nixon to accept responsibility on behalf of the State of Missouri for the intimidation and excessive force used against protesters following Michael Brown’s murder, and provide for reparations for damages suffered; and (iv) offering amnesty to those protesters arrested while protesting the killing of Michael Brown.
3. End racial profiling and racially-biased police harassment across the jurisdictions surrounding Ferguson, Missouri (referred to as North County) by taking the following steps: (i) ensure that Missouri police forces are racially integrated and reflective of the communities they police and create a cause of action under Missouri’s existing racial profiling law; (ii) establish a minimum population for a police department; (iii) develop a strategy for creating a community policing culture in Ferguson and the surrounding St. Louis County; (iv) condition state funding to municipal police departments based on minimum standards regarding use of force and the targeting of racial minorities.

### *National Recommendations:*

1. Provide mandatory guidelines developed with input from communities vulnerable to police brutality with strict regulations on the use of force by state and local law enforcement departments that receive federal funding. Violation of these standards should result in financial penalties or reduction in federal funding.
2. Improve accountability for police’s use of deadly force, particularly in black and brown communities, by: (i) establishing guidelines for a clear, transparent process of reporting and response to all incidents involving law enforcement’s use of deadly force, including collection of facts, establishing timeline and all issues related to release of information; (ii) establishing laws entitling the citizenry to know the name of each police officer involved in an situation including

- deadly force within 24 hours of said incident; and (iii) establishing a federal law requiring an annual report on the use of deadly force by all federal police departments as well as state and local police departments that receive federal funding.
3. Pass legislation to end racial profiling and police brutality against people of color, like the End Racial Profiling Act.
  4. Ensure transparency, accountability, and safety of communities by requiring front facing cameras in all police departments with records of racial disparities in stops, arrests, killings, and excessive force complaints, while establishing clear guidelines around the control of the recordings and limiting infringements on individuals' right to privacy.
  5. Review and remediate laws regarding the use of deadly force by law enforcement to accord with rule of law and international standards of necessity and proportionality in the use of deadly force.
  6. The Attorney General and the Department of Justice must conduct a nationwide investigation of systematic police brutality and harassment in black and brown communities, and youth in particular. Methodology and findings of this investigation must be made publicly available.

### **Basis of the Recommendations:**

On August 9, 2014, Michael (“Mike”) Brown, an 18 year-old unarmed black male was intentionally and arbitrarily killed when he was shot to death by Ferguson police officer Darren Wilson. Following his murder, Michael Brown’s body was left uncovered in the middle of a street for over four hours. The intimidation caused by the shooting of Michael Brown and the disrespect for his body was amplified by the impunity that followed.

The acts of violence committed by law enforcement officials who donned riot gear, tanks, armored vehicles and other military-style armaments during the largely peaceful protests in Ferguson following Brown’s murder included indiscriminate use of tear gas into crowds which included elderly people and children young enough to be in strollers, and less lethal bullets,<sup>261</sup> intimidation, fear of imminent death and sowing confusion by directing protesters at gunpoint and the sexual harassment of at least one protester while in custody. Over 200 individuals were arrested in the course of these protests and taken into custody. Law enforcement’s militarized response to protesters in Ferguson is part of widespread militarization of local police forces across the U.S., permitted, if not encouraged, by the federal government.

Despite the injuries to hundreds if not thousands of civilians in his state, Missouri Governor Jay Nixon has not yet called for a state investigation into police violence on the protesters, thereby reinforcing the climate of impunity around police abuses and sanctioning the disproportionate and excessive use of force on people exercising their right to protest.

**CAT Articles Implicated:** 1, 12, 16

### **Correlation to U.S. Government Report:**

This Committee’s 2006 Concluding Observations included several recommendations pertinent to the violations that have taken place in Ferguson.<sup>262</sup>

In paragraph 25, in response to allegations of impunity for acts of torture or cruel, inhuman or degrading treatment or punishment by officers from the Chicago Police Department, the Committee

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<sup>261</sup> In their response to the protest, police forces were documented using rubber bullets, bean-bag projectiles, and wooden baton bullets.

<sup>262</sup> Committee Against Torture, Consideration of Reports Submitted by States Parties Under Article 19 of the Convention, Conclusions and Recommendations of the Committee against Torture: United States of America, UN doc. CAT/C/USA/CO/2, para. 42 (July 25, 2006), at [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fUSA%2fCO%2f2&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fUSA%2fCO%2f2&Lang=en) (hereinafter “2006 CAT Committee Recommendations”).

recommended that the U.S. Government “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 fulfil its obligations under article 12 of the Convention.”<sup>263</sup> The U.S. Government did not respond to this recommendation in its 2006 response.<sup>264</sup>

Elsewhere, the Committee expressed concerns about police brutality and excessive force against vulnerable groups, in particular racial minorities, and the failure to adequately investigate these incidents and recommended that the U.S. Government “ensure that reports of brutality and ill-treatment of members of vulnerable groups by its law-enforcement personnel are independently, promptly and thoroughly investigated and that perpetrators are prosecuted and appropriately punished.”<sup>265</sup> However, the U.S. Government did not respond to this recommendation in its 2006 response.<sup>266</sup>

With respect to paragraph 42(a) in the list of issues, the U.S. Government relies on its efforts described in its 2011 report to the U.N. Human Rights Committee to “train[] law enforcement officers with a view to combating prejudice that may lead to violence,” and prosecute charges of excessive force. However, the Human Rights Committee found these efforts wanting and called on the U.S. Government to take further steps to address these issues.<sup>267</sup>

While the U.S. Government’s response to paragraph 42(b) in the list of issues relies on the reports it submitted to the U.N. Committee on the Elimination of Racial Discrimination in 2013 and the Human Rights Committee in 2011, both committees found the efforts described in those reports lacking.

### **Report Informing this Section:**

The Family of Michael Brown, HandsUpUnited, Organization for Black Struggle (OBS), and Missourians Organizing for Reform and Empowerment (MORE): *Written Statement on the Police Shooting of Michael Brown and Ensuing Police Violence Against Protesters in Ferguson, Missouri*

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## **Torture in Prisons and Jails**

The list of abuses committed against U.S. prisoners includes: sexual violence, humiliation, unsanitary conditions, extreme temperatures, insufficiently nutritious food, inadequate medical care, isolation, psychological torture, racism, chemical abuse and disproportionate uses of force.

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<sup>263</sup> *Id.* at para. 25.

<sup>264</sup> Committee Against Torture, Consideration of Reports Submitted by States Parties Under Article 19 of the Convention, Comments by the Government of the United States of America to the conclusions and recommendations of the Committee against Torture, UN doc. CAT/C/USA/CO/2/Add.1 (Nov. 6, 2007), at [http://tbinternet.ohchr.org/\\_layouts/Treaties/CAT/Shared%20Documents/USA/CAT\\_C\\_USA\\_CO\\_2\\_Add-1\\_528\\_E.doc](http://tbinternet.ohchr.org/_layouts/Treaties/CAT/Shared%20Documents/USA/CAT_C_USA_CO_2_Add-1_528_E.doc). (hereinafter “2006 U.S. Government Response”).

<sup>265</sup> Committee Against Torture, Consideration of Reports Submitted by States Parties Under Article 19 of the Convention, Conclusions and Recommendations of the Committee against Torture: United States of America, UN doc. CAT/C/USA/CO/2, para. 37 (July 25, 2006), at [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2FC%2FUSA%2FCO%2F2&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2FC%2FUSA%2FCO%2F2&Lang=en)

<sup>266</sup> Committee Against Torture, Consideration of Reports Submitted by States Parties Under Article 19 of the Convention, Comments by the Government of the United States of America to the conclusions and recommendations of the Committee against Torture, UN doc. CAT/C/USA/CO/2/Add.1 (Nov. 6, 2007), at [http://tbinternet.ohchr.org/\\_layouts/Treaties/CAT/Shared%20Documents/USA/CAT\\_C\\_USA\\_CO\\_2\\_Add-1\\_528\\_E.doc](http://tbinternet.ohchr.org/_layouts/Treaties/CAT/Shared%20Documents/USA/CAT_C_USA_CO_2_Add-1_528_E.doc)

<sup>267</sup> Human Rights Committee, Concluding observations on the fourth periodic report of the United States of America, UN doc. CCPR/C/USA/CO/4, para.11 (Apr. 23, 2014), at

[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2FUSA%2FCO%2F4](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2FUSA%2FCO%2F4) (hereinafter “CCPR 2014 Concluding Observations”).

### **Suggested Recommendations:**

1. The U.S. Government should ratify the Optional Protocol to the Convention Against Torture.
2. The U.S. Government should ensure that the use of isolation/solitary confinement is ended immediately.
3. The U.S. Government should provide conditions of confinement in jails and prisons that align with their own domestic laws, protect the U.S. Constitutional rights of prisoners, and are in accordance with international norms and obligations.
4. The U.S. Government must permit international observers to enter and evaluate centers of confinement. For prisons/jails not under the direct control of the federal government, the U.S. government must actively engage states and localities to facilitate such access.
5. The U.S. Government should immediately implement the Prison Rape Elimination Act of 2003 in all confinement facilities nationwide to protect those entrusted to their care against sexual violence.
6. The U.S. Government should ensure that prison and jail personnel only use the least restrictive response to avert harm to another prisoner or staff.
7. The U.S. Government should guarantee that chemical agents are never used in prisons and jails. Limitations on mobility and lack of ventilation significantly undermine the safety of all exposed to harmful agents.
8. The U.S. Government should honor its responsibility to keep those incarcerated safe from harm. This includes abuses at the hands of staff and guards, as well as violence perpetrated among prisoners. A robust monitoring system must be put into place to honor this obligation that also includes accountability mechanisms for all perpetrators of abuses.

### **Basis of the Recommendations:**

At the close of 2012 over 2.2 million adults<sup>268</sup> were held in prisons and jails<sup>269</sup>, leading the world in incarceration rates.<sup>270</sup> Deeply flawed policies focusing on punishment, as opposed to healing or rehabilitation, have created a pipeline through which economically disadvantaged populations are funneled into prisons and jails. Incarcerated individuals are frequently exposed to deplorable, cruel, and dangerous conditions of confinement that no human being should experience.

#### *Health Care*

Prisoners commonly report inadequate health care conditions that include significant delays in accessing medical treatment, medical personnel engaging in treatments for which they have not received adequate training, denials of prescription medications, and humiliating treatment by health care staff. Prisoners have no recourse when medical treatment is requested but withheld. In the most serious cases, failing to secure timely medical attention can result in irreversible harm, and at times, death.

#### *Inhuman, Cruel and Degrading Treatment*

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<sup>268</sup> Sentencing Project, *Trends in Corrections Fact Sheet*,

[http://sentencingproject.org/doc/publications/inc\\_Trends\\_in\\_Corrections\\_Fact\\_sheet.pdf](http://sentencingproject.org/doc/publications/inc_Trends_in_Corrections_Fact_sheet.pdf) (last updated September 2014).

<sup>269</sup> The U.S. Bureau of Justice Statistics outlines the distinction between “jails” and “prisons” in the United States: “Jails are locally-operated, short term facilities that hold inmates awaiting trial or sentencing or both, and inmates sentenced to a term of less than 1 year, typically misdemeanants. Prisons are long term facilities run by the state or the federal government and typically hold felons and inmates with sentences of more than 1 year. Definitions may vary by state.” For more information please visit <http://www.bjs.gov/index.cfm?ty=qa&iid=322>.

<sup>270</sup> Sentencing Project, *supra* note 268.

