

**The United States' Compliance with the United Nations Convention Against Torture with Respect to Guantánamo Bay Detainees and the Cumulative Impact of Confinement, the Abuse of Detainees Post Release, and the Right to Redress**

**Submitted for the 53<sup>rd</sup> Session, Geneva, 3 November – 28 November 2014**

**Executive Summary**

**Reporting Organizations**

**Center for Constitutional Rights**

The Center for Constitutional Rights (“CCR”) is a non-governmental organization based in the United States that is dedicated to advancing and protecting the rights guaranteed by the United States Constitution and the Universal Declaration of Human Rights. CCR has been at the forefront of defending the rights of men detained at Guantánamo since the beginning of the prison’s operation. CCR was counsel in *Rasul v. Bush*, which first established the right of detainees to challenge the legality of their detentions in U.S. courts, and has coordinated the legal representation of detainees by hundreds of pro bono counsel for over a decade. CCR has also directly represented over a dozen current and former detainees in all aspects of their efforts for release, humane treatment during detention, and reintegration and rehabilitation after release. For more information, please visit [www.ccrjustice.org](http://www.ccrjustice.org).

**Human Rights Center, University of California, Berkeley**

The Human Rights Center (“HRC”) at the University of California, Berkeley, School of Law conducts research on war crimes and other serious violations of international humanitarian law and human rights. Using evidence-based methods and innovative technologies, we support efforts to hold perpetrators accountable and protect vulnerable populations. We also train students and advocates to document human rights violations and turn this information into effective action. For more information, please visit [hrc.berkeley.edu](http://hrc.berkeley.edu).

**International Human Rights Law Clinic, University of California, Berkeley, School of Law**

The International Human Rights Law Clinic (“IHRLC”) designs and implements innovative human rights projects to advance the struggle for justice on behalf of individuals and marginalized communities through advocacy, research, and policy development. The IHRLC employs an interdisciplinary model that leverages the intellectual capital of the university to provide innovative solutions to emerging human rights issues. Students are integral to all phases of the IHRLC’s work and acquire unparalleled experience generating knowledge and addressing urgent human rights challenges. For more information, please visit [www.humanrightsclinic.org](http://www.humanrightsclinic.org).

**Summary of Issues**

This report presents empirical data drawn from a 2008 study conducted by the reporting organizations regarding the treatment and effects of detention on former Guantánamo Bay detainees entitled *Guantánamo and Its Aftermath: U.S. Detention and Interrogation Practices and their Impact on Former Detainees* (the “Study”). Based on the Study and additional research, this submission provides data documenting the following:

**The cumulative effect of indefinite detention and abuse experienced by some Guantánamo detainees constitutes torture and cruel, inhuman or degrading treatment in violation of Article 1.** Guantánamo Bay detainees experienced this cumulative effect as a result of a system of indefinite confinement that collectively dehumanized detainees by subjecting them to desecration of the Quran, sexual humiliation, short shackling, stress positions, extended exposure to extreme temperatures, and prolonged isolation. Psychological torture as interpreted by the Committee and the U.S. incorporates the concept of the cumulative effect of detention procedures at Guantánamo Bay. (Question 2)

**Former detainees reported post release mistreatment that constitutes cruel, inhuman and degrading treatment or torture in violation of Article 3.** Former detainees reported being beaten by domestic security agents after their release from Guantánamo—both in prison and during interrogation—as well as being forced to take hallucinogenic drugs, and having their families threatened. (Question 8(a))

**Former detainees suffered economic, psychological, physical, and social harm as a result of their detention and ill-treatment at Guantánamo Bay and thus are entitled to fair and adequate compensation under Article 14.** At the time of their interview, only six of the sixty-two former detainees in the Study had permanent employment, almost two-thirds reported having emotional difficulties post release, and most had experienced a Guantánamo-related stigma that hampered their reintegration. (Question 8(d))

### **Suggested Recommendations**

**The U.S. government should establish a comprehensive reintegration program for former detainees, either on its own or under the auspices of the United Nations.** The program should provide immediate financial assistance and support former detainees to secure long-term, sustainable livelihoods. Mental and physical health services should be made available to former detainees and offered in conjunction with livelihood support to address the relationship of economic harms to mental health issues. Social stigma should be mitigated through issuance of an official apology and the creation of an individual process through which former detainees may clear their names.

**The U.S. government should establish a fair and adequate procedure to compensate former detainees for torture and other ill-treatment.** Former detainees in the Study and others who have been transferred after being cleared for release were never convicted of a crime and were unjustly detained for years under conditions designed to dehumanize, degrade, and instill despair. These individuals are entitled to fair and adequate compensation, both under the Convention and according to principles of fundamental fairness.

## Introduction

*“I was living in hell in Guantánamo. And when I returned home, it was another hell.”*

-Former Guantánamo Bay detainee<sup>1</sup>

Berkeley Law’s International Human Rights Law Clinic (“IHRLC”) and Human Rights Center (“HRC”), and the Center for Constitutional Rights (“CCR”) jointly submit this report to the Convention Against Torture Committee (“Committee”) to inform its review of the United States’ treaty obligations under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“CAT” or “Convention”).<sup>2</sup> In particular, this report presents empirical data drawn from the most comprehensive academic study to date regarding the treatment and effects of detention on former Guantánamo Bay detainees to address U.S. treaty obligations under Articles 1, 2, 3, and 14 of the Convention with regard to: (1) the United States’ interpretation of the definition of psychological torture; (2) the risks of torture and abuse that Guantánamo Bay detainees face upon their release; and (3) the social and economic effects of detention on Guantánamo Bay detainees and the need for redress.<sup>3</sup>

The findings of this study suggest the U.S. has violated its obligations under the Convention, including its duty to provide redress. Further, while the findings are not generalizable to the entire population of released detainees, there is good reason to believe that key findings of the study apply to a large number of this group. The indefinite nature of detention continues. Detainees released since publication of the study as well as those who remain in detention, have experienced the ill-treatment of the system for even longer periods of time than those in the study, suggesting the harms they have experienced may be even greater. Further, the U.S. has not established a procedure to provide fair and adequate compensation for released detainees, the number of which has only increased since publication of the study.

In 2008, IHRLC and HRC, in partnership with CCR, released their findings from a study of sixty-two former detainees held in U.S. custody in Guantánamo Bay, entitled *Guantánamo and Its Aftermath: U.S. Detention and Interrogation Practices and their Impact on Former Detainees* (“the Study”).<sup>4</sup> The Study assessed the treatment of former detainees in detention by U.S. authorities and explored how the conditions of their confinement impacted their reintegration with their families and communities.<sup>5</sup> Researchers interviewed former detainees in nine countries from July 2007 to July 2008, including Albania and Afghanistan, under conditions to ensure their anonymity.<sup>6</sup> These men had been held in U.S. custody without trial for a little over three years on average.<sup>7</sup> In many cases, U.S. government officials believed that these men had been detained in error.<sup>8</sup> None of the released detainees were ever convicted of a crime.<sup>9</sup> To date, none of the former detainees from the Study have received compensation for harm suffered or acknowledgment of any mistake or wrongdoing by the U.S. regarding their unjust detention.<sup>10</sup>

The Committee made specific findings regarding the issues presented in this submission in its concluding observations of its prior review of the U.S. With respect to the U.S. interpretation of psychological torture, the Committee concluded that “acts of psychological torture, prohibited by the Convention, are not limited to ‘prolonged mental harm’...but constitute a wider category of acts, which cause severe mental suffering, irrespective of their prolongation or its duration.”<sup>11</sup> In its response to the Committee’s concluding observations, the U.S. did not speak directly to its adopted definition of psychological torture. However, with respect to the Committee’s

recommendation to “rescind” certain interrogation techniques, the U.S. rejected application of the Convention, stating that the laws of war applied exclusively.<sup>12</sup> Regarding the safe transfer of former detainees at Guantánamo Bay, the Committee and the U.S. agreed on the application of the principle of *non-refoulement* to detainees.<sup>13</sup> Regarding Article 14’s mandate to provide redress, the Committee expressed concern at the difficulties that “victims of abuses” face in accessing a remedy,<sup>14</sup> and called upon the U.S. to ensure access to measures of “full redress,” including compensation and rehabilitation.<sup>15</sup> The U.S. did not respond to this concluding observation.

