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Mr. Ambassador,

In my capacity as Rapporteur for Follow-up on Conclusions and Recommendations of the United Nations Committee against Torture for the United States of America, I refer to the examination of the second periodic report of United States of America (CAT/C/48/Add.3/Rev.1). The Committee, in its Conclusions and Recommendations (CAT/C/USA/CO/2), requested the State Party to provide within one year information on the specific recommendations identified by the Committee in paragraph 43 (paragraphs 16, 20, 21, 22, 24, 33, 34 and 42 of the mentioned Conclusions and Recommendations).

The Government of the United States of America provided the information requested in September 2007 (CAT/C/USA/CO/2/Add.1). The Committee thanks the State party for its cooperation and presents its comments on the responses provided in the framework of the follow-up procedure, as part of the procedure through which the Committee monitors the implementation of specific recommendations that are serious, protective and may be implemented within one year as well as of the continuous dialogue with States parties

With regard to the recommendation made in paragraph 16, the Committee welcomes the information that relevant authorities of the State party, including military, "as a matter of good administration practice, generally maintain appropriate records on persons detained by them. Such records would generally include the information mentioned in the Committee's recommendation". The Committee considers that maintaining records of persons detained is mandatory as it constitutes a basic guarantee, particularly in order to prevent torture, for all persons deprived of their liberty (paragraph 13 of the General Comment n° 2 on the implementation of article 2 by States parties, adopted on 23 November 2007). The Committee does not make any distinction between categories of persons deprived of their liberty and it considers that all of them are protected by this guarantee. The Committee reiterates that the State party should adopt the necessary measures to establish the obligation of registration of all persons deprived of liberty. I would be grateful if you could clarify in which cases the mentioned authorities do not maintain appropriate records on persons detained. Is the State party considering adopting any legislative measures to ensure that such registration is an obligation for all authorities, including military, and that it is not only carried out as a matter of good administrative practice?

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While the Committee welcomes the information on paragraph 20 that “as a matter of policy, the United States Government does not transfer persons to countries where it determines that it is more likely than not that they will be tortured [and that this] policy applies to all components of the government, including the intelligence agencies”, the Committee wishes to remind the State party that the guarantee of non *refoulement* is a normative determination, of article 3 of the Convention, of the absolute, and *jus cogens*, prohibition of torture. It must be enforced effectively by the authorities of the State Party as a matter of law in any territory subject to its de jure or de facto control. No provision of the Convention limits the State territorial scope to the “territory of sovereignty” of States parties. It is reasonable to consider that the most adequate way to implement the assurance of non *refoulement* is the establishment of adequate judicial mechanisms to challenge all *refoulement* decisions. The Committee reiterates the recommendation to introduce such judicial control and would appreciate if the State party could indicate any measures taken in this regard.

As to the recommendation made in paragraph 21, the Committee welcomes the information received on the policy and practice of the Government of the United States, when relying on “diplomatic assurances”. In particular, the Declaration of the Ambassador-at-large for War Crimes, Mr. Clint Williamson, clarifies the motives and details of the practice. However, the Committee regrets the absolute confidentiality of such procedure and the lack of information on cases where assurances have been provided, which does not enable the Committee to monitor these arrangements and the de facto implementation of the Convention’s provisions by the State party. It also recalls that an adequate judicial mechanism for reviewing, in last instance, the sufficiency and appropriateness of diplomatic assurances in any applicable case, would have to be established. This principle also constitutes the basis of the decision adopted by the United States District Court for the Middle District of Pennsylvania in the case “Sameh Sami S. Khouzam v. Thomas H. Hogan et al.” (3:CV-07-0992; Judge Vanaskie), of 22 August 2007. Please indicate, in light of the above, any steps that might have been taken to consider the establishment of a judicial mechanism to this effect. Considering the confidential nature the State party has given to the procedure, please describe the post-return monitoring machinery in place on a generic and non specific basis. Has the State party received information on any assurances that have not been honored and what appropriate actions were taken in such cases by the State party?