Prisoners frequently report denials of food and water, forced nudity, unsanitary confinement conditions, inadequate nutrition, use of racial and ethnic slurs by guards, lack of avenues of recourse, and physical assault. Regardless of the origins and classification of the prohibited acts, the consequences to victims are the same: dehumanization and trauma. Additionally, prisoners are not shielded from cruel and degrading acts, such as excessive and unnecessary uses of force, being subjected to racial and ethnic slurs, and unrestrained use of chemical agents, by guards.

### *Sexual Violence*

In early 2014 the Bureau of Justice Statistics, an agency of the U.S. Department of Justice, announced that reports of sexual abuse in prisons and jails increased significantly between 2007 and 2011.<sup>271</sup> Approximately 51 percent of reported sexual violence was committed by a prisoner against another prisoner, and around 49 percent of incidents were perpetrated by staff against a prisoner.<sup>272</sup>

However, the statistics change significantly when prisoners are surveyed directly about sexual violence they have experienced (as opposed to relying solely on reported incidents to examine rates of sexual abuse). In light of guard retaliation against prisoners who file complaints or may consider doing so,<sup>273</sup> it is unsurprising that surveys indicate far greater rates of sexual abuse incidents than what official accounts suggest. It is likely that the true rates of abuse are even higher than what these surveys indicate given the level of fear of reprisals prisoners experience.

### *Isolation and Solitary Confinement*

The use of isolation for prolonged periods of time – in some cases decades – is torture, causing severe and irreparable mental suffering and psychological harm extending far beyond the period of time individuals are held in solitary confinement. In the U.S. federal system isolation from the general prison population is classified as “special housing units” (SHU), where prisoners may find themselves through no fault of their own or for minor rules infractions.

Mental health experts have found the rates of psychological and psychiatric issues to be greater in populations exposed to solitary confinement than among those who had never been isolated.<sup>274</sup> Those with a previous history of psychological problems placed in isolation “generally experience a significant deterioration of their condition” while in isolation.<sup>275</sup>

### *Political Prisoners and Control Management Units*

In the U.S. federal prison system Control Management Units (CMU) were “established to house inmates who, due to their current offense of conviction, offense conduct, or other verified information, require increased monitoring of communication with persons in the community in order to protect the safety, security and orderly operation of Bureau facilities, and protect the public.”<sup>276</sup>

The most well-known CMU residents are those convicted of terrorism-related activities. For example, at “Little Gitmo”<sup>277</sup> and “Guantanamo North,”<sup>278</sup> reminiscent of the U.S. Guantanamo Bay

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<sup>271</sup> U.S. Govt., U.S. Department of Justice Office of Justice Programs Bureau of Justice Statistics, *Allegations of Sexual Victimization in Prisons and Jails Rose from 2009 to 2011*, <http://www.bjs.gov/content/pub/pdf/svraca0911.pdf> (January 23, 2014).

<sup>272</sup> *Id.*

<sup>273</sup> See “Reprisals against prisoners for airing grievances”

<sup>274</sup> *Id.* at 451, 476.

<sup>275</sup> *Id.* at 494.

<sup>276</sup> Center for Constitutional Rights, *Aref, et al. v. Holder, et al. Plaintiffs Motion for Summary Judgment Exhibit 1*, 1, [ccrjustice.org/files/138.4%20Ehx%201-5.pdf](http://ccrjustice.org/files/138.4%20Ehx%201-5.pdf) (April 23, 2014).

<sup>277</sup> New York Times Magazine, ‘Little Gitmo’, [nymag.com/news/features/yassin-aref-2011-7/](http://nymag.com/news/features/yassin-aref-2011-7/) (July 10, 2011).



facility, two-thirds of the prisoners are Muslim (despite only representing six percent of the general federal prison population).<sup>279</sup>

CMUs also house those involved in social justice movements, those who engage in prisoners' rights advocacy, those who file grievances about their treatment while incarcerated,<sup>280</sup> and those whose beliefs and ideology the U.S. Government seeks to track.<sup>281</sup> Because prisoners sent to CMUs are deemed security threats, they are constantly observed.<sup>282</sup> CMUs rely heavily on extreme conditions of solitary confinement, isolate prisoners from the general population, and create conditions intentionally hindering their ability to communicate with the outside world.<sup>283</sup>

#### *Psychological/ "No Touch" Torture*

Prisoners experience torture, as defined by U.S. law to include "prolonged mental harm caused by or resulting from...the administration or application, or threatened administration or application, of...procedures calculated to disrupt profoundly the senses or the personality,"<sup>284</sup> through, for example, being shackled for excessive periods of time, stress positions, exposure to extreme temperatures and subjection to unrelenting light exposure.

#### *Reprisals against Prisoners for Airing Grievances*

Accountability for inhumane treatment within centers of confinement is severely limited despite the prevalence of prisoner abuse. Recurring challenges faced by prisoners in using complaint mechanisms, which are the primary means through which prisoners are able to air grievances about their treatment and to report abuses committed by guards, include guard retaliation or threats of reprisal. This system of intimidation undermines the possibility of rectifying prior abuse and securing redress and perpetuates a climate of impunity for those responsible for rights violations.

**CAT Articles Implicated:** 1, 4, 16

#### **Correlation to U.S. Government Report:**

The Government Report acknowledges its obligation to ban acts of torture, stating "(t)he absolute prohibition of torture is of fundamental importance to the United States."<sup>285</sup> A quote from U.S. President Barak Obama underscores the U.S. Government's commitment to domestic and international laws on torture: "I can stand here today, as President of the United States, and say without exception or equivocation that we do not torture..."<sup>286</sup>

The Government Report recognizes some correctional facilities – those privately operated – are exempt from compliance with a number of laws and regulations limiting the use of isolation.<sup>287</sup> According to the government "[t]here is no systematic use of solitary confinement in the United

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<sup>278</sup> National Public Radio, 'Guantanamo North': Inside Secretive U.S. Prisons, [www.npr.org/2011/03/03/134168714/guantanamo-north-inside-u-s-secretive-prisons](http://www.npr.org/2011/03/03/134168714/guantanamo-north-inside-u-s-secretive-prisons) (March 3, 2011, 1:09PM).

<sup>279</sup> *Id.*

<sup>280</sup> Center for Constitutional Rights, *Communications Management Unit Factsheet*, [ccrjustice.org/cmufactsheet](http://ccrjustice.org/cmufactsheet) (2013).

<sup>281</sup> National Public Radio, 'Guantanamo North': Inside Secretive U.S. Prisons, [www.npr.org/2011/03/03/134168714/guantanamo-north-inside-u-s-secretive-prisons](http://www.npr.org/2011/03/03/134168714/guantanamo-north-inside-u-s-secretive-prisons) (March 3, 2011, 1:09PM).

<sup>282</sup> Daniel McGowan, *Court Documents Prove I was Sent to Communications Management Units (CMU) for my Political Speech*, [www.huffingtonpost.com/daniel-mcgowan/communication-management-units\\_b\\_2944580.html](http://www.huffingtonpost.com/daniel-mcgowan/communication-management-units_b_2944580.html) (April 2, 2013, 8:36AM).

<sup>283</sup> *Id.*

<sup>284</sup> 18 U.S.C. §2340(2)(B).

<sup>285</sup> *Periodic Report to the Committee against Torture* at ¶ 2.

<sup>286</sup> *Id.*

<sup>287</sup> *Id.* at ¶212.

States,<sup>288</sup> yet its use is widespread and occurs in the absence of adequate oversight ensuring humane treatment of prisoners.

The U.S. Government states that “DOJ/BOP meets its...mandates by confining inmates to prisons and community-based facilities that are safe, humane, and appropriately secure.”<sup>289</sup> However prisoner accounts and non-governmental investigations suggest that conditions in many facilities are in stark contrast to what the U.S. claims in its report.

The Government Report outlines partial implementation of domestic legislation designed to address sexual violence and notes that these regulations are applicable to all federal facilities.<sup>290</sup> These policies should include protecting prisoners from retribution for filing a sexual violence grievance.

The U.S. Government states that it considers the “intentional infliction of mental pain or suffering” acts of torture, recognizing that psychological acts may constitute a violation of CAT.<sup>291</sup>

Despite these assurances, the U.S. Government violates its CAT obligations to prevent and address acts of torture with respect to individuals in prisons and jails.

**Report Informing this Section:**

The American Friends Service Committee: *Survivors Speak, Prisoner Testimonies of Torture in United States Prisons and Jails*

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## OTHER ISSUES

## HURRICANE KATRINA

The U.S. Government has failed to adequately address both Officer Involved Shootings (OIS) and the widespread suspension of constitutional rights during Hurricane Katrina.

**Suggested Recommendations:**

1. The U.S. Government should reopen the 2006 investigation conducted by the U.S. Senate Committee on Homeland Security and Governmental Affairs into the emergency response to Hurricane Katrina, and address the suspension of constitutional rights and the occurrence of Officer Involved Shootings (OIS) which were omitted as subjects of the 2006 Senatorial report.
2. The U.S. Government should invest in local independent monitoring organizations and the Department of Justice Civil Right Division to better protect human rights during times of national emergency.

**Basis of the Recommendations:**

While in 2006 the U.S. Senate Committee on Homeland Security and Governmental Affairs

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<sup>288</sup> *Id.* at ¶214.

<sup>289</sup> *Id.* at ¶213.

<sup>290</sup> *Id.* at ¶170, 171.

<sup>291</sup> *Id.* at ¶12.

published a bipartisan special report, “Hurricane Katrina A Nation Still Unprepared,” the report failed to address both the incidence of Officer Involved Shootings (OIS) and the widespread suspension of constitutional rights during the storm.<sup>292</sup> Most of the OIS carried out by NOPD came to light after the U.S. Senate published its report. Some of the OIS have more recently been investigated and prosecuted by the U.S. Government; many have not. Following is the list of victims shot by the NOPD in OIS that have come to light after the U.S. Senate first published its report: Henry Glover, Matthew McDonald, Danny Brumfield, Keenon McCann, Ronald Goodman, Terrance Harold and Adolph Grimes. The presence of these OIS as well as the widespread violation of 2<sup>nd</sup> and 4<sup>th</sup> amendment constitutional violations at the hands of NOPD, many of them ignored and uninvestigated, cause great pain to victims’ families as well as perpetuating a feeling of lawlessness around police action which impedes any attempt at meaningful reform of the NOPD. Because these issues were not addressed, the people of New Orleans, particularly the disproportionately affected African-American community, are unable to move forward to embrace “police reform.” The country is left with the police misconduct of Katrina as a precedent for future national emergencies.<sup>293</sup>

It is not unusual for local police monitoring mechanisms to be severely underfunded. Complaints of insufficient resources have been reported in over half a dozen cities; most other cities do not have civilian monitoring of the police at all. Due to the lack of sufficient resources, the Office of the Independent Police Monitor (OIPM) estimates it is unable to perform at least half of its functions as required by its enacting ordinance. Additionally, without adequate resources, the DOJ Civil Rights Division is unable to respond to the needs for reform, which are becoming increasingly abundant in law enforcement divisions across the country. The DOJ Civil Rights Division should have the resources to send out an adequately resourced rapid response team to ensure that the situation is observed and adequate remedies are put in place at the time of or immediately after a national crisis such as Hurricane Katrina or Ferguson, Missouri. Police monitoring agencies serve as the eyes and ears of the community in a manner that the internal affairs division of a police department cannot. By allowing civilian monitoring agencies and the DOJ sufficient resources, a community will slowly regain the trust that a healthy community needs to maintain toward its police department, even a city as traumatized as New Orleans.