The Committee has maintained its interest in these issues in its questions to the U.S. in conjunction with its current review. This submission provides supplemental information regarding the experience of Guantánamo Bay detainees that should inform the Committee as it reviews U.S. compliance with its treaty obligations under the Convention.

## **I. The Cumulative Effects of the System of Detention and Treatment in Guantánamo Bay Violate the Torture Convention.**<sup>16</sup>

In its recent periodic report, the U.S. stated that it conditioned its ratification of CAT upon an understanding that “mental pain or suffering refers to prolonged mental harm.”<sup>17</sup> According to the U.S., the CAT definition of psychological torture did not satisfy the U.S. constitutional requirement of “precision in defining criminal offenses with respect to mental pain and suffering.”<sup>18</sup>

First, this section discusses the medico-legal basis for the conclusion that the cumulative effect of discrete acts of abuse can constitute torture and cruel, inhuman or degrading treatment or punishment. Medical studies reveal that, when taken together, multiple interventions that exert pain, humiliation, and despair upon detainees cause long-term psychological damage.<sup>19</sup> With respect to relevant law, the cumulative effect of detention procedures at Guantánamo Bay is consistent with CAT’s broadly construed definition of torture under Article 1 as applying to a wide range of potential abuses, including “acts of psychological torture.”<sup>20</sup> The cumulative effect is also within the scope of the U.S. interpretation of “mental pain or suffering” as “prolonged mental harm.”<sup>21</sup>

Second, this section provides empirical data regarding the cumulative effect of interrogation techniques and conditions of confinement in Guantánamo Bay and the long-term mental suffering former detainees attribute to these experiences. Taken together, the medical and legal authorities and data from the Study should inform how the Committee reviews the U.S. compliance with Article 4 of the Convention as applied to detainees at the facility.

### **A. Medico-Legal Research Indicates that “Complex Cumulative Trauma” Results from “Seemingly Less Severe” Detention Procedures and May Arise to Torture or Cruel, Inhuman or Degrading Treatment.**

In a related article, *The Cumulative Effect: A medico-legal approach to United States torture law and policy*, the Study’s authors survey medical research that reveals that physical and psychological damage that rises to the level of torture or cruel, inhuman and degrading treatment can result from the cumulative effect of “seemingly less severe acts” of mistreatment in confinement.<sup>22</sup> This cumulative impact is even more apparent when less severe acts are applied

“in sequence” and “over extended periods of time,” as one technique magnifies the impact of the others.<sup>23</sup> One study referenced in the article found that “exposure to pain over time produced ‘a complex cumulative trauma.’”<sup>24</sup> According to medical researchers, “when trauma accumulates beyond the person’s threshold of resilience, [even] an added mild or moderate trauma can become ‘the last straw that broke the camel’s back,’ causing all previous trauma to come to a forefront.”<sup>25</sup>

“Complex cumulative trauma” becomes salient for review of treatment of detainees in Guantánamo Bay when one considers that detainees were kept in a “constant state of fear.”<sup>26</sup> Fear is a tactic utilized to exacerbate the pain of individual acts of violence and to “maintain psychological control of the victim.”<sup>27</sup> Research by Metin Basoglu, head of Trauma Studies at King’s College London and the Istanbul Center for Behaviour Research and Therapy, suggests that detention in a “hostile and life-threatening environment” can cause even *more* psychological damage than physical torture.<sup>28</sup> In particular, prisoners detained in a “war setting” were 2.8 times more likely to suffer from Post-Traumatic Stress Disorder (“PTSD”) than if they had been detained in their home country.<sup>29</sup> Basoglu theorized that this may be due to an enhanced “perceived threat to life.”<sup>30</sup>

Individual acts that may not by themselves constitute torture may nevertheless contribute to a “hostile and life-threatening environment” and thus cause “complex cumulative trauma.”<sup>31</sup> A research study based on 279 torture victims from Bosnia, Herzegovina, Republika Srpska, Croatia, and Serbia shows that “detention procedures involving deprivation of needs, exposure to adverse environmental conditions, forced stress positions...isolation, restriction of movement...humiliating treatment and other psychological manipulations” can result in as much mental distress and traumatic stress as physical torture.<sup>32</sup>

Recognizing the legal significance of the trauma attributed to a combination of seemingly less severe acts is consistent with CAT’s definition of torture and the legal interpretation of this term by the U.S. According to Article 1 of CAT, torture is defined as “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person....”<sup>33</sup> The Committee has found in its General Comments and its concluding observations from its previous review of the U.S. that CAT was intended to prohibit a wide range of potential abuses.<sup>34</sup> According to the Committee’s concluding observations, “acts of psychological torture...constitute a wider category of acts.”<sup>35</sup> The distinction between “torture” and “cruel, inhuman or degrading treatment” was kept purposely vague for this reason.<sup>36</sup> This interpretation by the Committee comports with other international standards on torture, which recognize that an individual’s experience of pain cannot be separated into physical or mental elements but rather exists on a combined “physical-psychological spectrum.”<sup>37</sup>

In addition, the concept of the cumulative effect also falls within the scope of the U.S. interpretation of “mental pain or suffering” as “prolonged mental harm.”<sup>38</sup> Medical research reveals that the cumulative effect of detention procedures produces, in some, long-term psychological damage that renders this treatment a violation of the Convention.<sup>39</sup>

Thus, the potential cumulative effect of detention procedures at Guantánamo Bay is an empirical fact that should inform the Committee’s interpretation of torture and cruel, inhuman and degrading treatment and application of this norm to the United States.<sup>40</sup>

## **B. The Cumulative Effects of the System of Confinement at Guantánamo Bay Caused Psychological Harm to Detainees that Rises to a Violation of the Convention.**

The Study findings suggest that the “complex cumulative trauma” of confinement produced long-term psychological damage in former detainees that rises to torture or cruel, inhuman and degrading treatment.<sup>41</sup> The system of confinement that detainees experienced included tactics that collectively dehumanized detainees, such as sexual humiliation, short shackling and other stress positions, exposure to extreme temperatures for long periods, desecration of the Quran, and prolonged isolation.<sup>42</sup> Confinement in Guantánamo Bay may lead to serious psychological injury post release that is consistent with torture and cruel, inhuman or degrading treatment under CAT and the U.S. interpretation of “mental pain or suffering” as “prolonged mental harm.”<sup>43</sup>

### **1. *Guantánamo Bay Magnified Psychic and Cultural Vulnerabilities of Detainees Through an Atmosphere of Constant Surveillance and Uncertainty.***

The system of confinement at Guantánamo Bay was premised on an atmosphere of constant surveillance and uncertainty over the detainees’ fate that effectively dehumanized detainees.<sup>44</sup> As documented in the Study, the U.S. government deliberately created camp conditions that were designed to weaken the defenses of detainees and thereby enable interrogators to break detainees down psychologically.<sup>45</sup> With the appointment of Major General Geoffrey Miller as commander of Joint Task Force 160/120, military and civilian behavioral scientists were employed to look for “psychological vulnerabilities, soft spots, ways to manipulate the detainees...to get them to cooperate, and [look] for...psychic vulnerabilities and cultural vulnerabilities.”<sup>46</sup> According to the Study, each component of the camp system was designed to increase the authority of camp interrogators and magnify the detainees’ sense of isolation, powerlessness, and uncertainty.<sup>47</sup> One former detainee stated, “They tried to do everything to push our human dignity down.... They were watching us constantly and noting everything we did. It was like we were subjects of a scientific study. And we were just a number.”<sup>48</sup> Other former detainees described their experience as “futile,” “desperate,” “helpless,” and “hopeless.”<sup>49</sup>

### **2. *Lack of Due Process and Indefinite Detention Without Charge at Guantánamo Bay Exacerbated Detainees’ Sense of Futility and Uncertainty.***

In the initial years of operation at Guantánamo Bay, detainees experienced a heightened sense of futility because they had virtually no means of due process.<sup>50</sup> Their lack of due process was a result of the U.S. military’s fear of releasing the wrong detainees and undercutting executive officials, who at the time rejected any proposal to review the detainee’s status.<sup>51</sup> Consequently, many detainees believed that they would spend the rest of their lives in Guantánamo Bay, a view that was encouraged by some of their interrogators.<sup>52</sup> One detainee met with an intelligence officer sent by his government and was told that everything he was saying “was a lie” and that he would “spend the rest of his life in Guantánamo.”<sup>53</sup>

