



---

**Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**

Distr.

GENERAL

CAT/C/USA/Q/5

20 January 2010

Original: ENGLISH

---

**COMMITTEE AGAINST TORTURE**

**Forty-third session**

2-20 November 2009

**List of issues prior to the submission of the fifth periodic report of**

**UNITED STATES OF AMERICA (CAT/C/USA/5) \***

**Specific information on the implementation of articles 1 to 16 of the Convention, including with regard to the previous recommendations of the Committee \*\***

**Articles 1 and 4**

Please provide information on steps taken to enact a federal crime of torture consistent with article 1 of the Convention, which includes appropriate penalties, as recommended by the Committee in its previous concluding observations (para. 13).

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?

Please provide updated information on any changes in the State party's position that the Convention is not applicable at all times, whether in peace, war or armed conflict, in any territory under its jurisdiction and is not without prejudice to the provisions of any other international instrument, pursuant to article 1, paragraph 2, and 16, paragraph 2, of the Convention.

**Article 2**

In light of the Committee's previous concluding observations (para. 16) and the replies provided in the State party's comments under the follow-up procedure (CAT/C/USA/CO/2/Add.1, para. 3), please provide:

(a) Information on steps taken by the State party to ensure that it registers all persons it detains in any territory under its jurisdiction, including in all areas under its de facto effective control. Please elaborate on whether steps have been taken to adopt legislative measures to make registration obligatory for all authorities, including military authorities. Please clarify in which cases the authorities do not maintain appropriate records on persons detained.

(b) Details of cases in which the registration of persons detained does not contain all the elements mentioned in paragraph 16 of the previous concluding observations as to guarantee an effective safeguard against acts of torture.

Please provide information on:

(a) Whether the State party has adopted a policy that ensures that no one is detained in any secret detention facility under its de facto effective control and that publicly condemns secret detention, pursuant to the Committee's previous concluding observations (para. 17). Please disclose detailed information on the existence of any such facilities, in the past and present, and the authority under which they have been established. In this respect, please respond to allegations made by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the Council of Europe that the State party has used the British Indian Ocean Territory, Diego Garcia, for the secret detention of high-value "terror" suspects.

(b) The legal safeguards provided to the detainees and the manner in which they are treated.

(c) Steps taken to address the reports of detainees held incommunicado and without the protection of domestic or international law (CCPR/C/USA/CO/3/Rev.1, para. 12). In this respect, please provide information on steps taken to ensure that all detained suspects, including in Diego Garcia and at Bagram Airbase in Afghanistan, are afforded, in practice, fundamental safeguards, including the right to a lawyer and an independent medical examination, as well as the right to inform a relative and have access to a court and the right to challenge the grounds for their detention.

Please indicate what specific measures have been taken to ensure that the State party is fulfilling its international responsibility under the Convention during its intelligence activities, notwithstanding the author, nature or location of those activities.

Please indicate if the State party has adopted legal provisions to implement the principle of absolute prohibition of torture in its domestic law without any possible derogation, as recommended by the Committee in its previous concluding observations (para. 19).

Please provide updated information on practical steps taken to close down Guantánamo Bay. In this respect, please provide detailed information on:

(a) 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.

(b) Steps taken to bring to justice those still detained at Guantánamo Bay for crimes under criminal law in regularly constituted courts, in accordance with internationally recognized fair trial standards. Please indicate before which judicial authority such detainees are tried and the legal safeguards with which they are provided.

(c) Steps taken to ensure that the State party will not indefinitely detain suspects, including those currently held at Guantánamo Bay, without charge. In case of such prolonged detention without trial, please elaborate on the legal safeguards provided to the detainees. Do they have the right to access to a lawyer of their own choice?

(d) 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.

Please describe steps taken to ensure that the Material Witness Statute and immigration laws are not used so as to detain persons suspected of terrorism or any other criminal offences with fewer guarantees than in criminal proceedings.

### **Article 3**

In light of the Committee's previous concluding observations (para. 20), please provide updated information on:

(a) Steps taken to ensure that the State party applies the non-refoulement guarantee to all detainees in its custody, including those detained outside its territory. Please provide information on steps taken to establish adequate judicial mechanisms to challenge all refoulement decisions.

(b) Whether the State party has ceased the "rendition" of suspects, in particular by its intelligence agencies, to States where they face a real risk of torture, as recommended by the Committee in its previous concluding observations.

(c) Steps taken to ensure that the State party conducts investigations into all allegations of violation of article 3 of the Convention. Please elaborate on the outcome of these investigations and the impact thereof on the State party's policy (CCPR/C/USA/CO/3/Rev.1, para. 16).