**CAT Articles Implicated:** 12, 14, 16

### **Correlation to U.S. Government Report:**

The Government Report, in response to the Committee’s question about updated information on investigations into alleged ill-treatment perpetrated by law enforcement personnel in the aftermath of Hurricane Katrina, states that DOJ/CRT has prosecuted a number of cases involving the New Orleans Police Department (NOPD), including several that involved law enforcement shootings and also explains that these are addressed in the 2011 ICCPR Report.<sup>294</sup> The Report also states that the DOJ launched a civil pattern or practice investigation of NOPD resulting in a report issued in March 2011, also discussed in the 2011 ICCPR Report.<sup>295</sup> In July 2012 DOJ/CRT reached “one of the most comprehensive reform agreements in its history” and currently the United States and the City of New Orleans are working on implementation.<sup>296</sup> Finally, the Government Report states that all complaints received by DHS/ICE/OPR and DOJ/OIG in the aftermath of Katrina “were

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<sup>292</sup> United States, Committee on Homeland Security and Governmental Affairs, Hurricane Katrina: A Nation Still Unprepared (Washington, U.S. Government Printing Office 2006). Available from <http://www.gpo.gov/fdsys/pkg/CRPT-109s rpt322/pdf/CRPT-109s rpt322.pdf>.

<sup>293</sup> Allen Johnson, Jr., “Digging Further”, New Orleans Magazine (March 2011). Available from <http://www.myneworleans.com/New-Orleans-Magazine/March-2011/DIGGING-FURTHER/>.

<sup>294</sup> *Periodic Report to the Committee against Torture* at ¶ 268.

<sup>295</sup> *Id.* at ¶ 269.

<sup>296</sup> *Id.* at ¶ 269.

investigated in accordance with standard procedures” and that “none gave rise to prosecution or other sanction of any DHS law enforcement employee.”<sup>297</sup>

**Report Informing this Section:**

The New Orleans Office of the Independent Police Monitor: *Hurricane Katrina: The Remaining Legacy*

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## **INDIGENOUS PEOPLES**

### **Lack of Access to Justice for Indigenous Peoples**

Indigenous Peoples are unable to access justice when they are tortured and/or murdered, including at the hands of agents of U.S. law enforcement.

**Suggested Recommendations:**

1. The U.S. Government should work with Indigenous Peoples and Indigenous Peoples’ Organizations to establish a commission reviewing individual violent acts against Natives, which have not resulted in successful prosecutions. This commission should share information about the investigations and prosecutions of torture acts in good faith with Indigenous Peoples and families of indigenous victims.
2. The U.S. Government should provide legal advocacy resources to Indigenous Peoples and Natives seeking justice so that they can enforce the laws that the U.S. Government fails to enforce so often when Natives are tortured.
3. The U.S. Government should review, in conjunction with Indigenous Peoples, its use of confidential informants and share information with indigenous law enforcement so that confidential informants cannot torture Natives while they are working for the U.S. and its agents.

**Basis of the Recommendations:**

The U.S. Government does not investigate murders of Natives as fully as it does those of non-Natives, creating an atmosphere of impunity and resulting in the psychological terror associated with state-condoned murder. This murder of Natives is part of a pattern of discounting the collective and individual lives of Indigenous Peoples. Many Natives are tortured and murdered by U.S. officials and their actors and agents, including confidential informants and corporate agents, working for the US. The murder of Sonny Wayne Lewis, which has not been accounted for because of law enforcement misconduct, corruption, and misinformation illustrates: (1) the inability for Indigenous Peoples to police their lands at the same time that violent crime, including torture, is increasing; (2) the inability of Indigenous Peoples to prosecute non-Natives while more non-Natives than ever are entering their lands; (3) economic and political pressures denying Natives justice when crimes, including law enforcement agents torturing and murdering, are committed or suspected of being committed by non-Natives; and (4) general and complete lack of access to justice for Natives.

**CAT Articles Implicated:** 1, 14, 16

**Correlation to U.S. Government Report:**

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<sup>297</sup> *Id.* at ¶ 269.

The U.S. Government states that “Under U.S. law, officials of all government agencies are prohibited from engaging in torture, at all times, and in all places, not only in territory under U.S. jurisdiction.”<sup>298</sup> Thus all acts by all parties, officials and corporations chartered by United States authorities are responsible to respect the Rights of Indigenous Peoples, even Wal-Mart Corporation, which the U.S. promotes and protects.

**Report Informing this Section:**

Natives Seeking Justice: *Police Crimes prevent indigenous access to justice*

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## **Incarceration and Taking of Land and Mineral Rights from Indigenous Peoples**

Indigenous Peoples are subject to continued incarceration as well as having their land and mineral rights taken.

**Suggested Recommendations:**

1. The U.S. Government should establish a commission to review each case of indigenous political prisoners in the individual, collective, national, and international context of wealth transfer and create an appeals process for review of each ‘allotment’ transfer to adjudicate whether the transfer of the resource should continue.
2. The U.S. Government should honor the jurisdiction of original nations protecting collective Indigenous Peoples and natural resources from illegal allotments of indigenous resources.
3. The U.S. Government should recognize that payouts for past resources extracted without the collective consent of Indigenous Peoples does not legitimize the continued extraction of such resources and does not compensate for current or future resource extractions.

**Basis of the Recommendations:**

The U.S. Government continues to indefinitely incarcerate Political Prisoners who fought against racial and political violence and repression. The U.S. Government also incarcerates those who question government authority to make it easier to coerce and intimidate Indigenous Peoples into subjugation to obtain land and mineral rights which rightfully belong to Indigenous Peoples collectively. The U.S. Government uses allotment to more easily transfer allotments of land parcels to non-indigenous persons. While the U.S. Government claims that the *Cobell vs. Salazar*<sup>299</sup> case has settled the physical and mental torture specifically related to the Allotment era, this is not the case because of limitations in the case. Additionally, the systematic distribution of drugs (including alcohol) is used to facilitate the transfer of individually allotted Native resources to non-Natives.<sup>300</sup> A further consequence of U.S. Government policies is the pollution and defilement of sacred winds, waters, lands, and fires as well as animals and plants that are part of Indigenous Peoples. Finally, the U.S. Government, in order to impose allotment, uses coercion and torture via incarceration, drugging, document leger de main, corruption, assault, rape, and murder, and the ubiquitous devaluing of indigenous life and culture.

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<sup>298</sup> *Periodic Report to the Committee against Torture* at ¶ 13.

<sup>299</sup> *Eloise Pepion Cobell, et al., v Sally Jewell, Secretary of the Interior, et al.*, Civil Action No. 1:96CV01285

<sup>300</sup> <http://www.indianz.com/News/2013/010537.asp> “Eagle Bull addresses alcohol sales and Salazar payments” accessed on 9/22/14.

## **CAT Articles Implicated: 1**

### **Correlation to U.S. Government Report:**

The Government Report does not address the torture of Indigenous Peoples.

### **Report Informing this Section:**

Tetuwaw Treaty Council of the Grandmothers: *Shadow Report Submission to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)*

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## **Violations against Yamasi People**

Violations against Yamasi People, a “human southeast Indigenous People in North America,” continue to occur and the U.S. Government fails to take steps to investigate, prosecute or respond to this torture.

### **Basis of the Recommendations:**

The U.S. Government continues to systematically rape, assault, torture, kidnap, imprison, enslave, torture, incarcerate and murder Yamasi<sup>301</sup> indefinitely as political prisoners. Additionally, the U.S. Government will not investigate, prosecute, or respond to any requests relating to the torture of Yamasi. The U.S. Government uses apartheid ‘Indian Law’ to torture Yamasi and other Natives living with Yamasi lands for the purpose of coercing and intimidating Natives into subordination as ‘dependent’ and ‘domestic’ ‘Tribes’ controlled by the United States and denied rights and title to natural blessings. This apartheid ‘Indian Law’ prevents Indigenous Peoples and the original nations from enforcing ecosystem protections and mitigating climate change.

### **Suggested Recommendations:**

1. The U.S. Government should end its practice of apartheid “Indian Law” and its mental and physical torture of Natives and Indigenous Peoples to coerce and intimidate Indigenous Peoples to become ‘dependent’ nations governed by the USBIA. This would also end the use of Natives as sports mascots and related degrading state-sponsored hate speech and media as well as the appropriation of Indigenous Peoples’ identity by organized crime, including the USBIA, and the torture used to silence Natives asserting rights not to be claimed as BIA beneficiaries. The end of apartheid would also significantly mitigate climate change, as original nations would be free to enforce ecosystem protections without being tortured.
2. The U.S. Government should investigate all instances of torture and cruel, inhuman, and degrading treatment and punishment of indigenous political prisoners. The results of the investigation must be reported to affected Indigenous Peoples for review by their own judicial systems. The U.S. Government should develop a means of collaborating with Indigenous Peoples and their governments to prevent torture and enforce laws, including the laws of original nations.
3. The U.S. Government should establish a Truth and Reconciliation Commission to address the systematic and ongoing torture of southeast Indigenous Peoples, including culturally-based torture, slavery, and organized crime networks including but not limited to plantation, reservation, casino or other related slavery and allotment systems with the goal of (a) reviewing the causes, consequences, contributors, and continuation of this historical oppression through torture; (b) freeing current indigenous political prisoners held both publicly and through tacit

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<sup>301</sup> A human southeast Indigenous People in North America.

and/or secret collusion with war profiteers, including but not limited to casino rackets; (c) providing for the health, welfare, sustenance, and education of indigenous torture victims in a culturally appropriate manner by working with Indigenous Peoples affected; and (d) Investigating, monitoring, and ending the ongoing torture of Indigenous Peoples through the poisoning of Greatgrandmother Earth, Waters, Winds, and other natural blessings.

**CAT Articles Implicated:** 1, 5, 8(4), 10

**Correlation to U.S. Government Report:**

The Government Report does not address the torture of Indigenous Peoples.

**Report Informing this Section:**

Yamasi People: *US Apartheid and Occupation Promotes Torture*

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## CRIMINALIZATION OF HOMELESSNESS

The criminalization of homelessness, which affects more than 3.5 million people annually,<sup>302</sup> results in violations that constitute cruel, inhuman and degrading treatment.

**Suggested Recommendations:**

1. The U.S. Government should take immediate measures to eliminate the criminalization of basic life activities where homeless persons have no choice but to perform them in public, cease disparate enforcement of other laws that adversely affect homeless persons, and ensure homeless persons are provided housing and not punishment.
2. Federal agencies should take active steps to discourage criminalization, provide funding incentives for decriminalization and constructive alternative approaches, discontinue their funding of local law enforcement practices that criminalize homelessness, and investigate and prosecute criminalization policies or enforcement wherever they occur.

**Basis of the Recommendations:**

Many homeless people in the United States regularly face the degradation of performing basic bodily functions in public, a condition which is compounded when they are criminally punished for doing so,<sup>303</sup> and leads to a climate which permits brutal violent crimes against homeless.<sup>304</sup> A significant and growing number of jurisdictions routinely and discriminately target homeless people under ordinances which prohibit particular behaviors.<sup>305</sup> Under these laws, homeless people are regularly

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<sup>302</sup> See, e.g., NATIONAL LAW CENTER ON HOMELESSNESS AND POVERTY, NO SAFE PLACE: THE CRIMINALIZATION OF HOMELESSNESS IN U.S. CITIES (2014) [hereinafter NLCHP, NO SAFE PLACE], [http://www.nlchp.org/documents/No\\_Safe\\_Place](http://www.nlchp.org/documents/No_Safe_Place); NATIONAL LAW CENTER ON HOMELESSNESS AND POVERTY, CRIMINALIZING CRISIS: THE CRIMINALIZATION OF HOMELESSNESS IN U.S. CITIES (2011) [hereinafter NLCHP, CRIMINALIZING CRISIS]. Also, for further development of several of the arguments in this report, see NATIONAL LAW CENTER ON HOMELESSNESS AND POVERTY, CRUEL, INHUMAN, AND DEGRADING: HOMELESSNESS IN THE UNITED STATES UNDER THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (2013), [http://nlchp.org/Cruel\\_Inhuman\\_and\\_Degrading](http://nlchp.org/Cruel_Inhuman_and_Degrading).

