

Committee against Torture

Concluding observations on the third to fifth periodic reports of United States of America

ADVANCE UNEDITED VERSION

1. The Committee against Torture considered the combined third to fifth periodic report of the United States of America (CAT/C/USA/3-5) at its 1264th and 1267th meetings, held on 12 and 13 November 2014 (CAT/C/SR.1264 and 1267), and adopted the concluding observations at its 1276th and 1277th meeting, held on 20 November 2014 (CAT/C/SR. 1276 and 1277).

A. Introduction

2. The Committee expresses its appreciation to the State party for accepting the optional reporting procedure as this improves the dialogue between the State party and the Committee and helps the State party to prepare a more focused report. It notes, however, that the report was submitted with a two-year delay.

3. The Committee appreciates the quality of its dialogue with the State party's high-level delegation and of the responses provided orally to the questions and concerns raised during the consideration of the report.

B. Positive aspects

4. The Committee welcomes the changes in the State party's legislation and jurisprudence in areas of relevance to the Convention, including:

(a) Recognition by the Supreme Court in *Boumediene v. Bush*, 553 U.S. 723 (2008), of the extraterritorial application of constitutional habeas corpus rights to aliens detained by the military as enemy combatants at Guantanamo Bay;

(b) Presidential Executive Orders 13491 – Ensuring Lawful Interrogations, 13492 – Review and Disposition of Individuals Detained at the Guantanamo Bay Naval Base and Closure of Detention Facilities, and 13493 – Review of Detention Policy Options, issued on 22 January 2009;

(c) Presidential Executive Order 13567 establishing a periodic review of detainees at the Guantanamo Bay detention facility who have not been charged, convicted or designated for transfer, issued on 7 March 2011;

(d) Supreme Court's rulings in *Graham v. Florida* (2010), prohibiting sentences of life imprisonment without parole for children convicted of non-homicide offences, and *Miller v. Alabama* (2012), barring sentences of mandatory life imprisonment without parole for children convicted of homicide offences.

5. The Committee also welcomes the efforts of the State party to amend its policies, programmes and administrative measures to give effect to the Convention, including:

(a) Adoption of the Directive on the appropriate use of segregation in Immigration and Customs Enforcement (ICE) detention facilities, in 2013; and, ICE revised Performance-Based National Detention Standards, in 2011;

(b) Promulgation of the National Standards to Prevent, Detect, and Respond to Sexual Abuse in Confinement Facilities, in accordance with the Prison Rape Elimination Act of 2003 (PREA), in 2012; and, the efforts undertaken by the State party to ensure the respect of the act in federal, state and local facilities and to collect data on the extent of sexual violence in detention.

6. The Committee welcomes the firm and principled position adopted by the State party with regard to the applicability of the Convention during armed conflict, stating that a time of war does not suspend the operation of the Convention, which continues to apply even when the State is engaged in an armed conflict.

7. It also welcomes the State party's long standing commitment to the United Nations Voluntary Funds for Victims of Torture and its mission.

8. Finally the Committee notes with appreciation President's Obama public statement of 1 August 2014 in which he qualified some of the so-called "enhanced interrogation-techniques" as acts of torture.

C. Principal subjects of concern and recommendations

Definition and criminalization of torture

9. Notwithstanding the State party's statement that under U.S. law, acts of torture are prohibited by various statutes and may be prosecuted in a variety of ways, the Committee regrets that a specific offence of torture has not been introduced yet at the federal level. The Committee is of the view that the introduction of such offence, in full conformity with article 1 of the Convention, would strengthen the human rights protection framework in the State party. The Committee also regrets that the State party maintains a restrictive interpretation of the provisions of the Convention and does not intend to withdraw any of its interpretative understandings lodged at the time of ratification. In particular, the concept of "prolonged mental harm" introduces a subjective non-measurable element which undermines the application of the treaty. While noting the delegation's explanations on this matter, especially with regard to articles 1 and 16 of the Convention, the Committee recalls that under international law, reservations that are contrary to the object and purpose of a treaty are impermissible (arts. 1, 2, paragraph 1 and 4).

The Committee reiterates its previous recommendation (A/55/44, para. 180 (a) and CAT/C/USA/CO/2, para. 13) that the State party should criminalize torture at the federal level, in full conformity with article 1 of the Convention, and ensure that penalties for torture are commensurate with the gravity of this crime. It recommends the re-introduction of the Law Enforcement Torture Prevention Act, a bill which contains a definition of torture and specifically criminalizes acts of torture by law enforcement personnel and others under the color of law.

The State party should give further consideration to withdrawing its interpretative understandings and reservations. In particular, it should ensure that acts of psychological torture are not qualified as "prolonged mental harm". In this regard, the Committee draws the attention to its General Comment No. 2 (2007), on the implementation of article 2 of the Convention by State parties, which states that serious discrepancies between the Convention's definition and that incorporated into domestic law create actual or potential loopholes for impunity (CAT/C/GC/2, para. 9).