Lack of due process additionally contributed to a sense of uncertainty for former detainees. A few former detainees reported that their interrogators confessed they did not understand why they were being held.<sup>54</sup> According to one former detainee, “I think the worst was not knowing... why you’re there, or when you can go home. Or when they’re going to take you to court.... If they told us like, next week you’re going to court, you’ve got a lawyer and so forth, then you

know, it gives your mind a rest.”<sup>55</sup> Another former detainee expressed his frustration with his indefinite detention to U.S. authorities, who were reviewing the basis for his continued confinement: “I have been here for more than three years, so what is my [crime]? If I am guilty, just show me the proof...explain it to me.”<sup>56</sup> But he reported that he was not told the basis for his detention.<sup>57</sup>

### ***3. Detainees Experienced Abusive Treatment During Interrogations: Sexual Humiliation, Short Shackling and Other Stress Positions, and Exposure to Extreme Temperatures.***

Detainees reported abusive treatment during interrogations, such as sexual humiliation, short shackling and other stress positions, and exposure to extreme temperatures.<sup>58</sup> Three former detainees reported that female interrogators sexually humiliated them during interrogation sessions, mocking Islamic teachings that prohibit physical contact between unrelated men and women.<sup>59</sup> One former detainee reported that during his interrogation, he was left alone in a room with a woman in civilian clothes who undressed and touched him.<sup>60</sup> After about an hour, a guard entered the interrogation room and told the woman to leave, as the sexual humiliation was “not working.”<sup>61</sup> The former detainee stated, “I could hear the laughter, and this was just a very humiliating experience.”<sup>62</sup> One FBI agent stated that while he was at Guantánamo Bay, other agents told him that they observed female military interrogators “straddling detainees, whispering in their ears, and generally invading the detainees’ personal space.”<sup>63</sup>

Former detainees also reported abusive treatment in the form of short shackling and other stress positions. Nearly fifteen percent of former detainees reported that they had been shackled in painful positions for hours during their detainment in U.S. custody.<sup>64</sup> Many former detainees stated that after their interrogations, they were left sitting in a chair or on the floor for hours, hunched over with their hands and feet shackled to a metal ring in the floor.<sup>65</sup> One former detainee stated that he was left shackled and alone in a room for a full day.<sup>66</sup> Several former detainees reported being short shackled in a room with loud music and strobe lights for hours on end.<sup>67</sup> Relaying his experience, one former detainee stated that when short shackled, “[A]fter awhile...you start getting cramps in your thighs, and your buttocks, and your calves, and slowly your legs...just go numb. And when you move over, [the shackles] start cutting into you.... And even if you close your eyes you can still see the light and you start hallucinating.”<sup>68</sup>

In addition to sexual humiliation and short shackling, the Study found that former detainees at Guantánamo Bay were subject to extreme temperatures during interrogations. Several FBI agents at the facility reported that exposure to extreme temperatures was intended to “break the detainees’ resolve to resist cooperating.”<sup>69</sup> Nineteen former detainees reported prolonged exposure to cold temperatures.<sup>70</sup> For all but five of these nineteen, exposure to cold temperatures occurred during interrogations.<sup>71</sup> Eight former detainees claimed that being held in isolation in cold rooms was the worst treatment they endured at Guantánamo.<sup>72</sup> One stated that he was left shackled in an extremely cold, air-conditioned room for nine hours while another described being left alone with the “music and air conditioner turned on” for more than three hours.<sup>73</sup> Regarding his experience in isolation as part of interrogation procedures, one former detainee stated, “You’ve been there for hours and hours, being chained to the floor and not being able to move. The worst thing is you don’t know what’s going on. And you’re just sitting in there, the AC is on and you’re freezing and chained to the floor.... If you try to move, the

shackles start digging into your wrists and your ankles and it's painful.... That was really the worst time for me, mentally and physically.”<sup>74</sup>

#### **4. *Prolonged Isolation Contributed to Detainees' Mental Deterioration.***

Beyond abusive treatment during interrogations, the Study found that prolonged isolation was another common tactic used at Guantánamo to mentally and physically break down detainees.<sup>75</sup> Medical evidence suggests that such isolation may cause serious and prolonged mental harm that rises to a violation of the Convention.<sup>76</sup> The conditions of isolation in solitary confinement cells were more severe than those in the mainland U.S. “super-max” facilities, which often subject prisoners to near total isolation for years.<sup>77</sup> Former detainees reported that solitary confinement ranging from a few days to thirty days was a common form of punishment.<sup>78</sup> Detainees in Camps 5 and 6 were held in solitary confinement cells in which the lights were never turned off.<sup>79</sup> One former detainee stated that his isolation cell was “very cold, with just a metal bed. There was nothing else.”<sup>80</sup> Another former detainee described being put in a “dark room . . . for 20 days and nights” as punishment for making yogurt out of milk.<sup>81</sup>

Nine of twelve attorneys interviewed for the Study stated that in their opinion, prolonged isolation affected the mental condition of their clients.<sup>82</sup> One attorney’s client had been held for “over a year in a solid wall cell that he couldn’t see out of, from which he couldn’t speak to any other detainees, and where he stayed twenty-two to twenty-four hours a day.”<sup>83</sup> The attorney reported that his client’s isolation and the “fact that he had been told that he would stay at Guantánamo living like that forever” led him to attempt suicide during one of their meetings, and subsequently four more times.<sup>84</sup>

#### **5. *Desecration of the Quran Led Detainees to Organize a Collective Suicide Attempt.***

Former detainees additionally reported desecration of the Quran as one tactic implemented by guards to dehumanize detainees.<sup>85</sup> Given that the Quran is sacred to Muslim detainees, such treatment was particularly injurious. U.S. authorities recognized the religious sensitivity of this issue and directed personnel at Guantánamo Bay to “avoid touching a detainee’s [Quran] whenever possible.”<sup>86</sup> Out of thirty-three former detainees who discussed treatment of the Quran, thirteen reported that they witnessed military personnel leave the Quran on the floor.<sup>87</sup> In five of these instances, former detainees claimed that soldiers also stepped on or kicked the Quran.<sup>88</sup> One former detainee reported several occasions in which guards entered his cell, “open[ed] the Quran to a certain page and look[ed] through it and then thr[e]w it very forcefully across the floor.”<sup>89</sup> This individual also reported that on other occasions, guards “pour[ed] water on the Qurans” and the detainees would “bang on the cells to try to get them to stop.”<sup>90</sup>

Desecration of the Quran was extremely offensive to detainees and led several to organize a mass suicide attempt as a form of collective protest.<sup>91</sup> Former Army Captain James Yee reported that during the mass suicide attempt, former detainees attempted suicide every fifteen minutes.<sup>92</sup> A detainee would first “hang himself by tying his shirt around his neck and fastening it through the mesh of the cage wall.”<sup>93</sup> As soon as the detainee was taken to the hospital, another detainee would repeat the process.<sup>94</sup> One former detainee reported that he had decided to commit suicide because he “couldn’t tolerate the insult and desecration of the Holy Quran.”<sup>95</sup>



The Study found that the cumulative effect of indefinite detention, sexual humiliation, short shackling and other stress positions, exposure to extreme temperatures, desecration of the Quran, and prolonged isolation adversely impacted the psychological health of detainees while at Guantánamo Bay.<sup>96</sup> This finding is consistent with a 2004 International Committee of the Red Cross report, which found a high incidence of mental illness amongst the detainee population in Guantánamo Bay due to the above-mentioned abuses and environmental stressors.<sup>97</sup> One former detainee stated that he developed a disorder in which he “repeatedly hit his head against the wall and spat at guards.”<sup>98</sup> Another reported that he developed an obsession with cleanliness during his detention in U.S. custody.<sup>99</sup> Some Guantánamo Bay detainees broke under the strain of detention and tried to kill themselves.<sup>100</sup> Six former detainees admitted to having attempted suicide due to the strain of detention on one or more occasions and several others witnessed suicide attempts by fellow detainees.<sup>101</sup> This is a significant figure given the strict prohibition against suicide in Islam.<sup>102</sup> According to research on suicide rates among prisoners in high security units in U.S. prisons, the isolation, stark conditions, and lack of stimuli during confinement contribute to the mental deterioration of inmates.<sup>103</sup> As described below, former detainees reported long-term psychological harm as a result of their ill-treatment. (See Section III.B.)