<sup>303</sup> UNITED STATES INTERAGENCY COUNCIL ON HOMELESSNESS, SEARCHING OUT SOLUTIONS: CONSTRUCTIVE ALTERNATIVES TO THE CRIMINALIZATION OF HOMELESSNESS, (2012), available at [www.usich.gov/resources/uploads/asset\\_library/RPT\\_SoS\\_March2012.pdf](http://www.usich.gov/resources/uploads/asset_library/RPT_SoS_March2012.pdf) [hereinafter USICH, SEARCHING OUT SOLUTIONS].

<sup>304</sup> NATIONAL COALITION FOR THE HOMELESS, VULNERABLE TO HATE: A SURVEY OF HATE CRIMES & VIOLENCE COMMITTED AGAINST HOMELESS PEOPLE IN 2013, (2014), <http://nationalhomeless.org/wp-content/uploads/2014/06/Hate-Crimes-2013-FINAL.pdf>, [hereinafter NCH, VULNERABLE TO HATE].

<sup>305</sup> NLCHP, NO SAFE PLACE, *supra* note 300, at 7-9; NATIONAL LAW CENTER ON HOMELESSNESS AND POVERTY, CRIMINALIZING CRISIS: THE

cycled through prisons and jails, creating a correctional-system-to-homelessness cycle which exacerbates discrimination, exclusion, and violations.<sup>306</sup> Violations are especially severe for people of color, immigrants, gay, lesbian, bisexual, and transgender people, and people with disabilities, who are among the most likely to be rendered homeless, and are often subject to the harshest treatment by private actors and law enforcement officials when that occurs.<sup>307</sup>

In the absence of strong federal enforcement, local governments continue to enact restrictive ordinances that impose extreme hardships on individuals, and state and local courts have ruled inconsistently on whether criminalization of homelessness violates the U.S. Constitution,<sup>308</sup> but numerous U.N. human rights monitors have condemned criminalization in the United States in recent years.<sup>309</sup> Indeed, Sir Nigel Rodley, Chair of the Human Rights Committee and former Special Rapporteur on Torture stated in his concluding remarks on his committee's review of the U.S. in March, "I'm just simply baffled by the idea that people can be without shelter in a country, and then be treated as criminals for being without shelter. The idea of criminalizing people who don't have shelter is something that I think many of my colleagues might find as difficult as I do to even begin to comprehend."<sup>310</sup>

## CAT Articles Implicated: 16

### Correlation to U.S. Government Report:

The U.S. Government does not address this issue in its Government Report.

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CRIMINALIZATION OF HOMELESSNESS IN U.S. CITIES (2011) [hereinafter NLCHP, CRIMINALIZING CRISIS] at 7-8; USICH, SEARCHING OUT SOLUTIONS, *supra* note 301, at 6-7 (citing NATIONAL LAW CENTER ON HOMELESSNESS AND POVERTY & NATIONAL COALITION FOR THE HOMELESS, HOMES NOT HANDCUFFS: THE CRIMINALIZATION OF HOMELESSNESS IN U.S. CITIES (2009) [hereinafter NLCHP, HOMES NOT HANDCUFFS]).

<sup>306</sup> For the effects of imprisonment on voting, for example, see Committee on the Elimination of Racial Discrimination, *Concluding Observations of the Committee on the Elimination of Racial Discrimination (United States of America)*, ¶ 27, U.N. Doc. CERD/C/USA/CO/6 (2008); *Hirst v. United Kingdom* (No. 2), 2005-IX Eur. Ct. H.R. 681; MATTHEW CARDINALE, TRIPLE-DECKER DISENFRANCHISEMENT: FIRST-PERSON ACCOUNTS OF LOSING THE RIGHT TO VOTE AMONG POOR, HOMELESS AMERICANS WITH A FELONY CONVICTION, THE SENTENCING PROJECT (2004).

<sup>307</sup> See NATIONAL COALITION FOR THE HOMELESS, WHO IS HOMELESS? (2009), <http://www.nationalhomeless.org/factsheets/who.html> (based on a 2006 survey of 24 cities); NATIONAL COALITION OF ANTI-VIOLENCE PROGRAMS, HATE VIOLENCE AGAINST LESBIAN, GAY, BISEXUAL, TRANSGENDER, QUEER, AND HIV-AFFECTED COMMUNITIES IN THE UNITED STATES IN 2011 (2011), [http://www.avp.org/storage/documents/Reports/2012\\_NCAVP\\_2011\\_HV\\_Report.pdf](http://www.avp.org/storage/documents/Reports/2012_NCAVP_2011_HV_Report.pdf); Rudy Estrada & Jody Marksamer, *Lesbian, Gay, Bisexual, and Transgender Young People in State Custody: Making the Child Welfare and Juvenile Justice Systems Safe for All Youth through Litigation, Advocacy, and Education*, 79 TEMP. L. REV. 415 (2006), [http://www.nclrights.org/wp-content/uploads/2013/07/youth\\_in\\_state\\_custody\\_article.pdf](http://www.nclrights.org/wp-content/uploads/2013/07/youth_in_state_custody_article.pdf).

<sup>308</sup> Criminalization of an involuntary status was ruled unconstitutional by the U.S. Supreme Court. *Robinson v. California*, 370 U.S. 660, 667 (1962). Other courts have found that penalizing people "for performing innocent conduct in public places—in particular, for being in a park or on public streets at a time of day when there is no place where they can lawfully be—most definitely interferes with their right under the constitution to be free from cruel and unusual punishment," *Pottinger v. City of Miami*, 810 F. Supp. 1551, 1579 (S.D. Fla. 1992), and that the enforcement of an anti-loitering law "at all times and in all places against homeless individuals who are sitting, lying, or sleeping in Los Angeles's Skid Row because they cannot obtain shelter violates the Cruel and Unusual Punishment Clause," *Jones v. City of Los Angeles*, 444 F.3d 1118, 1135 (9th Cir. 2006). Yet despite these holdings, criminalization remains the norm rather than the exception in U.S. communities.

<sup>309</sup> U.N. Human Rights Committee, *Concluding observations on the fourth report of the United States of America*, ¶ 19, U.N. Doc. CCPR/C/USA/CO/4 (2014), [hereinafter HRC, *Concluding observations*]; Committee on the Elimination of Racial Discrimination, *Concluding Observations*, CERD/C/USA/CO/7-9, para. 12, Aug. 29, 2014; U.N. Human Rights Council, *Report of the U.N. Special Rapporteur on Extreme Poverty and Human Rights, Magdalena Sepúlveda Carmona*, ¶ 36, U.N. Doc. A/66/265 (2011), available at <http://www.ohchr.org/Documents/Issues/EPoverty/A.66.265.pdf>; U.N. Human Rights Council, *Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the Right to Non-Discrimination in this Context, Raquel Rolnik, Mission to the United States of America*, ¶ 95, U.N. Doc. A/HRC/13/20/Add.4 (Feb. 12, 2012); U.N. Human Rights Council, *Final Draft of the Guiding Principles on Extreme Poverty and Human Rights, Submitted by the Special Rapporteur on Extreme Poverty and Human Rights, Magdalena Sepúlveda Carmona*, ¶¶ 65, 66(c), U.N. Doc. A/HRC/21/39 (July 18, 2012); U.N. Human Rights Council, *Report of the Special Rapporteur on Extreme Poverty and Human Rights, ¶¶ 48-50, 78(c)*, U.N. Doc. A/67/278 (Aug. 9, 2012); Special Rapporteurs on the Rights to Adequate Housing, Water and Sanitation, and Extreme Poverty and Human Rights, USA: "Moving Away from the Criminalization of Homelessness, A Step in the Right Direction" (Apr. 23, 2012), <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=12079&LangID=E>; UNHRC, *Report of the Special Rapporteur on the human right to safe drinking water and sanitation, Catarina de Albuquerque, Addendum, Mission to the United States of America*, A/HRC/18/33/Add.4, Aug. 2, 2011; Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, *Stigma and the Realization of the Human Rights to Water and Sanitation*, U.N. Doc. A/HRC/21/42 (July 2, 2012); U.N. Human Rights Council, *Report of the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, Doudou Diène, Mission to the United States of America*, U.N. Doc. A/HRC/11/36/Add.3 (Apr. 28, 2009).

<sup>310</sup> See US ICCPR Review 2014: *Cruel, Inhuman, and Degrading*, <http://youtu.be/1M6eXpJVuIA>.



## Report Informing this Section:

National Law Center on Homelessness & Poverty, National Coalition for the Homeless, and Southern Legal Counsel, as the US Human Rights Network CAT Homelessness Working Group: *Criminalization of Homeless in the United States of America*

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# DENIAL OF REPRODUCTIVE HEALTH CARE FOR IMMIGRANT WOMEN

Depending on their immigration status and the state in which they reside, immigrant women of reproductive age are often denied reproductive health care, which threatens their rights to life, health, and freedom from ill-treatment.

## Suggested Recommendations:

1. The U.S. Government should eliminate discriminatory policies that restrict immigrant women's access to health insurance on the basis of their citizenship status, including the prohibition on undocumented immigrants' participation in the health insurance exchanges established by the Affordable Care Act and the five-year waiting period on qualified immigrants' eligibility for Medicaid. As a preliminary measure, the Obama Administration should rescind the exclusion on access to affordable health coverage and care for those granted deferred action under Deferred Action for Childhood Arrivals. It should strongly urge Congress to pass the HEAL Immigrant Women and Families Act.
2. The U.S. Government should address the unmet demand for affordable contraception among immigrants who are ineligible for Medicaid by substantially increasing the budget for the Title X family planning program and expanding full contraceptive access through community health centers.
3. The U.S. Government should enact the Women's Health Protection Act in order to prohibit states such as Texas from passing legislation designed to erode a woman's constitutional right to abortion.

## Basis of the Recommendations:

A combination of state and federal policies have cut off access for immigrant women to essential reproductive health care, including family planning goods and services, reproductive cancer screenings, and abortion care.<sup>311</sup> Beginning in 2010, many states, particularly those in the South and those with high immigrant populations, have passed laws targeting women's access to reproductive health care.

In particular, thousands of low-income uninsured immigrant women living in the Rio Grande Valley of South Texas, on the U.S. border with Mexico, are denied the reproductive health care they need at great cost to their health, well-being, and lives. Recent state policy changes—notably, a 2/3 budget cut in family planning services—have exacerbated longer term structural barriers to health care, depriving these women of a range of reproductive health goods and services including screenings for breast and cervical cancer, contraceptive counseling and supplies, and tests for sexually transmitted

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<sup>311</sup> CENTER FOR REPRODUCTIVE RIGHTS & NATIONAL LATINA INSTITUTE FOR REPRODUCTIVE HEALTH, *Nuestra Voz, Nuestra Salud, Nuestro Texas: The Fight for Reproductive Health Care in the Rio Grande Valley* (2013), <http://www.nuestrotexas.org>

infections. As a result, women who already had some of the worst reproductive health outcomes in the country are experiencing higher rates of unintended pregnancy, unsafe abortion, and cervical cancer incidence.<sup>312</sup>

With respect to abortion, since 2010, state legislatures have enacted over 170 restrictive abortion laws designed to make it harder or impossible for women to access abortion services in their communities.<sup>313</sup> Texas enacted the most restrictive abortion law in the country in 2013, leading to the closure of dozens of abortion clinics in Texas. Vast expanses of the state now lack any clinics, including the Rio Grande Valley, forcing women to travel 500 miles round trip to the nearest clinic or seek an illegal and unsafe abortion in neighboring Mexico.