Extraterritoriality

10. The Committee welcomes the State party's unequivocal commitment to abide by the universal prohibition of torture and ill-treatment everywhere, including Bagram and Guantanamo Bay detention facilities, as well as the assurances that U.S. personnel are

legally prohibited under international and domestic law from engaging in torture or cruel, inhuman, or degrading treatment or punishment at all times, and in all places. The Committee notes that the State party has reviewed its position concerning the extraterritorial application of the Convention, and stated that it applies to “certain areas beyond” its sovereign territory, and more specifically to “all places that the State party controls as a governmental authority”, noting that it currently exercises such control at “the U.S. Naval Station at Guantanamo Bay, Cuba, and over all proceedings conducted there, and with respect to U.S.-registered ships and aircraft”. The Committee also values the statement made by the State party’s delegation that the reservation to article 16 of the Convention, whose intended purpose is to ensure that existing U.S. constitutional standards satisfy the State party’s obligations under article 16, “does not introduce any limitation to the geographic applicability of article 16”, and that “the obligations in article 16 apply beyond the sovereign territory of the United States to any territory under its jurisdiction” under the terms mentioned above.

However, the Committee is dismayed that the State party’s reservation to article 16 of the Convention features in various declassified memoranda containing legal interpretations on the extraterritorial applicability of U.S. obligations under the Convention issued by the Department of Justice’s Office of Legal Counsel (OLC) between 2001 and 2009, as part of deeply flawed legal arguments used to advise that interrogation techniques, which amounted to torture, could be authorized and used lawfully. While noting that these memoranda were revoked by Presidential Executive Order 13491 to the extent of their inconsistency with that order, the Committee remains concerned that the State party has not withdrawn yet its reservation to article 16 which could permit interpretations incompatible with the absolute prohibition of torture and ill-treatment.

The Committee reiterates its view (CAT/C/USA/CO/2, para. 15) that the State party should take effective measures to prevent acts of torture not only in its sovereign territory but also “in any territory under its jurisdiction”. In this respect, the Committee recalls, as stated in its General Comment No. 2, that ‘any territory’ includes “all areas where the State party exercises, directly or indirectly, in whole or in part, de jure or de facto effective control, in accordance with international law. The reference to ‘any territory’ in article 2, like that in articles 5, 11, 12, 13 and 16 [of the Convention], refers to prohibited acts committed not only on board a ship or aircraft registered by the a State party, but also during military occupation or peacekeeping operations and in such places as embassies, military bases, detention facilities, or other areas which a State party exercises factual or effective control” (para. 16).

The State party should amend the relevant laws and regulations accordingly, and withdraw its reservation to article 16 as a means to avoid wrongful interpretations.

Counter-terrorism measures

11. The Committee expresses its grave concern over the extraordinary rendition, secret detention and interrogation programme operated by the U.S. Central Intelligence Agency (CIA) between 2001 and 2008, which involved numerous human rights violations, including torture, ill-treatment and enforced disappearance of persons suspected of involvement in terrorism-related crimes. While noting the content and scope of Presidential E.O. 13491, the Committee regrets the scant information provided by the State party with regard to the now shuttered network of secret detention facilities, which formed part of the high-value detainee programme publicly referred to by President Bush on 6 September 2006. It also regrets the lack of information provided on the practices of extraordinary rendition and enforced disappearance; and, on the extent of the CIA’s abusive interrogation techniques used on suspected terrorists, such as water-boarding. In this regard, the Committee is closely following the declassification process of the U.S. Senate Select

Committee on Intelligence's report on the CIA's detention and interrogation programme (art. 2, 11 and 16).

The Committee recalls the absolute prohibition of torture reflected in article 2, paragraph 2, of the Convention, stating that “no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture”. In this regard, the Committee draws the attention to paragraph 5 of its General Comment No. 2 (2007), in which it states that those ‘exceptional circumstances’ include “any threat of terrorist acts or violent crime as well as armed conflict, international or non-international”.

The Committee urges the State party to:

(a) Ensure that no one is held in secret detention under its *de facto* effective control. The Committee reiterates that detaining individuals in such conditions constitutes *per se* a violation of the Convention;

(b) Take all necessary measures to ensure that its legislative, administrative and other anti-terrorism measures are compatible with the provisions of the Convention, especially with article 2;

(c) Adopt effective measures to ensure, in law and in practice, that all detainees are afforded all legal safeguards from the very outset of their deprivation of liberty, including those mentioned in paragraphs 13 and 14 of the Committee's General Comment No. 2.

The Committee calls for the declassification and prompt public release of the Senate Select Committee on Intelligence's report on the CIA's secret detention and interrogation programme with minimal redactions.

The Committee also encourages the State party to ratify the International Convention for the Protection of All Persons from Enforced Disappearance.