Medical and legal authorities corroborate empirical data from the Study regarding the cumulative effect of confinement on former Guantánamo Bay detainees and its attendant long-term psychological damage.<sup>104</sup> Medical studies reveal that, when taken together, multiple-interventions that exert pain, humiliation, and despair upon detainees cause long-term psychological damage.<sup>105</sup> The cumulative effect of confinement on former detainees is consistent with CAT’s broadly construed definition of torture under Article 1 as including “acts of psychological torture”<sup>106</sup> and is within the scope of the U.S. interpretation of “mental pain or suffering” as “prolonged mental harm,”<sup>107</sup> as the data show that these effects have, in many cases, continued for months, if not years. The Committee should review the U.S. report in light of the above-mentioned medical and legal authorities as well as the Study’s empirical findings.

## **II. The United States Transferred Guantánamo Bay Detainees to the Custody of States That Abused Them in Violation of the Convention.**<sup>108</sup>

According to the U.S. periodic report, more than 600 detainees have been transferred from Guantánamo Bay to at least forty-five other countries.<sup>109</sup> Former detainees reported mistreatment post release that may constitute cruel, inhuman and degrading treatment or torture.

Article 3 of CAT states that “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.”<sup>110</sup> In its periodic report, the U.S. outlined the procedures it has taken to ensure the safe transfer of detainees to their home country or a third country.<sup>111</sup> However, the Study provides data that suggests that some former detainees were subjected to torture and abuse upon release in violation of the U.S.’s treaty obligations under Article 3.

Because the interviews for the Study were collected from 2007-2008, the Study does not account for detainees released after that time period.<sup>112</sup> Nevertheless, the Study does contain information from former detainees regarding their treatment post release, which indicates mistreatment that potentially descends to the level of cruel, inhuman, and degrading treatment, or

torture. The abuses experienced by former detainees include being beaten by domestic security agents in prison and during interrogation, being forced to take hallucinogenic drugs, and threats to their family.<sup>113</sup> Additionally, ten former detainees reported being arrested upon arrival in their home countries and incarcerated anywhere from three months to two years.<sup>114</sup>

Of the sixty-two former detainees, ten reported being arrested by government officials upon arrival in their home countries and being incarcerated for periods ranging from three months to two years.<sup>115</sup> Some reported being detained without formal charges and then abused during their detention.<sup>116</sup> One former detainee who was imprisoned for a year and a half described his experience as “leaving one nightmare to go into another one.”<sup>117</sup> Another reported that he was held without formal charges, but was accused of being an American spy.<sup>118</sup> He stated that domestic security agents beat him while he was in prison, and he was forced to take drugs that made him hallucinate so badly he saw “snakes coming from beneath the floor.”<sup>119</sup> A third former detainee said he was held for eight months before being released without a trial.<sup>120</sup> During his initial interrogation, authorities demanded he confess that he was a member of a terrorist organization.<sup>121</sup>

These data indicate that the U.S. failed to ensure that former detainees were not subjected to abuse upon release in violation of its treaty obligations under Article 3 of the Convention.

### **III. The Cumulative Effects of the System of Detention and the Former Detainees’ Experiences of Torture or Ill-treatment Entitle Them to Redress Under the Convention.**<sup>122</sup>

Despite the torture or ill-treatment experienced by former detainees while in detention at Guantánamo Bay and post release, none of the former detainees interviewed for the Study have received any form of redress for lost wages and potential earnings or acknowledgment of the harms they have suffered.<sup>123</sup> The fact that none of those released was convicted of any crime and that, in many cases, U.S. officials believed that these individuals were detained in error further underscores the humanitarian as well as legal justification for providing former detainees with a remedy under the Convention.<sup>124</sup>

Article 14 of CAT provides that each State shall ensure that “the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation including the means for as full rehabilitation as possible.”<sup>125</sup> The Committee has interpreted Article 14 to apply to “all victims of torture and acts of cruel, inhuman or degrading treatment or punishment (“ill-treatment”).”<sup>126</sup> Additionally, “victims” are not only those who have individually or collectively suffered harm, but also “affected immediate family or dependents of the victim.”<sup>127</sup> The Committee considers redress under the Convention to include “compensation,” “rehabilitation,” and “satisfaction.”<sup>128</sup> The Study offers data that illustrate the nature of damage that former detainees report as a result of their ill-treatment at Guantánamo Bay and for whom Article 14 is applicable.

In its interim report, the U.S. did not address the opportunities available to former Guantánamo Bay detainees to receive fair and adequate compensation and rehabilitation as a result of their ill-treatment.<sup>129</sup>

Thirty-eight former detainees in the Study stated that they believed they should receive financial compensation for “what they saw as wrongful imprisonment, for their losses, and for their treatment in Guantánamo Bay.”<sup>130</sup> Most Afghan former detainees wanted compensation for lost property and economic losses.<sup>131</sup> Other former detainees wanted enough compensation to be able to have a “sustainable future,” return to a “normal life,”<sup>132</sup> and move forward. With only a few exceptions, former detainees reported desiring compensation from U.S. authorities rather than their own governments.<sup>133</sup> Although most former detainees said they deserved compensation, few actively pursued it.<sup>134</sup> For example, several Afghan former detainees did not think they could seek compensation or that officials would be responsive to their requests for compensation.<sup>135</sup> Two Afghan former detainees reported approaching Afghan or U.S. officials to take action regarding their demands for compensation but had been rejected.<sup>136</sup> A few former detainees in Europe were aware of legal actions against U.S. officials, although they did not expect a successful outcome. Moreover, the Study documents the need of former detainees for rehabilitation, and social costs they suffer due to the “stigma” of detention at Guantánamo Bay. The Study found that forty-five of sixty-two former detainees received little or no support from any private or government groups when they arrived in their custodial country.<sup>137</sup> According to one former detainee in Europe, convicted criminals in his country receive more assistance than he did.<sup>138</sup>

In sum, the Study highlights the obligation of the U.S. to provide eligible former detainees with fair and adequate compensation, including measures of rehabilitation and satisfaction as a consequence of their ill-treatment. The Convention limits redress to harm that results from torture or ill-treatment. With this in mind, the Study data regarding the lives of former detainees upon release provide a vital context, which should inform the Committee’s interpretation of the U.S. obligation to provide redress. This section first discusses the economic impact of confinement on former detainees and their families, and their entitlement to consequential damages. Second, this section addresses the physical and mental health consequences of detention in Guantánamo Bay, which underscore the urgency for the U.S. to fulfill its obligation to provide measures of rehabilitation to former detainees who desire such assistance. Finally, this section discusses the social stigma of Guantánamo Bay that former detainees experience, which justifies the provision of satisfaction measures, such as an official apology and the opportunity for individual former detainees to clear their names.

#### **A. Under the Convention, Former Detainees Are Entitled to Compensation for Significant Economic Losses and Consequential Damages Sustained as a Result of Their Torture or Ill-treatment in Guantánamo Bay.**

For the Committee, compensation should be sufficient to “compensate for any economically assessable damage” that results from “torture or ill-treatment.”<sup>139</sup> Additionally, the Committee states that compensation is “multi-layered” and monetary compensation alone may not be sufficient redress.<sup>140</sup> Thus, compensation also includes “non-pecuniary” damages resulting from physical and mental harm and “lost opportunities,” such as employment or education.<sup>141</sup>

Most former detainees interviewed for the Study stated that economic hardship to them and their families was one of the primary effects of their detention at Guantánamo Bay.<sup>142</sup> As captured in the words of one, “The greatest need is financial because as a man, a son, and a father, I should support my family.”<sup>143</sup> Additionally, former detainees reported difficulty reestablishing family relationships as a consequence of their detention.<sup>144</sup>

**1. *Former Detainees Had Difficulty Finding Permanent Employment, Lost Property During their Capture, and Were Unable to Support Themselves Financially.***

Many of the former detainees reported that they could not support their family or themselves due to unemployment. Of the sixty-two former detainees interviewed in the Study, only six had found permanent employment and thirty-four were unemployed.<sup>145</sup> Prospective employers asked one former detainee about the gap in his resume, and when he informed them that he had been in U.S. custody, he never heard from the prospective employers again.<sup>146</sup> Employment also was difficult to obtain for a highly educated, practicing physician who owned a clinic prior to his detention in U.S. custody.<sup>147</sup> He stated that his reputation and career had been ruined, and after his release he was forced to “start again” from a drugstore in order to regain people’s trust.<sup>148</sup> Another former detainee summarized his situation by stating, “I have lost everything as a result of being detained in Guantánamo. I’ve lost my property. I’ve lost my job. I’ve lost my will... There isn’t any work for me in Afghanistan.”<sup>149</sup> The family of another unemployed former detainee forced him to leave home, and his wife left him because he was unable to support her.<sup>150</sup>