**CAT Articles Implicated: 16**

**Correlation to U.S. Government Report:**

The U.S. Government does not address the denial of reproductive health care for immigrant women as ill treatment.

**Report Informing this Section:**

Center for Reproductive Rights, The National Latina Institute for Reproductive Health, and Women Enabled International: *Violations of Reproductive Rights amounting to Torture and Ill Treatment*

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## **FORCED STERILIZATION OF WOMEN WITH DISABILITIES**

Women with disabilities are often denied the opportunity to exercise informed consent to reproductive rights decisions including sterilization.

**Suggested Recommendations:**

1. State Governments should remove statutory language in the 11 states that authorize a court to order the involuntary sterilization or forced contraceptive use of disabled persons.
2. State Governments should encourage medical associations to adopt the 2011 International Federation of Gynecology and Obstetrics ethical guidelines on obtaining prior informed consent to sterilization.<sup>314</sup>

**Basis of the Recommendations:**

Women with disabilities often face coercion from health care providers regarding their reproductive decision-making and may be subjected to medical procedures without their consent. Women with disabilities are more likely to have hysterectomies at a younger age and for a non-medically necessary

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<sup>312</sup> *Id.*

<sup>313</sup> The 2013 legislative session was the second worst on record for reproductive rights, with over 30 harmful anti-abortion bills becoming law in 18 states. CENTER FOR REPRODUCTIVE RIGHTS, *Fulfilling Unmet Promises: Securing and Protecting Reproductive Rights and Equality in the United States*, 21 (2013).

<sup>314</sup> Bernard Dickens, *FIGO Committee Report: Female Contraceptive Sterilization – FIGO Committee for the Ethical Aspects of Human Reproduction and Women's Health*, 115 INT'L J. OF GYNECOLOGY & OBSTETRICS 88 (2011).

reason, including by request of a parent or guardian.<sup>315</sup> Women with disabilities also frequently encounter pressure from doctors, guardians, social service workers, parents, and society to abort a pregnancy because of a misperception of the possibility of passing on disabilities to their children—even if the disability is not genetic.<sup>316</sup>

Stereotypes regarding the danger of procreation by women with disabilities are enshrined in state law. Courts in the U.S. have addressed these issues, not always consistent with the requirements of the Americans with Disabilities Act (ADA) Title II, which prohibits state and local governments from discriminating on the basis of disability in government services, programs, or activities.<sup>317</sup>

For women and girls with disabilities, so-called “informed consent” for sterilization or abortion often comes from parents, guardians, or medical professionals rather than the woman herself. This practice is the result of the widespread and worldwide practice of depriving women with disabilities of legal capacity and thus the right to make important life decisions, or because individuals assume that women with disabilities lack capacity to make choices about their reproductive health.<sup>318</sup>

### **CAT Articles Implicated: 16**

### **Correlation to U.S. Government Report:**

The Government Report does not address the issue of forced sterilization of women with disabilities.

### **Report Informing this Section:**

Center for Reproductive Rights, The National Latina Institute for Reproductive Health, and Women Enabled International: *Violations of Reproductive Rights amounting to Torture and Ill Treatment*

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## **MEDICAL TREATMENT OF PEOPLE WITH INTERSEX CONDITIONS**

Intersex people suffer significant harm as a result of genital-normalizing surgery in childhood, involuntary sterilization, excessive genital exams and medical display, human experimentation, and denial of needed medical care.

### **Suggested Recommendations:**

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<sup>315</sup> Julia A. Rivera Drew, *Hysterectomy and Disability Among U.S. Women*, 45 PERSP. ON SEXUAL AND REPROD. HEALTH 157, 161 (2013); Elizabeth Pendo, *Disability, Equipment Barriers, and Women's Health: Using the ADA to Provide Meaningful Access*, 2 SLU JOURNAL OF HEALTH LAW & POLICY 44-45 (2008) available at <http://ssrn.com/abstract=1435543>.

<sup>316</sup> Anne Finger, *Forbidden Fruit*, 233 THE NEW INTERNATIONALIST (July 1992) available at <http://www.newint.org/issue233/fruit.htm>; see also Carolyn Frohmader, *Moving Forward and Gaining Ground: The Sterilisation of Women and Girls with Disabilities in Australia*, Women With Disabilities Australia, 6-7 (2012), available at [http://wwda.org.au/wp-content/uploads/2013/12/Moving\\_Forward\\_Gaining\\_Ground.pdf](http://wwda.org.au/wp-content/uploads/2013/12/Moving_Forward_Gaining_Ground.pdf); See generally Law Students for Reproductive Justice, *Women with Disabilities*, at 3 (2008), available at [http://lsrj.org/documents/factsheets/08-09\\_Women\\_with\\_Disabilities.pdf](http://lsrj.org/documents/factsheets/08-09_Women_with_Disabilities.pdf).

<sup>317</sup> Americans with Disabilities Act of 1990 (ADA), 42 U.S.C., §§12101-12213 (2000).

<sup>318</sup> Open Society Foundations, *Against Her Will: Forced and Coerced Sterilization of Women Worldwide*, 6 (Set. 2011), available at <http://www.opensocietyfoundations.org/sites/default/files/against-her-will-20111003.pdf>; Special Rapporteur on Violence against Women, its Causes and Consequences, *Report of the Special Rapporteur on Violence against Women, its Causes and Consequences*, para. 28, U.N. Doc. A/67/227 (Aug. 3, 2012) (by Rashida Manjoo).

1. Medical professionals should undergo specific training on intersex conditions, including the physical and psychological harm attendant to genital normalizing surgery, sterilization, and excessive genital exams and medical display.
2. With respect to (1) all cosmetic surgery on children's genitals and (2) all gonadectomies on children that are not justified by risks as strong as what would be required to perform a similar procedure on a non-intersex child, medical professionals should postpone such procedures until the patient is old enough to meaningfully participate in the decision-making process.
3. Medical professionals should only carry out the described procedures when the patient and parents have been thoroughly informed of the risks (physical and psychological) and alternatives, and have then given their informed consent.
4. Medical professionals should ensure proper human subjects research protections are in place prior to any research on people with intersex conditions.
5. Enforcement agencies should investigate possible violations of, and take action to enforce, laws prohibiting female genital mutilation, involuntary sterilization, and unethical human subjects research to protect children with intersex conditions.
6. U.S. courts should recognize genital normalizing surgery and involuntary sterilization performed on intersex children as violations of their federal civil rights,<sup>319</sup> and offer intersex plaintiffs comprehensive remedies for these harms.

### **Basis of the Recommendations:**

Americans born with intersex conditions face a wide range of violations of their sexual and reproductive rights, as well as rights to bodily integrity and individual autonomy. In infancy and throughout childhood, children with intersex conditions are subject to irreversible sex assignment and involuntary genital normalizing surgery, sterilization, medical display and photography of the genitals, and medical experimentation. Intersex individuals suffer life-long physical and emotional injury as a result of such treatment. For example, in some cases, sex-assignment surgery also removes viable gonads or other reproductive organs, terminating or permanently reducing reproductive capacity. With respect to emotional injury, harms include depression, poor body image, dissociation, social anxiety, suicidal ideation, shame, self-loathing, difficulty with trust and intimacy, and post-traumatic stress disorder.<sup>320</sup>

While children with intersex conditions suffer from an excess of medical attention, adults with intersex conditions often have difficulty finding providers who are educated about their needs. Some have reported discrimination and denial of care based on their atypical anatomy.

### **CAT Articles Implicated: 16**

#### **Correlation to U.S. Government Report:**

The Government Report does not address the issue of medical treatment of intersex individuals.

#### **Report Informing this Section:**

Advocates for Informed Choice: *Medical Treatment of People with Intersex Conditions*

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<sup>319</sup> In August 2014, a U.S. District Judge for the Charleston Division of South Carolina denied a motion to dismiss just such a claim in AIC's case, *M.C. v. Aaronson*. The decision is currently being appealed.

<sup>320</sup> San Francisco Human Rights Commission. A human rights investigation into the medical "normalization" of intersex people. (2005), available at [http://sfhrc.org/site/uploadedfiles/sfhumanrights/Committee\\_Meetings/Lesbian\\_Gay\\_Bisexual\\_Transgender/HRC%20Intersex%20Report.pdf](http://sfhrc.org/site/uploadedfiles/sfhumanrights/Committee_Meetings/Lesbian_Gay_Bisexual_Transgender/HRC%20Intersex%20Report.pdf). [SFHRC 2004]

# WARDS OF THE COURT

Wards of the court, who have surrogate decision makers for both legal and medical decisions, are vulnerable to different types of abuse.

## Suggested Recommendations:

1. The U.S. Government should establish a federal database tracking system to facilitate the tracking of complaints received by the Department of Health and Human Services (HHS), Food and Drug Administration (FDA) or the Department of Justice (DOJ) regarding complaints of psychiatric abuse in psychiatric facilities, psychiatric nursing homes and outpatient treatment.
2. The U.S. Government should establish a separate database to record and process allegations of misconduct which have been lodged by wards against their court assigned guardian or medical treatment team.
3. The U.S. Government should include persons with disabilities in the review policies at both the federal and state levels, to abolish all laws and mechanisms that restrict the legal capacity of any person (especially those with disabilities) and to create supportive measures for the exercise of legal capacity that respect the will and preferences of the person.
4. The U.S. Government should evaluate all guardianship cases in the State Court system to see if they are in compliance with U.S. Department of Health, Education, and Welfare Codes for the conduct of social and behavioral research and consistent with the ethical code of conduct established by the American Psychological Association, published in 1973.

## Basis of the Recommendations:

There is little transparency or accountability for what happens to wards of the court – especially in mental health cases. The mental health guardianship system offers few procedural protections, and has spawned a profit-driven professional guardianship industry that often enriches itself at the expense of society's most vulnerable members—the mentally ill.<sup>321</sup> Despite numerous calls for reform, most states have done little to monitor professional guardians and prevent abuse and neglect. Secrecy, lack of transparency and lack of accountability create an environment for human rights violations of the mentally disabled.<sup>322</sup> Problems of patient abuse include: excessive dosing for purposes of chemical restraint, poly-pharmacy with multiple medications, lack of informed consent and the use of medication with little or no direct doctor/patient contact.<sup>323</sup> Wards in mental health care have often been stripped of their legal rights and thus cannot assert their objections to treatment decisions. Patient human rights have been ignored and there is no direct process to bring guardianship abuse or doctor/proxy/decision maker abuse to the attention of the court. Additionally, "off-label" drugs – drugs not approved by the Food and Drug Administration – are given to wards of the court without their informed consent, which is tantamount to human experimentation.<sup>324</sup>

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<sup>321</sup> Fields, Robin, Evelyn Larrubia and Jack Leonard. "Guardians for Profit." Los Angeles Times (November 13-16, 2005).

<sup>322</sup> United States Government Accountability Office GAO Testimony Before the Special Committee on Aging, U.S. Senate, GUARDIANSHIPS, Little Progress in Ensuring Protection for Incapacitated Elderly People Statement of Barbara D. Bovbjerg, Director Education, Workforce, and Income Security, September 7, 2006, GAO-06-1086T; Wood, Erica F. "State-Level Adult Guardianship Data: An Exploratory Survey," American Bar Association Commission on Law and Aging for the National Center on Elder Abuse, August 2006; Yeoman, Barry. "Stolen Lives." AARP: The Magazine (January-February 2004).

<sup>323</sup> United States ex rel Law Project for Psychiatric Rights v. Matsutani, et al. US District Court, District of Alaska, Case No. 3:09-cv-0080-TMB.