Inquiries into allegations of torture overseas

12. The Committee expresses concern over the ongoing failure to fully investigate allegations of torture and ill-treatment of suspects held in U.S. custody abroad, evidenced by the limited number of criminal prosecutions and convictions. In this respect, the Committee notes that during the period under review, the Department of Justice (DoJ) successfully prosecuted two instances of extrajudicial killings of detainees by Department of Defense and CIA contractors in Afghanistan. It also notes the additional information provided by the State party's delegation regarding the criminal investigation undertaken by Assistant U.S. Attorney John Durham into allegations of detainee mistreatment while in U.S. custody at overseas locations. The Committee regrets, however, that the delegation was not in a position to describe the investigative methods employed by Mr. Durham or the identities of any witnesses his team may have interviewed. Thus, the Committee remains concerned about information before it that some former CIA detainees, who had been held in U.S. custody abroad, were never interviewed during the investigations, casting doubts as to whether this high-profile inquiry was properly conducted. The Committee also notes that the DoJ announced on 30 June 2011 the opening of a full investigation into the deaths of two individuals while in U.S. custody at overseas locations. However, Mr. Durham's review concluded that the admissible evidence would not be sufficient to obtain and sustain convictions beyond a reasonable doubt. The Committee shares the concerns expressed at the time by the UN Special Rapporteur on Torture over the decision not to prosecute and punish the alleged authors of these deaths. It further expresses concern about the absence of criminal prosecutions for the alleged destruction of torture evidence by CIA personnel, such as the destruction of the 92 videotapes of interrogations of Abu Zubaydah and 'Abd al-Nashiri that triggered Mr. Durham's initial mandate. The Committee notes that in

November 2011 the DoJ determined, based on the Mr. Durham's review, not to initiate prosecutions of those cases (arts. 2, 12, 13 and 16).

The Committee urges the State party to:

(a) Carry out prompt, impartial and effective investigations wherever there is reasonable ground to believe that an act of torture and ill-treatment has been committed in any territory under its jurisdiction, especially in those cases resulting in death in custody;

(b) Ensure that alleged perpetrators and accomplices are duly prosecuted, including persons in positions of command and those who provided legal cover to torture, and, if found guilty, handed down penalties commensurate with the grave nature of their acts. In this connection, the Committee draws the attention to paragraphs 9 and 26 of its General Comment No. 2;

(c) Provide effective remedies and redress to victims, including fair and adequate compensation, and as full rehabilitation as possible, in accordance with the Committee's General Comment No. 3 (2012) on the implementation of article 14 of the Convention by State parties (CAT/C/GC/3);

(d) Undertake a full review into the way the CIA's responsibilities were discharged in relation to the allegations of torture and ill-treatment against suspects during U.S. custody abroad. In the event of a re-opening of investigations, the State party should ensure that any such inquiries are designed to address the alleged shortcomings in the thoroughness of the previous reviews and investigations.

Military accountability for abuses

13. The information provided by the State party's delegation indicates that the U.S. Department of Defense (DoD) has conducted "thousands of investigations since 2001 and prosecuted or disciplined hundreds of service members for mistreatment of detainees and other misconduct". However, the Committee regrets that in the course of the dialogue, the delegation provided minimal statistics on the number of investigations, prosecutions, disciplinary proceedings and corresponding reparations. It has also received insufficient information about the sentences and criminal or disciplinary sanctions imposed on offenders, or on whether the alleged perpetrators of these acts were suspended or expelled from the U.S. military pending the outcome of the investigation of the abuses. In the absence of this information, the Committee finds itself unable to assess whether the State party's actions are in conformity with the provisions of article 12 of the Convention (arts. 2, 12, 13, 14 and 16).

The Committee urges the State party to:

(a) Ensure the prompt and impartial investigation of all instances of torture and ill-treatment by military personnel, that alleged perpetrators are prosecuted, and, if found guilty, punish appropriately, and that effective reparation, including adequate compensation, is granted to every victim;

(b) Ensure that alleged perpetrators of torture or ill-treatment are suspended from duty immediately for the duration of the investigation, particularly when there is a risk that they might otherwise be in a position to repeat the alleged act or to obstruct the investigation.

Guantanamo Bay detention facilities

14. The Committee expresses its deep concern about the fact that the State party continues to hold a number of individuals without charge at Guantanamo Bay detention facilities. Notwithstanding the State party's position that these individuals have been

captured and detained as “enemy belligerents” and that under the law of war is permitted “to hold them until the end of the hostilities”, the Committee reiterates that indefinite detention constitutes *per se* a violation of the Convention. According to the figures provided by the delegation, to date, out of the 148 men still held at the facility, only 33 have been designated for potential prosecution, either in federal court or by military commissions – a system that fails to meet international fair trial standards. The Committee notes with concern that 36 others have been designated for “continued law of war detention”. While noting that detainees held in Guantanamo have the constitutional privilege of the writ of habeas corpus, the Committee is concerned at reports that indicate that federal courts have rejected a significant number of habeas corpus petitions.