In addition to difficulties finding employment, former detainees attributed their economic hardship to property that had been confiscated or destroyed during their capture.<sup>151</sup> One Afghan former detainee reported that U.S. and Afghan forces had stolen \$45,000 during a raid of his house.<sup>152</sup> Another Afghan former detainee stated that his pharmacy had been looted because U.S. and Afghan forces left the doors of his pharmacy open.<sup>153</sup>

Former detainees reported that they were rendered “destitute” as a result of their detainment at Guantánamo Bay and had “little hope of recouping lost capital.”<sup>154</sup> One former detainee stated, “I have a plastic bag holding my belongings that I carry with me all the time, and I sleep every night in a different mosque.”<sup>155</sup> For others, economic difficulties were worsened by physical problems.<sup>156</sup> For example, in addition to the loss of his business and debt, one former detainee lost the use of his leg from an untreated injury he reportedly received during his arrest.<sup>157</sup>

Consistent with Article 14 of the Convention and as a matter of fundamental fairness, former detainees who are victims of torture or ill-treatment in Guantánamo Bay are entitled to compensation from the U.S. for their economic injury.

**2. *Families of Former Detainees Experienced Economic Hardship and Are Entitled to Compensation Under the Convention.***

Under Article 14 of the Convention, affected immediate family or dependents of victims of torture and ill-treatment qualify for redress, including compensation.<sup>158</sup> Families of former detainees experienced economic loss while their loved ones were detained at Guantánamo Bay without due process and for an uncertain duration.

The Study found that families of former detainees faced economic hardship from loss of money, property, and assets due to their efforts to secure a former detainee’s release from Guantánamo Bay. Of Afghan former detainees, virtually all reported that their family’s wealth had diminished substantially as a result of their incarceration.<sup>159</sup> Eleven Afghan former detainees reported that their families were forced to “sell property, borrow money, and/or quit

jobs in order to secure their freedom.”<sup>160</sup> One former detainee stated that his brothers quit their jobs to lobby full-time for his release.<sup>161</sup> Relatives of five Afghan former detainees reportedly paid bribes to corrupt officials who did not follow through with their promises to provide assistance.<sup>162</sup> The family of one former detainee spent \$60,000 in order to obtain his release.<sup>163</sup>

The Study also found that family members of at least thirteen former detainees incurred loans to survive in the detainee’s absence.<sup>164</sup> According to one former detainee, “I have a family of five. So it was difficult for my family while I was in Guantánamo. And now there is a loan. They were borrowing to buy food and flour.”<sup>165</sup>

Accordingly, family members of former detainees who have been subject to torture or ill-treatment are entitled to compensation for economic losses under Article 14 of the Convention and as a matter of fundamental fairness.<sup>166</sup>

### ***3. Former Detainees Experienced Difficulty Reestablishing Family Relationships and Are Entitled to Compensation Under the Convention.***

According to the Committee, monetary compensation alone may not be sufficient redress.<sup>167</sup> Compensation also includes “non-pecuniary” damage resulting from physical and mental harm and “lost opportunities,” such as employment or education.<sup>168</sup> After being released from Guantánamo Bay, former detainees experienced difficulty reestablishing family relationships, had family members discontinue their education, or suffered other lost opportunities as a result of their unjust detention.<sup>169</sup>

In the Study, one former detainee described his experience returning home to his family as similar to that of the lead character in the film, *Cast Away*, played by Tom Hanks; after years of being stranded on an island, the lead character returned to his fiancé, who had married another man and had a young child.<sup>170</sup> Former detainees reported returning home to divorce, deaths in their family, family members with physical or mental ailments, and children impacted by their absence.<sup>171</sup> One former detainee returned home to find his wife had divorced him.<sup>172</sup> Another former detainee realized that his father had been murdered and his wife had left and taken their children.<sup>173</sup> Eight former detainees interviewed for the Study attributed the mental illness of a family member to stress caused by their detention.<sup>174</sup> Several reported that their children had dropped out of school due to lack of funds or had fallen behind academically.<sup>175</sup> One former detainee stated that his sons “quit their education because of me.”<sup>176</sup>

Detainees released to Albania were told by U.S. authorities, the Albanian government, and local U.N. officials that they would be reunited with family and provided jobs and homes.<sup>177</sup> However, they experienced continued and sometimes indefinite separation from family.<sup>178</sup> One of these men stated, “I will never be able to go back. I cannot bring them here. I cannot see my family for the rest of my life.”<sup>179</sup>

Former detainees experienced difficulty reestablishing family relationships and as a matter of fairness, are entitled to compensation under Article 14 of the Convention.

## **B. Former Detainees Are Entitled to Rehabilitation Under the Convention for Psychological and Physical Harm Suffered as a Result of their Ill-treatment in Detention.**

As contemplated by the Committee, victims “in the aftermath of torture and ill-treatment” have a right to rehabilitation under Article 14 of the Convention.<sup>180</sup> Rehabilitation should be holistic and “include medical and psychological care as well as legal and social services.”<sup>181</sup> Rehabilitation for victims “should aim to restore, as far as possible, their independence, physical, mental, social and vocational ability; and full inclusion and participation in society.”<sup>182</sup>

Former detainees have not received treatment for the psychological and physical harm suffered as a result of their detention at Guantánamo Bay.<sup>183</sup> Since leaving Guantánamo Bay, almost two-thirds of former detainees reported experiencing emotional difficulties they attribute to their confinement.<sup>184</sup> According to one, “I realized that I didn’t return to this life as intact as I thought I had.”<sup>185</sup> Some examples of emotional difficulties post release include: Post-Traumatic Stress Disorder (“PTSD”); depression; development of a quick temper; memory loss; disturbing dreams; feelings of isolation from others; and mental deterioration.<sup>186</sup> Many former detainees have vivid memories of being short shackled, exposed to extreme temperatures, and exposed to violence by guards.<sup>187</sup> One former detainee acknowledged that images of Guantánamo Bay still haunted him years later, and that he experiences both depression and easy frustration, stating, “I think if I don’t leave the room, that I will die and I will burst...like a bomb.”<sup>188</sup> Another former detainee stated that several years after his release, he “still...get[s] nightmares. I think I’m still back there, with chains and people swearing at me.”<sup>189</sup> A few former detainees reported “an intense need at times to withdraw from their surroundings and be by themselves.”<sup>190</sup> One described feeling as though he was “in a world where people just don’t understand.”<sup>191</sup>

Many detainees suffered from different forms of physical harms that they attributed to their detention at Guantánamo Bay.<sup>192</sup> The most common of these harms were pain in the wrists, knees, back, and ankles as effects of prolonged short shackling and stress positions.<sup>193</sup> Detainees also experienced other physical injuries such as deteriorating eyesight, chronic pain, fatigue, and generalized deterioration that has prohibited their ability to perform physical work for extended periods.<sup>194</sup> As captured by the words of one, who reflected on how before being detained at Guantánamo Bay he was a strong man, now he is “nothing.”<sup>195</sup>

Despite their physical and mental ailments, few former detainees have been treated for their symptoms following their release.<sup>196</sup> Several former detainees reported that they were unable to pay for medicine prescribed by personnel at the camp.<sup>197</sup> One former detainee had to “ask people to lend [him] money to buy medicines.”<sup>198</sup> As victims “in the aftermath of torture and ill-treatment,” these individuals are entitled to rehabilitation under Article 14 of the Convention.<sup>199</sup>

## **C. Due to the Guantánamo Bay “Stigma,” Former Detainees Qualify for the Remedy of Satisfaction Under the Convention.**

Former detainees in the Study were held in Guantánamo Bay and subjected to torture or ill-treatment during their indefinite detention, and none of those released were convicted of a

crime.<sup>200</sup> In many cases, U.S. government officials believed that these men had been detained in error.<sup>201</sup> Remedies for satisfaction under Article 14 of the Convention entail an official declaration or judicial decision that restores the dignity of the victim or public apologies, including acknowledgment of the facts and acceptance of responsibility.<sup>202</sup> None of the former detainees have received an official acknowledgment of their innocence or acknowledgment of any mistake or wrongdoing by the U.S. regarding their detention.<sup>203</sup>