<sup>324</sup> Jones, Allen. (2004) "TMAP Critique," January 20, 2004, PschRights.org, <http://psychrights.org/Drugs/AllenJonesTMAPJanuary20.pdf>; Jackson, Grace E., MD, "What Doctors May Not Tell You About Psychiatric Drugs" Public Lecture, UCE Birmingham June 2004; March 21, 2000 Report to the court by Dr. Loren R. Mosher M.D. regarding Eric Harris and Luvox use prior to the Columbine High School shooting, Scoteria Associates; Jackson, Grace E. (2005) "Rethinking Psychiatric Drugs: A Guide for Informed Consent." Bloomington, IN: Author House.

**CAT Articles Implicated:** 1, 2, 4, 5, 6, 7, 10, 11, 12, 13, 14, 15, 16, 22

**Correlation to U.S. Government Report:**

The U.S. Government does not address this issue in its Government Report.

**Report Informing this Section:**

Medical Whistleblower Advocacy Network: *Voiceless Victims: Wards of the Court*

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## **OVER-MEDICATION OF AFRICAN-AMERICAN GIRLS IN FOSTER CARE**

The over-medication of psychotropic drugs<sup>325</sup> on girls of African descent in foster care in the United States impacts their healthy development, dignity, and self-determination.

**Suggested Recommendations:**

1. The U.S. Government should require Health and Human Services and state, and local governments to collect data concerning psychotropic medication use and prescriptions categorized by race and ethnic origin that is disaggregated by age and gender-identity within those racial and ethnic groups for foster care children.
2. Health and Human Services and local, and state governments should: (1) provide culturally-competent, gender and trauma-informed, psycho-social therapeutic services; (2) require state and local residential treatment centers for children to obtain informed consents from older youth; and; (3) ban forced psychotropic drugging.
3. The U.S. Government should ratify the Convention on the Rights of the Child (CRC), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention on the Rights of Persons with Disabilities (CRPD), and the International Covenant on Economic, Social and Cultural Rights (ICESCR) to ensure human rights for all and adopt and implement a national racial justice plan that is consistent with the Durban Declaration and Programme of Action.

**Basis of the Recommendations:**

African-American<sup>326</sup> children are the highest disproportionate group in foster care. Foster care children are prescribed psychotropic medications at rates nine times higher than other children;<sup>327</sup>

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<sup>325</sup> Mind-altering drugs that have serious side effects and long-term consequences that suppress and disrupt normal brain development and function, alters chemical levels in the brain, and impacts mood and behavior. Breggin, Peter, MD, "The Psychiatric Drugging of America's Foster Children," May 28, 2014, Citizens Commission on Human Rights International. <http://www.cchrnt.org/2014/05/29/psychiatric-drugging-of-americas-foster-children/>; Francis, Enjoli, "Psychotropic Drugs: What Are They?" December 2, 2011. <http://abcnews.go.com/blogs/health/2011/12/02/what-you-need-to-know-about-psychotropic-drugs/>; National Institute of Mental Health, Mental Health Medications. <http://www.nimh.nih.gov/health/publications/mental-health-medications/index.shtml>. This is a list of more commonly used psychotropic medications in the U.S.: a) Antipsychotics, (such as, Abilify, Geodon, Risperdal, Seroquel, Zyprexa) b) Antidepressants (such as Zoloft, Celexa, Paxil, Lexapro, and Prozac), c) Attention Deficit Hyperactivity Disorder (ADHD) medications (such as, Ritalin, Metadate, Concerta, Daytrana, Adderall, Dexedrine, and Dextrostat) medications, d) anti-anxiety medications (such as, Klonopin, Ativan, Xanax and e) mood stabilizers (such as, Zyprexa, Abilify, Risperdal, Geodon, and Clorazil).

<sup>326</sup> African-American, in this report, is defined as Black people living in the U.S. who identify as such, and are descendants of Black Africans from the continent of Africa. For this report, girls include biologically born females ages, 0-21. Please note that although U.S. law and international treaties define children as persons under the age of 18, we are including young women up to the age of 21 for two

children of African descent are diagnosed with higher rates of mood/psychotic and behavior or conduct disorders that link to prescribing anti-psychotic medications;<sup>328</sup> and girls in foster care are diagnosed with higher rates of depression.<sup>329</sup> While qualitative data supports that psychotropic drugs threaten the well-being and healthy development of African-American girls in foster care, disaggregated, quantitative data is lacking. The side effects and consequences of ingesting psychotropic medications are damaging, debilitating, and life-threatening.<sup>330</sup>

While the federal National Improvement and Innovation Act<sup>331</sup> of 2011, ensures state oversight and monitoring of psychotropic drug use on foster care children, extension of this oversight is needed by other state and local agencies to ensure the protection of human rights for foster care children.

**CAT Articles Implicated:** 1, 10, 14, 16

### **Correlation to U.S. Government Report:**

The U.S. Government fails to address this Committee's concerns with respect to a wider category of acts which cause mental suffering, irrespective of their duration. Although it mentions the use of drugs, psychotropic drugging of children in state care or custody and as a form of chemical restraint, is not addressed.

### **Report Informing this Section:**

Stephanie S. Franklin, Esq., The Franklin Law Group, P.C., *Over-Medication of Psychotropic Drugs & African-American Girls in Foster Care*

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## **CONVERSION THERAPY ON LESBIAN, GAY, BISEXUAL, AND TRANSGENDER MINORS**

Conversion therapy, attempts to change a person's sexual orientation or gender identity, continues largely unabated by law in the U.S and causes severe mental harm that can cause life-long mental health issues and lead to suicidality.

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reasons: a) foster care in Maryland, the state where we provide our legal services, includes young people ages, 18-21 and b) testimonies of affected girls in this report are over the age of 18, but were under the age of 18 when they entered foster care.

<sup>327</sup> Abdelmalek, Mark Dr., Adhikari, B., Koch, S., Diaz, J., and Weinraub, C. "New Studies Shows U.S. Government Fails to Oversee Treatment of Foster Children With Mind-Altering Drugs." November 30, 2011. <http://abcnews.go.com/US/story?id=15058380>; Government Accounting Office. Children's Mental Health. "Concerns Remain about Appropriate Services for Children in Medicaid and Foster Care." December 2012. <http://www.gao.gov/assets/660/650716.pdf>; Government Accounting Office. "Foster Children: HHS Guidance Could Help States Improve Oversight of Psychotropic Prescriptions." December 1, 2011. <http://www.gao.gov/products/GAO-12-270T>.

<sup>328</sup> "Mental Health Surveillance Among Children — United States, 2005–2011" - Centers for Disease Control and Prevention, May 17, 2013. <http://www.cdc.gov/mmwr/preview/mmwrhtml/su6202a1.htm#Tab2>; Nauert, R., Ph.D. "Child's Mental Health Diagnosis Influenced by Ethnicity." May 20, 2008. <http://psychcentral.com/news/2008/05/20/childs-mental-health-diagnosis-influenced-by-ethnicity/2317.html>; Nauert, R., Ph.D. "Child's Mental Health Diagnosis Influenced by Ethnicity." May 20, 2008. <http://psychcentral.com/news/2008/05/20/childs-mental-health-diagnosis-influenced-by-ethnicity/2317.html>

<sup>329</sup> "Mental Health Surveillance Among Children — United States, 2005–2011" - Centers for Disease Control and Prevention, May 17, 2013. <http://www.cdc.gov/mmwr/preview/mmwrhtml/su6202a1.htm#Tab2>

<sup>330</sup> For example, ingestion of atypical, anti-psychotic drugs such as, Abilify, Risperdal, Seroquel, and Zyprexa can lead to, but are not limited to, obesity, elevated blood sugar and diabetes, pancreatitis, cardiovascular abnormalities, behavior changes, anxiety, restlessness, drowsiness, low-energy, suicidal ideations, aggression, insomnia, and memory loss.; Breggin, Peter, MD, "The Psychiatric Drugging of America's Foster Children," May 28, 2014, Citizens Commission on Human Rights International. <http://www.cchr.org/2014/05/29/psychiatric-drugging-of-americas-foster-children/>

<sup>331</sup> Pub. Law 112-34. Child and Family Services Improvement and Innovation Act. (Enacted September 30, 2011). <http://www.gpo.gov/fdsys/pkg/PLAW-112publ34/pdf/PLAW-112publ34.pdf>

### **Suggested Recommendations:**

1. Every state should adopt legislation or regulations prohibiting state-licensed professionals from attempting to change a minor's sexual orientation or gender identity.
2. Federal and state child welfare officials and agencies should take all necessary steps, including the adoption of legislation or regulations, to ensure that youth in state care are not subjected to attempts to change their sexual orientation or gender identity, including by therapists, staff, or foster parents, and to ensure that lesbian, gay, bisexual, and transgender youth are provided with competent, supportive care.

### **Basis of the Recommendations:**

When an LGBT young person's parents or legal guardians do not accept the youth's identity, every state but two in the U.S. permits families to engage mental health professionals—licensed and authorized to practice by the state—to attempt to change the young person's sexual orientation or gender identity. Such practices can cause depression, substance abuse, self-harm, and suicide in LGBT youth. The nation's leading medical and mental health organizations have found that attempts to change a person's sexual orientation or gender identity lack any scientific basis and present significant risks of physical and mental harm to patients who undergo them.

### **CAT Articles Implicated: 16**

### **Correlation to U.S. Government Report:**

The U.S. Government does not address this issue in its Government Report.

### **Report Informing this Section:**

National Center for Lesbian Rights: *Report on the United States of America's Compliance with the Convention Against Torture with Respect to the Continuing Practice of Conversion Therapy on Lesbian, Gay, Bisexual, and Transgender Minors*

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## **POLITICAL PRISONERS**

### **The Continued Incarceration of Political Prisoners**

For decades, the U.S. Government has unjustly imprisoned racial justice activists and human rights defenders, many of whom were arrested under the COINTELPRO system.

### **Suggested Recommendations:**

1. The U.S. and state governments should immediately and unconditionally release all COINTELPRO-Civil Rights Era political activists, particularly, the aged and critically or chronically ill.
2. The U.S. Government should investigate all cited instances of torture and cruel, inhuman, and degrading treatment and punishment of those considered political prisoners. This investigation would include, but not be limited to, length of time served, medical treatment, age, and repeated



denial of parole.

3. The U.S. Government should establish a Truth and Reconciliation Commission (TRC), similar to that held and supported in South Africa and other countries. Such a Commission should consist of appropriate government officials and should include representatives of impacted communities (for example, educators, clergy and activists). In the alternative, a Special Prosecutor should be named to investigate the deaths and imprisonment of all COINTELPRO/Civil Rights Era human rights defenders and political activists to identify human and civil rights violations and a right to compensation.
4. The U.S. Government should design and fund a special program to train all levels of law enforcement in CAT and other human rights standards and prosecute those who violate them.
5. The U.S. Government should review the findings of the Senate Church Committee Hearings on the FBI's illegal Counter Intelligence Program, and determine how this program violated the human rights of hundreds of Black Americans, and created the consequence of its own citizens being political prisoners as a result of their activism in building their own communities and fighting against genuine racial violence and repression. The U.S. Government should take steps to ensure that the Church Committee safeguards are restored and remain in place to avoid a recurrence of these civil and human rights violations.