With regard to the recommendation made in paragraph 22, the Committee reiterates its interpretation of the scope of obligations imposed on States Parties, in time of peace as well as in time of armed conflict. All the guarantees that must be applied to all persons deprived of their liberty referred to previously (paragraph 13 of the General Comment n° 2) must also be applied to detainees in Guantanamo and, among these, “the right promptly to receive independent legal assistance, independent medical assistance, and to contact relatives, the need to establish impartial mechanisms for inspecting and visiting places of detention and confinement, and the availability (...) of judicial and other remedies that will allow them to have their complaints promptly and impartially examined, to defend their rights, and to challenge the legality of their detention or treatment”. Taking also into account the rules on evidence established by the Military Commissions Act of 2006, it is also relevant to recall that it is absolutely forbidden by article 15 of the Convention to invoke, as evidence in any proceedings, any statement which is established to have been made as a result of torture, except against a person accused of torture as evidence that the statement was made. That means that in a fair process, a person has the inderogable right to prove that evidence against him or her was obtained under torture. The Committee has closely followed the successive decisions of the Supreme Court of the United States to protect the constitutional rights and liberties of detainees in Guantanamo. It reiterates the recommendation that the State Party must provide access to a fair judicial process to the Guantanamo detainees, to comply with its obligations under the Convention.

In respect of the recommendation made in paragraph 24, the Committee takes note with satisfaction of the progress made in order to eradicate any interrogation technique that amounts to torture by any agent of United States Government. The Committee reiterates that in this context, the use of interrogation techniques amounting to torture, such as those identified by the Committee, must be forbidden to all “components of the Government, including intelligence agencies”. However, it seems that some special legal exception would be reserved to these intelligence agencies as to the use of prohibited techniques, therefore derogating from the principle of absolute prohibition of torture. Please clarify the objective of the presidential veto of the 2008

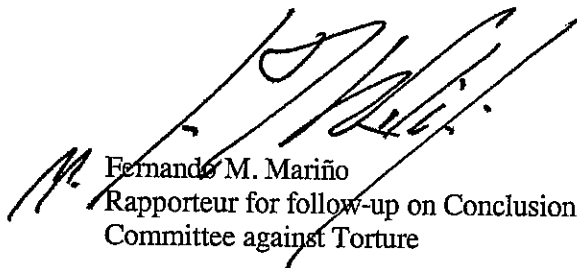
Intelligence Authorization Act which would have applied the Army Field Manual on interrogation to all "components of the Government, including intelligence agencies", thus prohibiting torture without any exception. Does this veto indicate that certain agencies outside of the Department of Defense, such as the CIA, may use prohibited acts, including interrogation techniques such as methods involving sexual humiliation, "water boarding", "short shackling" and using dogs to induce fear, which the Committee has clearly indicated as constituting torture or cruel, inhuman or degrading treatment or punishment?

Concerning the recommendations made in paragraphs 33 and 34, the Committee thanks the State party for the additional information submitted. However, the Committee considers that the United States should consider ratifying the Convention on the Rights of the Child (as all other members of the international community have, except Somalia and the United States) in order to accept the conventional obligation to prohibit the sentencing of juveniles to life imprisonment without the possibility of parole.

With regard to the recommendation made in paragraph 42, the Committee thanks the State Party for the information submitted. However, the Committee considers that the next periodic report, which the United States will have to present to the Committee on 19 November 2011, should include all the detailed statistical data requested in the concluding observations. While taking note of the response of the State Party to the recommendation of the establishment of a federal database on the implementation of the provisions of the Convention, the Committee reiterates this recommendation as it would allow the State party to provide the Committee with information it was unable to provide. Without the detailed statistical data as requested, the Committee will not be able to adequately monitor the full implementation of the State party's obligations under the Convention when considering the next report of the United States of America.

The Committee looks forward to pursuing the constructive dialogue started with the authorities of the United States of America on the implementation of the Convention. In this context, the Committee seeks to receive your written response to this request for further clarifications.

Accept, Mr. Ambassador, the assurances of my highest consideration.



Fernando M. Mariño

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Committee against Torture