Those interviewed for the Study report that their release signified to them that they were innocent and provided them an opportunity to resume their lives.<sup>204</sup> However many report they have not been able to move forward following release but confront a “post-Guantánamo” phase<sup>205</sup> that is marred by the “stigma” of Guantánamo Bay and has prevented them from fully reintegrating to their home country or third country.<sup>206</sup> According to one, “we still have a big hat on our heads that we were terrorists.”<sup>207</sup>

The Study found that most former detainees received a mixed reception in the communities to which they returned or in which they resettled.<sup>208</sup> Some former detainees reported being met with suspicion, which they attributed to the fact that they had not been formally exonerated and therefore were considered a threat to public safety.<sup>209</sup>

Some former detainees reported experiencing verbal abuse by members of their community, discomfort in public spaces, difficulty marrying, and accusations of being an American spy. Some released in Western Europe received death threats over the phone, confronted signs denouncing them in their neighborhood, and people shouting profanities in their direction on the street.<sup>210</sup> One said he did not feel comfortable walking alone in certain neighborhoods due to “[t]he way that people look at [him].”<sup>211</sup> Two Afghan former detainees reported that rumors in their communities that men in Guantánamo Bay had been subjected to sexual abuse had stigmatized them and made it difficult for them to marry.<sup>212</sup> One Afghan former detainee was accused of being an American spy and was fearful of the Taliban.<sup>213</sup>

Several former detainees felt they deserved public acknowledgment of their innocence from the U.S. and one stated, “[I]f they came and said: ‘these guys were innocent...’ I think that would help.”<sup>214</sup> Under the remedy of satisfaction, former detainees who are victims of torture or ill-treatment are entitled to a formal declaration that restores their dignity or a public apology that acknowledges their innocence and any mistake or wrongdoing by the U.S. regarding their detention.<sup>215</sup>

Remedies available under Article 14 of the Convention apply to all victims of torture and ill-treatment.<sup>216</sup> Former detainees were held indefinitely and were not convicted of a crime.<sup>217</sup> Based on the Study data, former Guantánamo Bay detainees have suffered torture or ill-treatment at the facility due to the cumulative effects of the system of confinement and exposure to specific incidents of abuse. Therefore the U.S. is obligated to provide access to fair and adequate compensation, including rehabilitation, and satisfaction as mandated by Article 14 of the Convention.

#### **IV. Suggested Recommendations**

**The U.S. government should establish a comprehensive reintegration program for former detainees, either on its own or under the auspices of the United Nations.** The program should provide immediate financial assistance and support former detainees to secure long-term, sustainable livelihoods. Mental and physical health services should be made available to former detainees and offered in conjunction with livelihood support to address the relationship of economic harms to mental health issues. Social stigma should be mitigated through issuance of an official apology and the creation of an individual process through which former detainees may clear their names.

**The U.S. government should establish a fair and adequate procedure to compensate former detainees for torture and other ill-treatment.** Former detainees in the Study and others who have been transferred after being cleared for release were never convicted of a crime and were unjustly detained for years under conditions designed to dehumanize, degrade, and instill despair. These individuals are entitled to fair and adequate compensation, both under the Convention and according to principles of fundamental fairness.

*3 October 2014*



## Endnotes

<sup>1</sup> Laurel E. Fletcher and Eric Stover, *Guantánamo and Its Aftermath: U.S. Detention and Interrogation Practices and their Impact on Former Detainees*, 65, November 2008 [hereinafter *Guantánamo and Its Aftermath*].

<sup>2</sup> This submission was drafted by International Human Rights Law Clinic (“IHRLC”) interns, Shanita Farris ’16 and Bina Patel ’16 under the supervision of Laurel E. Fletcher, Clinical Professor of Law and IHRLC Director in collaboration with Aliya Hana Hussain, Advocacy Program Manager, Center for Constitutional Rights, and Alexa Koenig, Executive Director, Human Rights Center.

<sup>3</sup> See Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, arts. 1, 2, 3, 14., Dec. 10, 1984, 1465 U.N.T.S. 85 [hereinafter CAT]; United Nations Committee Against Torture, List of Issues Prior to the Submission of the Fifth Periodic Report of the United States of America, U.N. Doc. CAT/C/USA/Q/5 (Jan. 20, 2010) [hereinafter CAT Committee List of Issues].

<sup>4</sup> *Guantánamo and Its Aftermath*, *supra* note 1, at 1. For further information regarding the study methodology see *id.* at 13-15. To date, the Study provides the most comprehensive, scientific study of the experience of detention at Guantánamo Bay. Nevertheless, the Study has limitations. *Id.* at 13. First, because the Study is limited to the interview sample, data from the Study may not reflect experiences of the total population of detainees released from Guantánamo Bay; there may have been a selection bias, where certain groups of detainees may have been more willing to speak with U.S. researchers. *Id.* at 15. Second, detainees may not have answered questions truthfully or fully due to fears of retaliation or stigmatization or because experiences were too painful or traumatic to share with strangers. *Id.* Third, the presence of U.S. citizens and residents who conducted the interviews may have created bias, especially to questions regarding opinions about or treatment by the U.S. *Id.* Lastly, because the purpose of the Study was to locate patterns in the experiences of detainees, researchers were unable to verify the information reported by former interviewed detainees. *Id.* Despite these limitations, there is a sound basis to assume the Study data are accurate and reliable. The responses of former detainees were consistent although they were interviewed in separate locations around the world according to a protocol that focused on direct experiences and the Study identified general patterns and trends rather than relied on isolated incidents to draw conclusions. *Id.*

<sup>5</sup> *Id.* at 1. Unless otherwise noted, all references to “former detainees” in this report refer to former detainees interviewed in the Study.

<sup>6</sup> *Id.* at 13. To protect the identities of former detainees, the location of the other countries is not specified.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 2. Guantánamo Bay commander, Major General Michael Dunlavey, estimated that half of the camp population was mistakenly detained. See JANE MAYER, *THE DARK SIDE: THE INSIDE STORY OF HOW THE WAR ON TERROR TURNED INTO A WAR ON AMERICAN IDEALS* 184 (2008).

<sup>9</sup> *Guantánamo and Its Aftermath*, *supra* note 1, at 2.

<sup>10</sup> *Id.* at 5, 61.

<sup>11</sup> United Nations Committee Against Torture, Consideration of Reports Submitted by State Parties Under Article 19 of the Convention, Conclusions and Recommendations of the Committee Against Torture, United States of America, U.N. Doc. CAT/C/USA/CO/2 (July 25, 2006), ¶ 13 [hereinafter CAT Committee Concluding Observations 2006].

<sup>12</sup> U.S. DEP’T OF STATE, UNITED STATES RESPONSE TO SPECIFIC RECOMMENDATIONS IDENTIFIED BY THE COMMITTEE AGAINST TORTURE, 7 (2007), available at <http://www.state.gov/documents/organization/100843.pdf> [hereinafter U.S. RESPONSE TO CAT COMMITTEE RECOMMENDATIONS] (stating the existence of “an armed conflict with al-Qaida, the Taliban, and their supporters” meant that the “law of war, and not the Convention, is the applicable legal framework governing these detentions.”).

<sup>13</sup> CAT Committee Concluding Observations 2006, *supra* note 11, ¶¶ 20-22. In its reply, the U.S. reiterated that it does not transfer individuals to countries “where it determines that it is more likely than not that they will be tortured.” U.S. RESPONSE TO CAT COMMITTEE RECOMMENDATIONS, *supra* note 12, at 2.

<sup>14</sup> CAT Committee Concluding Observations 2006, *supra* note 11, ¶ 28.

<sup>15</sup> *Id.* (calling on the U.S. to ensure “mechanisms to obtain full redress, compensation and rehabilitation are accessible to all victims of acts of torture or abuse...perpetrated by [U.S.] officials.”)

<sup>16</sup> See Question 2 from the CAT Committee to the U.S., which states, “Please clarify the State party’s position with regard to its understanding of acts of psychological torture, prohibited by the Convention. Does the State party recognize a wider category of acts which cause severe mental suffering, irrespective of their prolongation or its duration, as acts of psychological torture prohibited by the Convention?” CAT Committee List of Issues, *supra* note 3.