### **Basis of the Recommendations:**

The U.S. Government continues to indefinitely incarcerate COINTELPRO (short for Counterintelligence Program)<sup>332</sup> /Civil Rights Era racial justice activists and human rights defenders,<sup>333</sup> most of whom have been incarcerated for well over 40 years. These individuals include women and men who took up arms to defend themselves and their communities against racial police violence. These individuals are subject to indefinite prolonged cellular isolation;<sup>334</sup> several have died in prison;<sup>335</sup> most are aged and chronically or critically ill; others have endured years of solitary confinement, receive poor or no medical health care, are or have been confined in “prolonged isolation” or “control units” due solely to their status as political prisoners or prisoners of war, not because of disciplinary infractions, and suffer various other forms of abuse. They are given perfunctory parole hearings resulting in routine denial of statutory and/or compassionate release, despite exemplary prison records. Requests for new trials have been frustrated at every turn by law enforcement and the prosecution. Statutory release is denied despite having maxed out, even when court ordered.

The use of criminal punishment for surveillance and suppression of African (African American/Black) people has a long history and even today, U.S. law protects vigilantism under “Stand Your Ground” statutes which result in the deaths of Black children, women, and men every 28 hours – Operation Ghetto Storm.

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<sup>332</sup> Federal, state, and local governments, working under COINTELPRO, precipitated hundreds of arrests, false prosecutions, incarceration, maiming, murder, destruction and mayhem throughout the country. It infiltrated every organization and association that aspired to bring about social change or self-determination, whether sought through peaceful means or armed resistance. Prosecutors and the courts were complicit in the destruction meted out by the FBI and local law enforcement. Prosecutors routinely over charged and withheld exculpatory evidence. Courts handed down punitively long, draconian sentences. FBI's illegal Counter Intelligence Program. US Senate Church Hearings <http://unwittingvictim.com/Cointelpro.html>; <http://www.npr.org/templates/story/story.php?storyId=516181>; Churchill, Ward and Wall, Jim Vander, *The COINTELPRO PAPERS: Documents From the FBI's Secret Wars Against Dissent in the United States*, South End Press Classics, 1990 and 2002); Glick, Brian and Smith, Abbe, “Covert Action against U.S. Activists and What We Can Do,” (South End Press, 1989), p.11, <http://whatreallyhappened.com/RANCHO/POLITICS/COINTELPRO/>

<sup>333</sup> Jericho List of Political Prisoners, <http://www.thejerichomovement.com/prisoners.html>

<sup>334</sup> TORTURE: CRIMINALIZATION OF DISSENT, Malcolm X Center for Self Determination National Jericho Movement for Amnesty and Freedom of All (U.S.) Political Prisoners, List of Issues Submitted, United States Compliance with the ICCPR, 107<sup>th</sup> Session of the Human Rights Committee, Geneva 11-28 March 2013 [http://www.usmnetwork.org/sites/usmnetwork.org/files/16\\_malcolm\\_x\\_center\\_for\\_self\\_determination\\_and\\_national\\_jericho\\_movement.pdf](http://www.usmnetwork.org/sites/usmnetwork.org/files/16_malcolm_x_center_for_self_determination_and_national_jericho_movement.pdf)

<sup>335</sup> Deaths include: Safiya Asya Bukari, Albert “Nuh” Washington, Teddy “Jah” Heath, Kuwazi Balagoon, Merle Africa, Celetayo Tabor, Herman Wallace, Bashir Hameed, Richard Williams, Eddie Hatcher, Marilyn Buck, Geronimo Ji Jaga, Dr. Alan Berkman; National Jericho Movement for Amnesty and Freedom of All US Political Prisoners, <http://www.thejerichomovement.com/images17/safiya-poster.pdf>

The newly enacted 2012 National Defense Authorization Act (NDAA), which contains provisions authorizing the U.S. military to pick up and imprison people, including U.S. citizens, without charging them or putting them on trial expands the specter of solitary confinement to again include ordinary unpopular citizens.<sup>336</sup>

**CAT Articles Implicated:** 1, 2, 4, 5, 7, 12, 13, 14, 16

**Correlation to U.S. Government Report:**

The Government Report is silent on its treatment of its imprisonment of COINTELPRO /Civil Rights Era political activists.

**Report Informing this Section:**

Malcolm X Center for Self Determination, American Friends Service Committee Prison Watch Project, National Jericho Movement to Free for All U.S. Political Prisoners: *COINTELPRO/U.S. Civil Rights Era Political Prisoners – No Access to Justice - Political Repression: Imprisoned COINTELPRO U.S. Civil Rights Era HR Defenders, Political Activists, And Other Persons at Risk*

National Jericho Movement to Free all Political Prisoners, National Coalition for a Truth & Reconciliation Commission, Malcolm X Center for Self Determination (MXC), Sekou Odinga Defense Committee, Family & Friends of Dr. Mutulu Shakur: *COINTELPRO/U.S. Civil Rights Era Political Prisoners*

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## The Organized Stalking of Political Activists and Dissidents

“Organized stalking” is used as a form of psychological and also neuro-psychological torture against political activists and dissenters.

**Suggested Recommendations:**

1. Organized Stalking and its parallel organized surveillance must be allowed to be filed and reported as a human rights and civil crime against humanity to local police stations and to Community Human Rights Commissions.
2. Activities related to Organized Stalking must be investigated and categorized as such in the Department of Justice Victimization and Stalking database.
3. The Presidential Bioethics Commission, comprised of a dozen national agencies, which has heard complainants and victims over the last five years, should be suspended, fined, or investigated for perjury and misrepresentation for giving victims false hopes and exposing them

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<sup>336</sup> Specifically, the legislation “affirms the authority of the President to use all necessary and appropriate force pursuant to the Authorization for Use of Military Force (Public Law 107-40) includes the authority for the Armed Forces of the United States to detain covered persons (as defined in subsection (b)) pending disposition under the law of war.” It specifically authorizes “Detention under the law of war without trial until the end of the hostilities authorized by the Authorization for Use of Military Force,” referring to the bill passed by Congress more than ten years ago that authorized an endless “war on terror.”  
COINTELPRO 21<sup>st</sup> CENTURY: Tanks in the street in Ferguson, Missouri, Department of Justice to “train community leaders to spot 'radicals,' <http://m.theweek.com/speedreads/index/268143/speedreads-the-doj-to-train-community-leaders-to-spot-radicals>; Ritchie, Andrea J, Mogul, Joey L.,” In the Shadows of the War on Terror: Persistent Police Brutality and Abuse of People of Color in the United States,” file:///F:/9-11%20in%20the%20Shadows%20of%20the%20War%20on%20Terror%20%20Persistent%20Police%20Brutality%20and%20Abuse%20of%20People%20of%20Color%20in%20the%20United%20States%20%20National%20Police%20Accountability%20Project.htm

to more severe harms than before reporting their pains and suffering publicly to the commission.

4. Victims of Organized Stalking and Surveillance should be examined through forensics science by Physicians for Human Rights and other groups to detect and collect data and expose the human rights violations done to them by neural and neuro-psychological methods.

#### **Basis of the Recommendations:**

“Organized Stalking” is the electronic, emotional and psychological torture that is part of a covert political method or campaign, aimed at undermining, policing, neutralizing, and slowly killing dissidents.<sup>337</sup> It involves the illegal surveillance and harassment of political, civil and human rights activists and proponents by multiple perpetrators working together under the guises of the war on terror (Patriot Act, Fisa, NSA, Gag letters, NDAA, State Secrecy Act). The victims of organized stalking are, in most cases, political activists, political or judicial voices, or dissenters.

**CAT Articles Implicated:** 1, 2, 4, 12, 13, 14

#### **Correlation to U.S. Government Report:**

The Government Report does not address the issue of “Organized Stalking.”

#### **Report Informing this Section:**

The Human Dignity Council: *Shadow Report on Systematic Organized Stalking, Covert Neutralization of Dissidents by Means of Torture, Degrading and Inhumane Treatment.*

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## **STATE AND LOCAL IMPLEMENTATION OF THE CAT**

The U.S. Government does not adequately ensure state and local implementation of the CAT.

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<sup>337</sup> "Defining Organized Stalking." *Urban Dictionary*. Urban Dictionary, n.d. Web. 15 Oct. 2014, <http://www.urbandictionary.com/define.php?term=organized%20stalking>; *Cointelpro Terrorism* (n.d.): n. pag. *www.everydayconcerned.net*. 22 Sept. 2014. Web. 15 Oct. 2014, <http://everydayconcerned.net/category/cointelpro-terrorism/>; Labella, Keith S. "Keith Labella Affidavit." (n.d.): n. pag. *Keith Labella Affidavit*. Random Collection Pdf Post, 2011. Web. 15 Oct. 2014, <http://www.randomcollection.info/keith-affidavit-11-cv-23.pdf>; Kelley, Michael B. "The NDAA Legalizes The Use Of Propaganda On The US Public." *Business Insider*. Business Insider, Inc. 21 May 2012. Web. 15 Oct. 2014, <http://www.businessinsider.com/ndaa-legalizes-propaganda-2012-5>; Gunderson, Ted L. "Former FBI Agent Organized Stalking Affidavit." *Fight Gang-stalking*. Keith Labella, 01 May 2013. Web. 16 Oct. 2014, <http://fightgangstalking.files.wordpress.com/2013/05/gunderson-affidavit.pdf>; US. Darpa. Military. *Research Subjects Guidance*. N.p., n.d. Web. 15 Oct. 2014, [arpa.mil/WorkArea/DownloadAsset.aspx?id=2147486611](http://arpa.mil/WorkArea/DownloadAsset.aspx?id=2147486611); Airforce, Department Of. "Directed Energy Bioeffects Research." *Fedbizopps.gov*. Airforce, 14 Sept. 2006. Web. 15 Oct. 2014, [https://www.fbo.gov/index?s=opportunity&mode=form&id=e67926a9a380db7b10caa7e32f0f4d9e&tab=core&\\_cview=1](https://www.fbo.gov/index?s=opportunity&mode=form&id=e67926a9a380db7b10caa7e32f0f4d9e&tab=core&_cview=1); GOV, NIH. "NIH Genomic Data Sharing Policy." *National Institute of Health*. Department of Health and Human Services, 27 Aug. 2014. Web. 15 Oct. 2014, <http://grants.nih.gov/grants/guide/notice-files/NOT-OD-14-124.html>; Human Rights, Physicians For. "Torture Investigations." - *Justice and Forensic Science*. Physicians for Human Rights, 15 Oct. 2014. Web. 15 Oct. 2014, <http://physiciansforhumanrights.org/justice-forensic-science/torture-investigations/>; 256, Act No., Public Acts Of 2003, Approved By The Governor, and 2003 December 28. "Michigan Electromagnetic Weapons Law." *ENROLLED HOUSE BILL No. 4513* (2003): n. pag. *Michigan Legislature*. Michigan Legislature, 29 Dec. 2003. Web. 16 Oct. 2014., <https://www.legislature.mi.gov/documents/2003-2004/publicact/pdf/2003-PA-0256.pdf>; "Bioethics Commission FAQs." *President Bioethics Commission*. N.p., 01 Oct. 2010. Web. 16 Oct. 2014, <http://bioethics.gov/node/242>; Electronic Weapons, Mass Law. "'AN ACT RELATIVE TO THE POSSESSION OF ELECTRONIC WEAPONS'." *Human Dignity Council*. Massachusetts Legislature, 22 Mar. 2013. Web. 15 Oct. 2014, <http://humandignitycouncil.wordpress.com/2014/03>

## Suggested Recommendations:

1. The U.S. Government should provide education and training to state and local agencies and officials on their obligations under the CAT. This should include dissemination of Concluding Observations by federal agencies in coordination with the State Department, within one year of the review, along with appropriate guidance on how they relate to state and local policy and effective means of implementation.
2. The U.S. Government should ensure that dedicated staff serve as focal points for coordinating and liaising with state and local actors regarding human rights reporting and implementation, including identifying and developing effective practices at the state and local level and communicating recommendations from international bodies to state and local governments.
3. The U.S. Government should provide state and local governments with the funding and resources necessary to engage in civil and human rights implementation and compliance, including through grants to Human Rights Agencies, to ensure they have the resources to undertake human rights education, monitoring, reporting and implementation.
4. The U.S. Government should establish institutionalized, transparent and effective mechanisms to coordinate with state and local officials to ensure comprehensive monitoring and implementation of international human rights standards at the federal, state and local levels, such as a reinvigorated Interagency Working Group on Human Rights and a National Human Rights Institution.