While noting the explanations provided by the State party concerning the conditions of detention at Guantanamo, the Committee remains concerned about the secrecy surrounding conditions of confinement, especially in Camp 7 where high-value detainees are housed. It also notes the studies received on the cumulative effect that the conditions of detention and treatment in Guantanamo have had on the psychological health of detainees. There have been nine deaths in Guantanamo during the period under review, including seven suicides. In this respect, another cause of concern is the repeated suicide attempts and recurrent mass hunger strike protests by detainees over indefinite detention and conditions of detention. In this connection, the Committee considers that force-feeding of prisoners on hunger strike constitutes ill-treatment in violation of the Convention. Furthermore, it notes that detainees’ lawyers have argued in court that force feedings are allegedly administered in an unnecessarily brutal and painful manner (arts. 2, 11, 12, 13, 14, 15 and 16).

The Committee calls upon the State party to take immediate and effective measures to:

(a) Cease the use of indefinite detention without charge or trial for individuals suspected of terrorism-related activities;

(b) Ensure that detainees held at Guantanamo who are designated for potential prosecution be charged and tried in ordinary federal civilian courts. Any other detainees who are not to be charged or tried should be immediately released. Detainees and their counsels must have access to all evidence used to justify the detention;

(c) Investigate allegations of detainee abuse, including torture and ill-treatment, appropriately prosecute those responsible, and ensure effective redress for victims;

(d) Improve the detainees’ situation so as to persuade them to cease the hunger strike;

(e) Put an end to force-feeding of detainees in hunger strike as long as they are able to take informed decisions;

(f) Invite the UN Special Rapporteur on torture to visit Guantanamo Bay detention facilities, with full access to the detainees, including private meetings with them, in conformity with the terms of reference for fact-finding missions by Special Procedures of the UN Human Rights Council.

The Committee reiterates its earlier recommendation (CAT/C/USA/CO/2, para 22) that the State party should close the detention facilities at Guantanamo Bay, as instructed in section 3 of Executive Order 13492 of 22 January 2009.

Abuse of State secrecy provisions and mutual judicial assistance

15. The Committee expresses its serious concern at the use of State secrecy provisions and immunities to evade liability. While noting the delegation’s statement that the State

party abides by its obligations under article 15 of the Convention in the administrative procedures established to review the status of law of war detainees in Guantanamo, the Committee is particularly disturbed at reports describing a draconian system of secrecy surrounding high-value detainees that keeps their torture claims out of the public domain. Furthermore, the regime applied to these detainees prevents access to an effective remedy and reparations, and hinders investigations into human rights violations by other States (arts. 9, 12, 13, 14 and 16).

The Committee calls for the declassification of torture evidence, in particular Guantanamo detainees' accounts of torture. The State party should ensure that all victims of torture are able to access a remedy and obtain redress, wherever acts of torture occurred and regardless of the nationality of the perpetrator or the victim.

The State party should take effective steps to ensure the provision of mutual judicial assistance in all matters of criminal procedure regarding the offence of torture and related crimes of attempting to commit, complicity and participation in torture. The Committee recalls that article 9 of the Convention requests States parties to "afford one another the greatest measure of assistance" in connection with criminal proceedings related to violations of the Convention.

Transfer of detainees from Guantanamo Bay and reliance on diplomatic assurances

16. The Committee takes note of the explanations provided by the delegation concerning the processes involved in transferring the remaining detainees from Guantanamo Bay detention facilities, and the lifting of the detainee transfer moratorium to Yemen. However, it expresses its concern at the fact that most of the 79 detainees who are currently designated for transfer had already been cleared for transfer five years ago by the Review Task Force. While noting the information provided by the State party on the practice of obtaining torture-related diplomatic assurances, the Committee remains disturbed by reports from non-governmental sources which indicate that some former Guantanamo Bay detainees have experienced abuse during treatment post release (art. 3).

The Committee calls on the State party to ensure that no individual, including persons suspected of terrorism, who are expelled, returned, extradited or deported, is exposed to the danger of torture or other cruel, inhuman or degrading treatment or punishment. It urges the State party to refrain from seeking and relying on diplomatic assurances "where there are substantial grounds for believing that [the person] would be in danger of being subjected to torture" (art. 3). The principle of non-refoulement should always have precedence over any other protection measure.

Interrogation techniques

17. The Committee appreciates the initiatives of the State party to eliminate interrogation methods which constitute torture or ill-treatment. Nevertheless, the Committee is concerned about certain aspects of Appendix M of the Army Field Manual Human Intelligence Collector Operations, FM 2-22.3 of September 2006, in particular the description of some authorised methods of interrogation, such as the interrogation techniques of "physical separation" and "field expedient separation". While noting the information by the delegation to the effect that such practices are consistent with the State party's obligations under the Convention, the Committee remains concerned over the possibilities for abuse such techniques may entail (arts. 1, 2, 11 and 16).

The State party should ensure that interrogation methods contrary to the Convention are not used under any circumstances. The Committee urges the State party to review Appendix M of the Army Field Manual in light of its obligations under the Convention.

In particular, the State party should abolish the provision contained in the “physical separation technique” which establishes that “use of separation must not preclude the detainee getting four hours of continued sleep every 24 hours”. Such provision applicable over an initial period of 30 days, which is renewable, amounts to authorizing sleep deprivation –a form of ill-treatment-, and is unrelated to the aim of the “physical separation technique” which is to preventing communication among detainees. The State party should ensure detainee’s needs in terms of sleep time and that sleeping accommodation provided for the use of prisoners is in conformity the requirements of Rule 10 of the Standard Minimum Rules for the Treatment of Prisoners.