<sup>17</sup> U.S. DEP’T OF STATE, PERIODIC REPORT OF THE UNITED STATES OF AMERICA, 6 (Aug. 5, 2013), available at

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<http://www.state.gov/j/drl/reports/treaties/index.htm> [hereinafter U.S. PERIODIC REPORT]. See also Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, U.S. Reservations, Declarations, and Understandings, Cong. Rec. S17486-01 (daily ed., Oct. 27, 1990), § II(1)(a), available at <http://www1.umn.edu/humanrts/usdocs/tortres.html> [hereinafter U.S. Reservations].

<sup>18</sup> U.S. PERIODIC REPORT, *supra* note 17, at 6.

<sup>19</sup> Metin Basoglu, *A Multivariate Contextual Analysis of Torture and Cruel, Inhuman, and Degrading Treatments: Implications for an Evidence-Based Definition of Torture*, 79 AM. J. ORTHOPSYCHIATRY 135-45 (2009). See also *Physical and Psychological Torture Have Similar Mental Effects*, MEDICAL NEWS TODAY, March 12, 2007, available at <http://www.medicalnewstoday.com/articles/64611.php> [hereinafter *Physical and Psychological Torture*] (reporting on study results presented in 64 ARCHIVES GEN. PSYCHIATRY 277-85 (2007)). Last accessed September 23, 2014.

<sup>20</sup> CAT Committee Concluding Observations 2006, *supra* note 11, ¶ 13. See also United Nations Committee Against Torture, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment General Comment No. 2, Implementation of Article 2 by State Parties, U.N. Doc. CAT/C/GC/2 (Jan. 24, 2008), ¶ 3 [hereinafter CAT General Comment 2].

<sup>21</sup> U.S. PERIODIC REPORT, *supra* note 17, at 6.

<sup>22</sup> K. Alexa Koenig, Eric Stover, and Laurel E. Fletcher, *The Cumulative Effect: A medico-legal approach to United States torture law and policy*, 6 ESSEX HUM. RTS. REV. 145, 147 (2009) [hereinafter *The Cumulative Effect*].

<sup>23</sup> *Id.*

<sup>24</sup> Press Release, American Psychological Association, Torture Victims More Resilient than Other Trauma Victims, but Cumulative Effects Take their Toll, According to New Research (August 1, 2004), available at <http://www.apa.org/news/press/releases/2004/08/torture.aspx> [hereinafter Press Release]. See also *The Cumulative Effect*, *supra* note 22, at 161.

<sup>25</sup> Press Release, *supra* note 24. See also *The Cumulative Effect*, *supra* note 22, at 161.

<sup>26</sup> *Id.* at 162.

<sup>27</sup> *Id.*

<sup>28</sup> Basoglu, *supra* note 19.

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

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

<sup>31</sup> *The Cumulative Effect*, *supra* note 22, at 161, 163.

<sup>32</sup> *Physical and Psychological Torture*, *supra* note 19.

<sup>33</sup> CAT, *supra* note 3, art. 1.

<sup>34</sup> CAT General Comment 2, *supra* note 20, ¶ 3. See also CAT Committee Concluding Observations 2006, *supra* note 11, ¶ 13. In the Committee's review of Israel, the Committee concluded that interrogation techniques, such as loud music for prolonged periods or using cold air to chill, violated Israel's treaty obligations under CAT and constituted torture under Article 1. See Concluding Observations of the Committee Against Torture: Israel, U.N. Doc. A/52/44 (1997), ¶¶ 256-57.

<sup>35</sup> CAT Committee Concluding Observations 2006, *supra* note 11, ¶ 13.

<sup>36</sup> CAT General Comment 2, *supra* note 20, at ¶ 3. See also *The Cumulative Effect*, *supra* note 22, at 152.

<sup>37</sup> Office of the United Nations High Commissioner for Human Rights, Geneva, Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Professional Training Series No. 8/ Rev.1 (2004), available at <http://www.ohchr.org/Documents/Publications/training8Rev1en.pdf>.

<sup>38</sup> U.S. PERIODIC REPORT, *supra* note 17, at 6. See also U.S. Reservations, *supra* note 17.

<sup>39</sup> Basoglu, *supra* note 19. See also *Physical and Psychological Torture*, *supra* note 19.

<sup>40</sup> CAT General Comment 2, *supra* note 20, ¶ 3. CAT Committee Concluding Observations 2006, *supra* note 11, ¶ 13.

<sup>41</sup> *The Cumulative Effect*, *supra* note 22, at 161. *Guantánamo and Its Aftermath*, *supra* note 1, at 3-4.

<sup>42</sup> *Id.* at 33-34, 37, 42-44.

<sup>43</sup> *Id.* at 47-50, 52-55, 61-67. U.S. PERIODIC REPORT, *supra* note 17, at 6.

<sup>44</sup> *Guantánamo and Its Aftermath*, *supra* note 1, at 76.

<sup>45</sup> *Id.*

<sup>46</sup> *Id.* at 30.

<sup>47</sup> *Id.* at 76.

<sup>48</sup> *Id.* at 35.

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<sup>49</sup> *Id.* at 3.

<sup>50</sup> *Id.* at 56.

<sup>51</sup> *Id.*

<sup>52</sup> *Id.* at 54.

<sup>53</sup> *Id.* at 56.

<sup>54</sup> *Id.*

<sup>55</sup> *Id.* at 54.

<sup>56</sup> *Id.* at 58.

<sup>57</sup> *Id.*

<sup>58</sup> *Id.* at 42-44.

<sup>59</sup> *Id.* at 44.

<sup>60</sup> *Id.*

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

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> *Id.* at 42.

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> *Id.* at 43.

<sup>68</sup> *Id.* at 43-44.

<sup>69</sup> *Id.* at 42.

<sup>70</sup> *Id.* at 43.

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

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

<sup>75</sup> *Id.* at 47.

<sup>76</sup> Stuart Grassian, a psychiatrist with extensive experience in evaluating the psychiatric effects of confinement, has found that solitary confinement, especially when combined with severely restricted stimuli and activity, can have a “profoundly deleterious effect on mental functioning” and can cause both short-term and long term psychological and physical damage. *See* Stuart Grassian, *Psychiatric Effects of Solitary Confinement*, 22 WASH. U. J.L. & POL’Y 325-83 (2006). In a 2007 meeting in Istanbul, seventy-five experts in medicine and law determined that solitary confinement can cause “serious health problems.” International Psychological Trauma Symposium, Istanbul, *The Istanbul Statement on the Use and Effects of Solitary Confinement* (Dec. 9, 2007), 63, available at [http://solitaryconfinement.org/uploads/Istanbul\\_expert\\_statement\\_on\\_sc.pdf](http://solitaryconfinement.org/uploads/Istanbul_expert_statement_on_sc.pdf). Symptoms can include “extreme anxiety, hostility, confusion, difficulty with concentration, hypersensitivity to external stimuli, sleep disturbance, and psychosis.” *See* Grassian, *supra*.

<sup>77</sup> At Guantánamo Bay, Camps 5 and 6 housed solitary confinement cells. *Guantánamo and Its Aftermath*, *supra* note 1, at 33-34.

<sup>78</sup> *Id.* at 47.

<sup>79</sup> *Id.* at 49.

<sup>80</sup> *Id.* at 47.

<sup>81</sup> *Id.* at 48.

<sup>82</sup> *Id.* at 49.

<sup>83</sup> *Id.* at 49-50.

<sup>84</sup> *Id.* at 50.

<sup>85</sup> *Id.* at 37. Former Army Captain James Yee, in his book about the six months he served as a Muslim chaplain at Guantánamo Bay, described guards intentionally stepping on the Quran during cell searches, breaking the bindings on detainees’ holy books, and writing “English profanities” on the pages. *Id.*

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

<sup>87</sup> *Id.* at 37.