Please provide detailed information on:

(a) The procedures in place for obtaining "diplomatic assurances", as requested by the Committee in its previous concluding observations (para. 21). A reminder to this effect was sent by the Rapporteur for follow-up in his letter of 8 August 2008.

(b) Steps taken to establish a judicial mechanism for reviewing, in last instance, the sufficiency and appropriateness of diplomatic assurances in any applicable case. Please elaborate on the federal court ruling in the case of Sameh Khouzam, noting that "deporting Khouzam based on diplomatic assurances without court review would render the procedures established for seeking protection under the Convention Against Torture 'a farce'". Please provide information on other cases of this kind, if any.

(c) Steps taken to guarantee effective post-return monitoring arrangements.

(d) All cases since 11 September 2001 where diplomatic assurances have been provided. Furthermore, please indicate if the State party has received information on any assurances that have not been honoured and what appropriate actions were taken in such cases by the State party?

Please provide updated information on the security agreement reached between the State Party and Iraq on the transfer of detainees held by the State party to Iraqi custody and the safeguards included to ensure that detainees are not in danger of being tortured. Does each detainee have the opportunity to contest a transfer to Iraqi custody?

### **Articles 5 and 7**

Please indicate whether the State party has rejected, for any reason, any request for extradition by another State of an individual suspected of having committed an offence of torture and started its own prosecution proceedings as a result since the consideration of the previous report. If so, please provide information on the status and outcome of such proceedings.

Please indicate what are the purposes of the agreements the State party is signing with countries not to transfer its citizens to the International Criminal Court to be prosecuted for war crimes or crimes against humanity and how does the State party ensure that this combats impunity? Please provide examples of such cases, if any. With how many States has the State party signed such agreements? Should these agreements prove not to be effective in combating impunity, please provide information on any other measures taken by the State party to combat impunity in such cases.

Please provide information on any judicial cooperation between the State party and Colombia regarding Colombian paramilitary leaders who were extradited to the State party and their responsibility for gross human rights violations, in order to ensure the prosecution of the perpetrators and satisfy the right to justice, truth and compensation of the victims.

#### **Article 10**

Please include information on steps taken to:

(a) Ensure that education and training of all law enforcement or military personnel is conducted on a regular basis, in particular for personnel involved in the interrogation of suspects. Does this include training on interrogation rules, instructions and methods, as well as specific training on how to identify signs of torture and cruel, inhuman or degrading treatment? Are personnel instructed to report such incidents?

(b) Ensure specific training for all medical personnel dealing with detainees in the detection of signs of torture and ill-treatment and ensure that the Istanbul Protocol of 1999 becomes an integral part of the training provided to physicians and others involved in care of detainees.

(c) Develop and implement a methodology to evaluate the implementation of its training/educational programmes, and their effectiveness and impact on the reduction of cases of torture and ill-treatment. Please provide information on the content and implementation of such methodology, as well as on the results of the measures implemented.

Please indicate steps taken to ensure that acts of health personnel are in full conformity with principle No. 2 of the Principles of Medical Ethics relevant to the Role of Health Personnel in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. In this respect, please provide information on the participation and role of health personnel in interrogations of terror suspects, including in secret detention facilities.

#### **Article 11**

The Committee and the Human Rights Committee have expressed their concern that the State party authorized the use of enhanced interrogation techniques, such as methods involving sexual humiliation, "waterboarding", "short shackling" and using dogs to induce fear (para. 24 and CCPR/C/USA/CO/3/Rev.1, para. 13). In this respect, please describe steps taken to ensure that interrogation rules, instructions or methods do not derogate from the principle of absolute prohibition of torture. Furthermore, please:

(a) Provide updated information on the content of the Army Field Manual on Interrogation and its conformity with the Convention;

(b) Clarify if the standard for interrogation set in the manual is binding on all components of the State party, including intelligence agencies and private contractors who act on their behalf;

(c) Provide information with regard to the Central Intelligence Agency (CIA) interrogation manual;

(d) Indicate whether all interrogation techniques used in practice are in conformity with the Convention;

(e) Describe any steps taken to adopt legislation that explicitly prohibits interrogation techniques amounting to torture, such as those identified by the Committee in its previous concluding observations.

Please provide updated information on the composition and functioning of the inter-agency task force established by an executive order to evaluate the interrogation practices allowed by the Army Field Manual. Please also elaborate on the work of the agency, in particular on whether it has recommended any changes.

Please indicate if the International Committee of the Red Cross is granted access to all places of detention in any territory under its jurisdiction, including Bagram Airbase in Afghanistan and Diego Garcia, and under which conditions.