Equally, the State party should abolish sensory deprivation in the “field expedient separation technique” aimed at prolonging the shock of capture by applying goggles or blindfolds and earmuffs to generate a perception of separation, which based on recent scientific findings with high probability will create a state of psychosis with the detainee (Daniel C., Lovatt A., Manson OJ. *Psychotic-like experiences and their cognitive appraisal under short-term sensory deprivation*. *Frontiers in Psychiatry*; Vol. 5, Art 106:1), raising concerns of torture and ill-treatment.

Asylum protection requests at the southwestern border

18. The Committee is concerned by the expansion of expedited removal procedures, which do not adequately take into account the special circumstances of asylum seekers and other persons in need of international protection. It is also concerned by a growing number of reports that Customs and Border Protection (CBP) and other U.S. immigration agencies fail to identify and refer many of the individuals placed in expedited removal for an asylum-screening interview. Furthermore, persons who are placed in expedited removal proceedings may be detained until they are removed from the United States. The Committee also notes with concern that the Citizenship and Immigration Services (USCIS) Asylum Division recently revised its interpretation of the credible-fear standard making it more restrictive (art. 3).

The State party should ensure that it is in full compliance with its obligations in respect of non-refoulement under article 3 of the Convention. In particular the State party should:

(a) **Take concrete measures to ensure the adequacy of the refugee determination process and asylum procedures for migrants of all nationalities;**

(b) **Uphold the principle that asylum procedures should remain confidential and should provide for special consideration for minors, women, victims of torture or traumatised and other asylum seekers with specific needs;**

(c) **Conduct a thorough risk assessment of situations covered by article 3 of the Convention, notably by taking into consideration the current security situations in Mexico and in the Northern Triangle of Central America;**

(d) **Review the use of expedited removal procedures, and guarantee access to counsel;**

(e) **Ensure that the interpretation of the “credible fear” screening standard is returned to its original, less restrictive application for all individuals expressing a fear of return and referred for such screening interviews.**

Immigration detention

19. The Committee notes with concern that the State party continues to use, under certain circumstances, a system of mandatory detention to automatically hold asylum seekers and other immigrants on arrival in prison-like detention facilities, county jails and

private prisons. It is also concerned at the recent expansion of family detention with the plan to establish up to 6,350 additional detention beds for undocumented migrant families with children. The Committee observes that despite the increased use of foster care for unaccompanied children and separate children, many of them continue to be held in group homes and secure facilities, which closely resemble juvenile correctional facilities. While acknowledging the steps taken by the State party to reform the immigration detention system, the Committee remains concerned by reports of substandard conditions of detention in immigration facilities and use of solitary confinement. It is also concerned about reports of sexual violence by staff and other detainees (arts. 2, 11 and 16).

The State party should:

(a) Review the use of mandatory detention of certain categories of immigrants;

(b) Develop and expand community-based alternatives to immigration detention, expand the use of foster care for unaccompanied children, and halt the expansion of family detention, with a view to progressively eliminating it completely;

(c) Ensure compliance with the 2013 Directive on the appropriate use of segregation in U.S. Immigration and Customs Enforcement (ICE) detention facilities and the 2011 Performance-based national standards in all immigration detention facilities;

(d) Prevent sexual assault in immigration detention and ensure that all facilities holding immigration detainees are in compliance with Prison Rape Elimination Act standards;

(e) Establish an effective and independent oversight mechanism to ensure prompt, impartial and effective investigation into all allegations of violence and abuse in immigration centres.

Solitary confinement

20. While noting that the State party has indicated that there is “no systematic use of solitary confinement in the United States”, the Committee remains concerned about reports of extensive use of solitary confinement and other forms of isolation in US prisons, jails and other detention centres for purposes of punishment, discipline and protection, as well as for health-related reasons. It also notes the lack of relevant statistical information available. Furthermore, it is concerned about the use of solitary confinement for indefinite periods of time, and its use against juveniles and individuals with mental disabilities. The full isolation for 22-23 hours a day in super-maximum security prisons is unacceptable (art. 16).

The State party should:

(a) Limit the use of solitary confinement as a measure of last resort, for as short time as possible, under strict supervision and with the possibility of judicial review;

(b) Prohibit any use of solitary confinement against juveniles, persons with intellectual or psychosocial disabilities, pregnant women, women with infants and breastfeeding mothers in prison;

(c) Ban prison regimes of solitary confinement such as those in super-maximum security detention facilities;

(d) Compile and regularly publish comprehensive disaggregated data on the use of solitary confinement, including related suicide attempts and self-harm.