## Basis of the Recommendations:

The U.S. Government lacks institutionalized government entities tasked to encourage, coordinate and support human rights education, monitoring or implementation at the federal, state and local levels. Many state and local officials are unaware of the treaties the U.S. has ratified and their obligations with respect to treaty implementation.<sup>338</sup> This lack of basic human rights education is compounded by resource and staffing constraints at the state and local level, which further impede the promotion and protection of human rights.

Numerous examples illustrate how the current lack of a coordinated approach to implementation has led to persistent gaps in human rights protections in areas within state and local jurisdiction: these include sexual violence by correctional authorities,<sup>339</sup> use of the death penalty,<sup>340</sup> police brutality<sup>341</sup> and domestic violence and sexual assault.<sup>342</sup>

While state and local governments are increasingly expressing interest in promoting and protecting human rights—and a number of states and localities have explicitly incorporated international human

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<sup>338</sup>As one example, in 2008, Human Rights Watch sent letters to the Attorneys General of every state to identify whether they were aware of the International Convention on the Elimination of All Forms of Racial Discrimination and their states' responsibilities under the treaty. The responses they received were limited but illuminating. The Attorney General of Kansas, for example, responded: "It does not appear that Kansas was a party to any agreement or resolution passed by this body or the federal government" and requested a "cite to the pre-emptive federal law and/or Kansas Statute...creating a legal duty." Human Rights Watch, *Submission to the Committee on the Elimination of all Forms of Racial Discrimination During its Consideration of the Fourth, Fifth, and Sixth Periodic Reports of the United States of America CERD 72nd Session 64* (Feb. 2008), available at <http://www2.ohchr.org/english/bodies/cerd/docs/ngos/usa/HRW.pdf>.

<sup>339</sup>U.S. Department of Justice Office of Justice Programs, Bureau of Justice Statistics, *Survey of Sexual Violence in Adult Correctional Facilities, 2009-11, Statistical Tables* (January 2014), available at <http://www.bjs.gov/content/pub/pdf/ssvacf0911st.pdf>.

<sup>340</sup>Center for Constitutional Rights and FIDH, *Discrimination, Torture, and Execution: A Human Rights Analysis of the Death Penalty in California and Louisiana* (2013), available at <http://www.fidh.org/IMG/pdf/report-death-penalty-us-2013.pdf>.

<sup>341</sup>See, e.g., Stephanie Nebehey, *Missouri racial violence recalls apartheid, UN rights chief says*, Reuters (Aug. 20, 2014), at <http://in.reuters.com/article/2014/08/20/un-rights-pillay-idINKBN0GJ1UF20140820>.

<sup>342</sup>Rape, Abuse & Incest National Network (RAINN), How often does sexual assault occur, at <https://www.rainn.org/get-information/statistics/frequency-of-sexual-assault> (aggregating results from the U.S. Census Bureau for the Bureau of Justice Statistics National Crime Victimization Survey from 2008-2012); Michele C. Black et al., National Center for Injury Prevention and Control, Centers for Disease Control and Prevention, *The National Intimate Partner and Sexual Violence Survey (NISVS): 2010 Summary Report 2* (2011), available at [http://www.cdc.gov/violenceprevention/pdf/nisvs\\_report2010-a.pdf](http://www.cdc.gov/violenceprevention/pdf/nisvs_report2010-a.pdf).

rights standards into local law, policy, and practice<sup>343</sup>—these efforts are ad hoc and lack the coordination and resources necessary to ensure their sustainability.

In recent years, the Obama Administration has taken a number of important steps to improve federal coordination around treaty reporting and implementation, including the creation of an inter-agency Equality Working Group to coordinate federal efforts pertaining to human rights.<sup>344</sup> While this Working Group is a welcome development, it has not yet been institutionalized and it has not yet engaged with state and local governments. The United States also lacks a national human rights monitoring body, such as an NHRI.

To date, the federal government has not disseminated the U.N. treaty bodies' Concluding Observations or UPR recommendations to state and local government actors, nor has it offered guidance on how the recommendations relate to state and local policy or how state and local governments can comply with them.

### **CAT Articles Implicated: 2, 10**

### **Correlation to U.S. Government Report:**

The U.S. Government, in its 2011 report to the Human Rights Committee<sup>345</sup> and its 2013 report to the Committee on the Elimination of All Forms of Racial Discrimination<sup>346</sup> (which are both incorporated by reference in its 2013 report to this Committee<sup>347</sup>), notes new initiatives at the state and local government levels aimed at promoting and protecting human rights. While these efforts are laudable, the U.S. Government offers an incomplete picture of the context in which state and local governments operate. The U.S. Government indicates that state and local governments provide “complementary protections and mechanisms” that “reinforce the ability of the United States to guarantee respect for human rights.”<sup>348</sup> However, the U.S. Government fails to acknowledge the challenges that state and local actors face in fully participating in human rights monitoring and implementation. These constraints range from—and extend beyond—limited knowledge of international human rights standards to broader structural issues. Even where state and local

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<sup>343</sup> See, e.g., Columbia Law School Human Rights Institute, *Implementing Recommendations from the Universal Periodic Review: A Toolkit for State and Local Human Rights and Human Relations Commissions* (2011), available at [http://web.law.columbia.edu/sites/default/files/microsites/human-rights-institute/files/UPR%20Toolkit\\_0.pdf](http://web.law.columbia.edu/sites/default/files/microsites/human-rights-institute/files/UPR%20Toolkit_0.pdf); Columbia Law School Human Rights Institute & IAOHRA, *State and Local Human Rights Agencies: Recommendations for Advancing Equality Through an International Human Rights Framework* (2009), available at [http://web.law.columbia.edu/sites/default/files/microsites/human-rights-institute/files/45408\\_HRI-Text%20%5BOnline%5D%20-%202nd%20printing%20%28Updated%2010.1.09%29.pdf](http://web.law.columbia.edu/sites/default/files/microsites/human-rights-institute/files/45408_HRI-Text%20%5BOnline%5D%20-%202nd%20printing%20%28Updated%2010.1.09%29.pdf).

<sup>344</sup> See *Periodic Report of the United States of America to the United Nations Committee on the Elimination of Racial Discrimination Concerning the International Convention on the Elimination of All Forms of Racial Discrimination*, ¶ 4, ¶ 4, 30 (“the newly established Equality Working Group creates a forum for dialogue between civil society and the federal government on issues of equality and human rights”). (June 12, 2013), available at [http://www.state.gov/j/drl/rls/cerd\\_report/210605.htm](http://www.state.gov/j/drl/rls/cerd_report/210605.htm)

<sup>345</sup> Annex A to the Common Core Document of the United States: State, Local, Tribal, and Territorial Human Rights Organizations and Programs, Submitted With the Fourth Periodic Report of the United States of America to the United Nations Committee on Human Rights Concerning the International Covenant on Civil and Political Rights, ¶¶ 1-3, 124–26 (Dec. 30, 2011), available at <http://www.state.gov/j/drl/rls/179782.htm>

<sup>346</sup> *Periodic Report of the United States of America to the United Nations Committee on the Elimination of Racial Discrimination Concerning the International Convention on the Elimination of All Forms of Racial Discrimination*, ¶ 32 (June 12, 2013), available at [http://www.state.gov/j/drl/rls/cerd\\_report/210605.htm](http://www.state.gov/j/drl/rls/cerd_report/210605.htm)

<sup>347</sup> *Periodic Report to the Committee against Torture* at ¶ 77.

<sup>348</sup> See *Periodic Report of the United States of America to the United Nations Committee on the Elimination of Racial Discrimination Concerning the International Convention on the Elimination of All Forms of Racial Discrimination*, ¶ 31 (June 12, 2013), available at [http://www.state.gov/j/drl/rls/cerd\\_report/210605.htm](http://www.state.gov/j/drl/rls/cerd_report/210605.htm); *Common Core Document of the United States of America: Submitted With the Fourth Periodic Report of the United States of America to the United Nations Committee on Human Rights concerning the International Covenant on Civil and Political Rights*, ¶ 129 (Dec. 30, 2011), available at <http://www.state.gov/j/drl/rls/179780.htm>. As part of its report to the Committee on the Elimination of Racial Discrimination, the U.S. included an Annex, which provides a snapshot of state, local, tribal and territorial human rights organizations and programs and emphasizes that state and local agencies play a “critical role” in human rights implementation. See Annex A to the Common Core Document of the United States: State, Local, Tribal, and Territorial Human Rights Organizations and Programs, Submitted With the Fourth Periodic Report of the United States of America to the United Nations Committee on Human Rights Concerning the International Covenant on Civil and Political Rights, ¶¶ 1-3, 124–26 (Dec. 30, 2011), available at <http://www.state.gov/j/drl/rls/179782.htm>

governments have an awareness of international human rights and the will to engage in monitoring and implementation, they have limited capacity to do so.<sup>349</sup>

The Government Report describes some ways that the U.S. endeavors to comply with the CAT, including through training on “torture and cruel, inhuman and degrading treatment” for state and local partners of the Department of Homeland Security’s Immigration and Customs Enforcement.<sup>350</sup> Furthermore, regarding ill-treatment in schools, which is an issue of state and local concern, the U.S. Government notes there is a trend away from corporal punishment in school districts around the county.<sup>351</sup> The U.S. Government also highlights the Prison Rape Elimination Act as an effort address abuses in prisons related to women, children and LGBT individuals.<sup>352</sup> However, the efforts described are ad hoc and lack a firm grounding in international human rights treaty standards.

### **Report Informing this Section:**

Columbia Law School Human Rights Institute & International Association of Official Human Rights Agencies: *The Need for Comprehensive Federal Outreach and Mechanisms to Support State and Local Implementation of the Convention*

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<sup>349</sup> The information in this submission draws heavily from research and recommendations made in the Columbia Law School Human Rights Institute & International Association of Official Human Rights Agencies (IAOHRA) report, *Closing the Gap: The Federal Role in Respecting and Ensuring Human Rights at the State and Local Level: Response to the Fourth Periodic Report of the United States to the United Nations Human Rights Committee* (2013), available at [http://web.law.columbia.edu/sites/default/files/microsites/human-rights-institute/files/State%20and%20Local%20Shadow%20Report%20\(ecopy\).pdf](http://web.law.columbia.edu/sites/default/files/microsites/human-rights-institute/files/State%20and%20Local%20Shadow%20Report%20(ecopy).pdf). The recommendations laid out here echo a joint Human Rights Institute and IAOHRA report to the Committee on the Elimination of All Forms of Racial Discrimination, see *The Need for Effective Federal Outreach and Mechanisms to Coordinate and support Federal, State and Local Implementation of The Convention*, available at [http://web.law.columbia.edu/sites/default/files/microsites/human-rights-institute/files/cerd\\_shadow\\_report\\_state\\_and\\_local\\_implementation\\_-\\_final.pdf](http://web.law.columbia.edu/sites/default/files/microsites/human-rights-institute/files/cerd_shadow_report_state_and_local_implementation_-_final.pdf).

<sup>350</sup> *Periodic Report to the Committee against Torture* at ¶ 100.

<sup>351</sup> *Id.* at ¶ 226.

<sup>352</sup> *Id.* at ¶ 170.