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

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

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

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- <sup>92</sup> *Id.*
- <sup>93</sup> *Id.*
- <sup>94</sup> *Id.* at 37-38.
- <sup>95</sup> *Id.* at 38.
- <sup>96</sup> *Id.* at 77.
- <sup>97</sup> *Id.* at 4.
- <sup>98</sup> *Id.* at 53.
- <sup>99</sup> *Id.* at 68.
- <sup>100</sup> *Id.* at 54.
- <sup>101</sup> *Id.* at 55.
- <sup>102</sup> *Id.*
- <sup>103</sup> Mona Lynch, *The Disposal of Inmate #85271: Notes on a Routine Execution*, 20 *STUD. L. POL. AND SOC'Y* 14-15 (2000). See also *Guantánamo and Its Aftermath*, *supra* note 1, at 54.
- <sup>104</sup> *Id.* at 161.
- <sup>105</sup> Basoglu, *supra* note 19. See also *Physical and Psychological Torture*, *supra* note 19.
- <sup>106</sup> CAT Committee Concluding Observations 2006, *supra* note 11, ¶ 13. See also CAT General Comment 2, *supra* note 20, ¶ 3.
- <sup>107</sup> U.S. PERIODIC REPORT, *supra* note 17, at 6. See also U.S. Reservations, *supra* note 17.
- <sup>108</sup> See Question 8(a) from the CAT Committee to the U.S., which states, “Please provide updated information on practical steps taken to close down Guantánamo Bay. In this respect, please provide detailed information on: States which have agreed to accept Guantánamo detainees and which conditions they have imposed. Please elaborate on steps taken to ensure that they are not returned to any State where they could face a real risk of being tortured and guarantee effective post-return monitoring arrangements.” CAT Committee List of Issues, *supra* note 3.
- <sup>109</sup> U.S. PERIODIC REPORT, *supra* note 17, at 17.
- <sup>110</sup> See CAT, *supra* note 3, art. 3.
- <sup>111</sup> U.S. PERIODIC REPORT, *supra* note 17, at 16-18.
- <sup>112</sup> *Guantánamo and Its Aftermath*, *supra* note 1, at 1.
- <sup>113</sup> *Id.* at 61-62. Once released, several former detainees reported that they were placed under surveillance, required to comply with strict reporting requirements for domestic travel, or required to report regularly to authorities. *Id.* at 62. While not necessarily a violation of the Convention, this treatment contributes to the stress former detainees experienced in trying to rebuild their lives, particularly in light of the lack of rehabilitation or reintegration support. See *infra* note 183.
- <sup>114</sup> *Guantánamo and Its Aftermath*, *supra* note 1, at 62.
- <sup>115</sup> *Id.*
- <sup>116</sup> *Id.*
- <sup>117</sup> *Id.*
- <sup>118</sup> *Id.*
- <sup>119</sup> *Id.*
- <sup>120</sup> *Id.*
- <sup>121</sup> *Id.*
- <sup>122</sup> See Question 8(d) from the CAT Committee to the U.S., which states, “Please provide updated information on practical steps taken to close down Guantánamo Bay. In this respect, please provide detailed information on: Measures taken to ensure that all detainees who were kept in detention at Guantánamo Bay can have an enforceable right to fair and adequate compensation, in addition to rehabilitation, if a victim of torture or ill-treatment.” CAT Committee List of Issues, *supra* note 3.
- <sup>123</sup> *Guantánamo and Its Aftermath*, *supra* note 1, at 78.
- <sup>124</sup> *Id.* at 2. Guantánamo Bay commander, Major General Michael Dunlavey, estimated that half the camp population was mistakenly detained. MAYER, *supra* note 8.
- <sup>125</sup> See CAT, *supra* note 3, art. 14.
- <sup>126</sup> United Nations Committee Against Torture, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment General Comment No. 3: Implementation of Article 14 by State Parties, U.N. Doc. CAT/C/GC/3 (Dec. 13, 2012), ¶ 1 [hereinafter CAT General Comment 3].
- <sup>127</sup> *Id.* ¶ 3.
- <sup>128</sup> *Id.* ¶ 2.

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<sup>129</sup> In its reply, the U.S. stated the following: “E.O. 13492 requires that ‘[n]o individual currently detained at Guantánamo shall be held in the custody of under the effective control of any officer, employee, or other agent of the United States Government ... except in conformity with all applicable laws governing the conditions of such confinement, including Common Article 3 of the Geneva Conventions.’ This E.O directed the Secretary of Defense to undertake a comprehensive review of the conditions of confinement at Guantánamo to assess compliance with its directive. The review concluded in February 2009 that operations at Guantánamo were ‘in conformity with all applicable laws governing the conditions of confinement, including Common Article 3 of the Geneva Conventions.’” U.S. PERIODIC REPORT, *supra* note 17, at 22.

<sup>130</sup> *Guantánamo and Its Aftermath*, *supra* note 1, at 69.

<sup>131</sup> *Id.* at 70.

<sup>132</sup> *Id.*

<sup>133</sup> *Id.*

<sup>134</sup> *Id.*

<sup>135</sup> *Id.*

<sup>136</sup> *Id.* at 69.

<sup>137</sup> *Id.* at 66.

<sup>138</sup> *Id.*

<sup>139</sup> CAT General Comment 3, *supra* note 126, ¶ 10.

<sup>140</sup> *Id.*

<sup>141</sup> *Id.*

<sup>142</sup> *Guantánamo and Its Aftermath*, *supra* note 1, at 66.

<sup>143</sup> *Id.*

<sup>144</sup> *Id.* at 69.

<sup>145</sup> *Id.* at 67.

<sup>146</sup> *Id.*

<sup>147</sup> *Id.*

<sup>148</sup> *Id.*

<sup>149</sup> *Id.* at 70.

<sup>150</sup> *Id.*

<sup>151</sup> *Id.* at 66.

<sup>152</sup> *Id.* at 67.

<sup>153</sup> *Id.*

<sup>154</sup> *Id.* at 66.

<sup>155</sup> *Id.*

<sup>156</sup> *Id.*

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

<sup>158</sup> CAT General Comment 3, *supra* note 126, ¶ 2.

<sup>159</sup> *Guantánamo and Its Aftermath*, *supra* note 1, at 65.

<sup>160</sup> *Id.*

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

<sup>162</sup> *Id.*

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

<sup>164</sup> *Id.* at 67.

<sup>165</sup> *Id.*

<sup>166</sup> CAT General Comment 3, *supra* note 126, ¶ 2.

<sup>167</sup> *Id.* ¶ 10.

<sup>168</sup> *Id.*

<sup>169</sup> *Guantánamo and Its Aftermath*, *supra* note 1, at 65.

<sup>170</sup> *Id.*

<sup>171</sup> *Id.*

<sup>172</sup> *Id.*

<sup>173</sup> *Id.*

<sup>174</sup> *Id.*

<sup>175</sup> *Id.*

<sup>176</sup> *Id.*

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<sup>177</sup> *Id.* at 64.  
<sup>178</sup> *Id.*  
<sup>179</sup> *Id.*  
<sup>180</sup> CAT General Comment 3, *supra* note 126, ¶ 11.  
<sup>181</sup> *Id.*  
<sup>182</sup> *Id.*  
<sup>183</sup> *Guantánamo and Its Aftermath*, *supra* note 1, at 78.  
<sup>184</sup> *Id.* at 68.  
<sup>185</sup> *Id.*  
<sup>186</sup> *Id.*  
<sup>187</sup> *Id.*  
<sup>188</sup> *Id.*  
<sup>189</sup> *Id.* at 69.  
<sup>190</sup> *Id.* at 68.  
<sup>191</sup> *Id.*  
<sup>192</sup> *Id.*  
<sup>193</sup> *Id.*  
<sup>194</sup> *Id.*  
<sup>195</sup> *Id.*  
<sup>196</sup> *Id.*  
<sup>197</sup> *Id.*  
<sup>198</sup> *Id.*  
<sup>199</sup> CAT General Comment 3, *supra* note 126, ¶ 11.  
<sup>200</sup> *Guantánamo and Its Aftermath*, *supra* note 1, at 2.  
<sup>201</sup> *Id.* Guantánamo Bay commander, Major General Michael Dunlavey, estimated that half of the camp population was mistakenly detained. *See* MAYER, *supra* note 8.  
<sup>202</sup> CAT General Comment 3, *supra* note 126, ¶ 16.  
<sup>203</sup> *Guantánamo and Its Aftermath*, *supra* note 1, at 78.  
<sup>204</sup> *Id.* at 61.  
<sup>205</sup> *Id.*  
<sup>206</sup> *Id.* at 78.  
<sup>207</sup> *Id.* at 64.  
<sup>208</sup> *Id.* at 63.  
<sup>209</sup> *Id.*  
<sup>210</sup> *Id.*  
<sup>211</sup> *Id.*  
<sup>212</sup> *Id.* at 64.  
<sup>213</sup> *Id.*  
<sup>214</sup> *Id.*  
<sup>215</sup> CAT General Comment 3, *supra* note 126, ¶ 16.  
<sup>216</sup> *Id.* ¶ 1.  
<sup>217</sup> *Guantánamo and Its Aftermath*, *supra* note 1, at 2, 68.