Protection of prisoners against violence, including sexual assault

21. The Committee is seriously concerned at the widespread prevalence of sexual violence, including rape, in prisons, jails and other places of detention by staff and by other inmates. It also notes with concern the disproportionately high rates of sexual violence faced by children in adult facilities, as well as the higher rates of sexual victimization reported by inmates with a history of mental health problems and LGBTI individuals. While welcoming the promulgation in 2012 of the National Standards to Prevent, Detect, and Respond to Prison Rape under the Prison Rape Elimination Act (PREA), the Committee is concerned by reports that their implementation at the state level continues to be a substantial challenge. In this context, the Committee notes with concern that six states have not certified that they are in full compliance with PREA standards, and several agencies operating federal confinement facilities are still in the process of issuing their own PREA regulations.

The Committee remains concerned over the negative effects of the Prison Litigation Reform Act (PLRA) on the ability of prisoners to seek protection of their rights. While taking note of the changes introduced in 2013 in the PLRA (adding “the commission of a sexual act” as an alternative to physical injury to establish eligibility for compensation for emotional distress), the Committee considers that the State party has continued to place greater emphasis on the goal of curbing prisoner lawsuits at the expense of inmates’ rights. Thus, the Committee regrets that section 1997 e(e) requires a predicate of either “physical injury” or “the commission of a sexual act” as a prerequisite to obtaining compensatory damages for mental or emotional injury. It is concerned further at section 1997 e(a) of the PLRA, that requires prisoners to exhaust all internal complaint procedures before bringing an action in federal court, which implies that they have to meet applicable deadlines for filing the initial grievance and making administrative appeals.

Finally, the Committee notes that 19 states have enacted a statute restricting the shackling of pregnant inmates and that legislation has also been under consideration in a number of other states. It is nevertheless concerned at reports that in certain cases incarcerated women are still shackled or otherwise restrained throughout pregnancy and during labour, delivery, and post-partum recovery (arts. 2, 11, 12, 13, 14 and 16).

The Committee recommends the State party to increase its efforts to prevent and combat violence in prisons and places of detention, including sexual violence by law enforcement and penitentiary personnel and by other inmates. In particular, the State party should:

- (a) Ensure that PREA standards or similar standards are adopted and implemented by all states, and that all federal agencies and departments operating confinement facilities propose and publish regulations that apply PREA standards to all detention facilities under their jurisdiction;**
- (b) Promote effective and independent mechanisms for receiving and handling complaints of prison violence, including sexual violence;**
- (c) Ensure that any and all reports of prison violence, including sexual violence, are investigated promptly and impartially and that the alleged perpetrators are prosecuted;**
- (d) Ensure the use of same-sex guards in contexts where the detainee is vulnerable to attack, in scenarios that involve close personal contact or that involve the privacy of the detainee;**
- (e) Provide specialized training to prison staff on prevention of sexual violence;**

(g) Develop strategies for reducing violence among inmates. Monitor and document incidents of violence in prisons with a view to revealing the root causes and designing appropriate prevention strategies;

(h) Authorize monitoring activities by non-governmental organizations;

(i) Amend sections 1997 e(a) and (e) of the Prison Litigation Reform Act;

(j) Revise the practice of shackling of incarcerated pregnant women, bearing in mind that the regime of the prison shall be flexible enough to respond to the needs of pregnant women, nursing mothers and women with children (see the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules, as adopted by the General Assembly in its resolution 65/229 of 21 December 2010, Rule 42.2).

Deaths in custody

22. The Committee notes with concern that 958 inmates died while in the custody of local jails during 2012, an 8 percent increase from the 889 deaths in 2010. During the same year State prison deaths remained stable with 3,351 reported deaths. The Committee is particularly concerned about reports of inmate deaths occurred as a result of extreme heat exposure while imprisoned in unbearably hot and poor ventilated prison facilities in Arizona, California, Florida, New York, Michigan and Texas (arts. 2, 11 and 16).

The Committee urges the State party to investigate promptly, thoroughly and impartially all deaths of detainees, assessing the health care received by inmates as well as any possible liability of prison personnel, and provide, where appropriate, adequate compensation to the families of the victims.

The State party should adopt urgent measures to remedy any deficiencies concerning the temperature, insufficient ventilation and humidity levels in prison cells, including death row facilities.

Juvenile justice

23. The Committee remains concerned at the notable gaps in the protection of juveniles in the State party's criminal justice system. In particular, the Committee expresses once again its concern at the conditions of detention for juveniles, including their placement in adult jails and prisons, and in solitary confinement (art. 11 and 16).

The State party should take the necessary measures to ensure the proper functioning of the juvenile system in compliance with international standards. In particular, the State party should:

(a) Ensure full implementation of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules, General Assembly res. 40/33 of 29 November 1985, annex) and the United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines, General Assembly resolution 45/112, annex);

(b) Ensure that juvenile detainees and prisoners under 18 are held separately from adults, in line with the provisions of The Beijing Rules (rules 13.4 and 26.3), and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (General Assembly resolution 45/113 of 14 December 1990, rules 17, 28 and 29);

(c) Prohibit any use of solitary confinement against juveniles (see, para. 20);

(d) Resort more to alternatives to incarceration, taking into account the provisions of the United Nations Standard Minimum Rules for Non-custodial

Measures (the Tokyo Rules, General Assembly resolution 45/110, of 14 December 1990) and the Bangkok Rules.

Life-without-parole sentences for juvenile offenders

24. While welcoming Supreme Court's rulings in *Graham v. Florida* (2010) and *Miller v. Alabama* (2012), imposing limitations on juvenile life-without-parole sentences, the Committee remains concerned that some courts have ruled that *Miller v. Alabama* does not apply retroactively and that a majority of the 28 states that required mandatory life sentences without the possibility of parole for children have not passed legislation to comply with the ruling. Moreover, the rulings leave open the possibility of judges imposing life without parole sentences in homicide cases, even where the child played a minimal role, and courts continue to impose the sentence (art. 11 and 16).

The State party should abolish the sentence of life imprisonment without parole for offences committed by children under 18 years of age, irrespective of the crime committed. Enable child offenders currently serving life without parole to have their cases reviewed by a court for reassessment and resentencing, to restore parole eligibility and for a possible reduction of sentence.

Death penalty

25. While welcoming that six states have abolished capital punishment during the period under review, the Committee expresses its concern at the State party's admission that it is not currently considering abolishing the death penalty at the federal level. It also expresses its concern at reported cases of excruciating pain and prolonged suffering that procedural irregularities have caused to condemned prisoners in the course of their execution. The Committee is specially troubled by the recent cases of botched executions in Arizona, Oklahoma, and Ohio. The Committee is equally concerned at the continued delays in recourse procedures which keep prisoners sentenced to death in a situation of anguish and incertitude for many years. The Committee notes that in certain cases such situation amounts to torture in so far as it corresponds to one of the forms of torture (i.e. the threat of imminent death) contained in the interpretative understanding made by the State party at the time of ratification of the Convention (arts. 1, 2 and 16).

The State party should review its execution methods in order to prevent pain and prolonged suffering. The Committee recalls that according to the Safeguards guaranteeing protection of the rights of those facing the death penalty (approved by Economic and Social Council resolution 1984/50 of 25 May 1984), where capital punishment occurs, it shall be carried out so as to inflict the minimum suffering.

The State party should reduce the procedural delays that keep prisoners sentenced to capital punishment in the death row for prolonged periods.

The State party is encouraged to establish a moratorium on executions with a view to abolish the death penalty, to commute the sentences of individuals currently on death row and to accede to the Second Optional Protocol of the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.

Excessive use of force and police brutality

26. The Committee is concerned about numerous reports of police brutality and excessive use of force by law enforcement officials, in particular against persons belonging to certain racial and ethnic groups, immigrants and LGBTI individuals, racial profiling by police and immigration offices and growing militarization of policing activities. The Committee is particularly concerned at the reported current police violence in Chicago, especially against African-American and Latino young people who are allegedly being consistently profiled, harassed and subjected to excessive force by Chicago Police

Department (CPD) officers. It also expresses its deep concern at the frequent and recurrent police shootings or fatal pursuits of unarmed black individuals. In this regard, the Committee notes the alleged difficulties to hold police officers and their employers accountable for abuses. While noting the information provided by the delegation that over the past five years 20 investigations were opened into allegations of systematic police department violations, and over 330 police officers were criminally prosecuted, the Committee regrets the lack of statistical data available on allegations of police brutality and the lack of information on the result of the investigations undertaken in respect of those allegations. With regard to the acts of torture committed by CPD Commander Jon Burge and others under his command between 1972 and 1991, the Committee notes the information provided by the State party that a federal rights investigation did not develop sufficient evidence to prove beyond a reasonable doubt that prosecutable constitutional violations occurred. However, it remains concerned that, despite the fact that Jon Burge was convicted for perjury and obstruction of justice, no Chicago police officer has been convicted for these acts of torture for reasons including the statute of limitations expiring. While noting that several victims were ultimately exonerated of the underlying crimes, the vast majority of those tortured –most of them African Americans–, have received no compensation for the extensive injuries suffered (arts. 11, 12, 13, 14 and 16).

The State party should:

- (a) Ensure that all instances of police brutality and excessive use of force by law enforcement officers are investigated promptly, effectively and impartially by an independent mechanism with no institutional or hierarchical connection between the investigators and the alleged perpetrators;**
- (b) Prosecute persons suspected of torture or ill-treatment and, if found guilty, ensure that they are punished in accordance with the gravity of their acts;**
- (c) Provide effective remedies and rehabilitation to the victims;**
- (d) Provide redress for CPD torture survivors by supporting the passage of the Ordinance entitled Reparations for the Chicago Police Torture Survivors.**

Electrical discharge weapons (Tasers)

27. The Committee is concerned about numerous, consistent reports that police have used electrical discharge weapons against unarmed individuals who resist arrest or fail to comply immediately with commands, suspects fleeing minor crime scenes or even minors. Moreover, the Committee is appalled at the number of reported deaths after the use of electrical discharge weapons, including the recent cases of Israel “Reefa” Hernández Llach in Miami Beach, Florida, and Dominique Franklin Jr. in Sauk Village, Illinois. While taking note of the information provided by the State party on the relevant guidelines and available training for law-enforcement officers, the Committee observes the need to introduce more stringent regulations governing their use (arts. 11, 12, 13, 14 and 16).

The State party should ensure that electrical discharge weapons are used exclusively in extreme and limited situations –where there is a real and immediate threat to life or risk of serious injury– as a substitute for lethal weapons and by trained law enforcement personnel only.

The State party should revise the regulations governing the use of such weapons with a view to establishing a high threshold for their use and expressly prohibiting their use on children and pregnant women. The Committee is of the view that the use of electrical discharge weapons should be subject to the principles of necessity and proportionality and should be inadmissible in the equipment of custodial staff in prisons or any other place of deprivation of liberty. The Committee urges the State party to provide more stringent instructions to law enforcement personnel entitled to

use electric discharge weapons, and to strictly monitor and supervise their use through mandatory reporting and review of each use.

Training

28. The Committee takes note of the information that it has received regarding training in lawful interrogation methods and internal reporting mechanisms. It is concerned, however, by the lack of information on the impact of the training conducted for law enforcement officials, intelligence and security officials, military personnel and prison staff, and how effective the training programmes have been in reducing incidents of torture and ill-treatment (art. 10).

The State party should:

(a) Further develop mandatory training programmes to ensure that all public servants –law enforcement officers, military officers, intelligence officials, prison staff and medical personnel employed in prisons and psychiatric hospitals – are well acquainted in the provisions of the Convention and are fully aware that violations will not be tolerated and will be investigated, and that those responsible will be prosecuted;

(b) Ensure that all relevant staff, including medical personnel, are specifically trained to identify cases of torture and ill-treatment in accordance with the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol);

(c) Develop and apply a methodology for assessing how effective its training programmes are in reducing the number of cases of torture and ill-treatment.

Redress, including compensation and rehabilitation

29. While noting the State party's assertion that its legislation provides a wide range of civil remedies for seeking redress in cases of torture at the federal and state level, the Committee regrets the limited information provided by the delegation on rehabilitation programmes for both domestic and third country victims, or the allocation of resources to support such programmes. The Committee is further concerned about the situation of certain individuals and groups made vulnerable by discrimination or marginalization who face specific obstacles that impede the enjoyment of their right to redress (art. 14).

The State party should ensure that appropriate rehabilitation programmes are provided to all victims of torture and ill-treatment, including medical and psychological assistance. The State party should also enhance its support and funding for torture rehabilitation programmes in the State party.

The Committee urges the State party to take immediate legal and other measures to ensure that all victims of torture and ill-treatment obtain redress and have an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible, in particular victims of police brutality, terror suspects claiming abuse, victims of gender violence, asylum-seekers, refugees and others under international protection

The Committee draws the State party's attention to its General Comment No. 3 (2012) on the implementation of article 14 by State parties (CAT/C/GC/3), in which it elaborates upon the nature and scope of State parties' obligations to provide full redress to victims of torture, in particular to paragraphs 3-4, 11-15, 19, 32 and 39.

Sexual violence and rape in the U.S. military

30. While welcoming the recently increased efforts by the Department of Defense to prevent sexual assault in the military, the Committee remains concerned about the high prevalence of sexual violence, including rape, and the alleged failure of the Department to adequately prevent and address military sexual assaults of both men and women serving in the armed forces (arts. 2, 12, 13 and 16).

The State party should increase its efforts to prevent and eradicate sexual violence in the military by taking effective measures to:

(a) Ensure prompt, impartial and effective investigations of all allegations of sexual violence;

(b) Ensure that, in practice, complainants and witnesses are protected from any acts of retaliation or reprisals, including intimidation, related to their complain or testimony;

(c) Ensure equal access to disability compensation to those veterans who are survivors of military sexual assault.

Other issues

31. The Committee again recommends (CAT/C/USA/CO/2, para. 41) the State party to ratify the Optional Protocol to the Convention, and to make the declaration provided for in article 22 of the Convention in order to recognize the competence of the Committee to receive and consider individual communications.

32. The State party is requested to disseminate widely the report submitted to the Committee and the Committee's concluding observations, in all appropriate languages, through official websites, the media and non-governmental organizations.

33. The Committee requests the State party to provide, by 28 November 2015 follow-up information in response to the Committee's recommendations related to (a) ensuring or strengthening legal safeguards for persons detained, (b) conducting, prompt, impartial and effective investigations, and (c) prosecuting suspects and sanctioning perpetrators of torture or ill-treatment, as contained in paragraphs 12(a), 14(c) and 17 of the present concluding observations. In addition, the Committee requests follow-up information on remedies and redress to the victims, as contained in paragraph 26(c) of the present concluding observations.

34. The State party is invited to submit its next report, which will be the sixth periodic report, by 28 November 2018. To that end, the Committee will, in due course, submit to the State party a list of issues prior to reporting, in view of the fact that the State party has accepted to report to the Committee under the optional reporting procedure.