Please provide updated information on the establishment, composition and functioning of the "High-Value Interrogation Group", responsible for the interrogation of high-value detainees. Please provide detailed information on steps taken to ensure that the unit will only use interrogation techniques that are in conformity with the Convention. Furthermore, information should be provided on the authority responsible for monitoring such unit.

#### **Articles 12 and 13**

Please indicate if the State party has investigated, prosecuted and punished perpetrators under the federal extraterritorial criminal torture statute, as recommended by the Committee in its previous concluding observations (para. 13). If so, please provide further information on the relevant cases.

In light of the Committee's previous concluding observations, please provide information on:

(a) Steps taken to ensure that all forms of torture and ill-treatment of detainees by its military or civilian personnel, in any territory under its de facto and de jure jurisdiction, as well as in any other place under its effective control, is promptly, impartially and thoroughly investigated, and that all those responsible, including senior military and civilian officials authorizing, acquiescing or consenting in any way to such acts committed by their subordinates are prosecuted and appropriately punished, in accordance with the seriousness of the crime (para. 26). Are all suspects in prima facie cases of torture and ill-treatment as a rulesuspended or reassigned during the process of investigation?

(b) The mandate of the prosecutor in charge of the preliminary review into whether United States laws were violated by CIA officers and contractors during the interrogation of detainees at places outside the United States, including Guantánamo Bay. Please elaborate

on the outcome of this investigation and, if applicable, on the steps taken to hold the responsible persons accountable.

Please describe steps taken to ensure prompt and effective investigation into any allegations of torture or ill-treatment by private military and security companies and prosecute alleged perpetrators. In this respect, please indicate if the Department of Justice has strengthened its investigative resource capacity and appointed an independent prosecutor, as recommended by the Working Group on mercenaries.

As requested by the Committee in its previous concluding observations, please provide updated information on the investigations and prosecution relating to the allegations of torture perpetrated in areas 2 and 3 of the Chicago Police Department (para. 25). In this respect, please provide detailed information on the charges filed against Jon Burge and, if applicable, on the outcome of this case. Furthermore, please indicate if any other police officers have been brought to justice in this case.

Please provide detailed information on the procedures in place to review the circumstances of detention, as well as on steps taken to ensure that the status of detainees is available to all detainees. In this respect, please elaborate on the status and content of the Military Commission Act, as well as its conformity with the Convention.

#### **Article 14**

Pursuant the Committee's previous concluding observations (para. 28), please provide:

(a) Information on steps taken to ensure that mechanisms to obtain full redress, compensation and rehabilitation are accessible to all victims of acts or torture, including sexual violence, perpetrated by its officials. In this respect, please provide information about any reparation programmes, including psychological treatment and other forms of rehabilitation, provided to victims of torture and ill-treatment, as well as about the allocation of adequate resources to ensure the effective functioning of such programmes.

(b) Statistical data, disaggregated by sex and age, on the number of requests for redress made, the number granted and the amounts ordered and those actually provided in each case. In particular, information should be provided on the number of cases filed by detainees, including under the Foreign Claims Act, since the examination of the last periodic report in 2006.

Please indicate if the State party has amended the Prison Litigation Reform Act, including to guarantee the right of victims to bring civil actions, as recommended by the Committee in its previous concluding observations (para. 29).

#### **Article 15**

In light of the Committee's previous concluding observations, please provide information on steps taken by the State party to ensure that its obligations under articles 13 and 15 are fulfilled in all circumstances, including in the context of the military commissions (para. 30). Please inform the Committee whether the State party has established an independent mechanism to guarantee the rights of all detainees in custody.

#### **Article 16**

With reference to the Committee's previous concluding observations, please provide information on measures taken to prohibit and prevent enforced disappearances in any territory under its jurisdiction, and prosecute and punish perpetrators (para. 18).

Please address the following:

(a) Is the State party considering abolishing the death penalty?

(b) In light of the Committee's previous concluding observations, please provide information on steps taken to address the continuous concern that executions by lethal injection can cause severe pain and suffering (para. 31). In this respect, please elaborate on the events of the failed execution in the state of Ohio on 15 September 2009 and the proceedings following this, as well as on the fact that the revised execution procedure used by the state of California for carrying out executions continues to be lethal injection.

(c) Furthermore, please also provide information on the Nebraska Supreme Court's ruling that the use of the electric chair constitutes cruel and unusual punishment. Please indicate in how many states executions by electric chair are still performed.

With reference to the Committee's previous concluding observations (paras. 32 and 42), please provide:

(a) Information on steps taken to design and implement appropriate measures to prevent all sexual violence in all its detention centres. In this respect, please elaborate on the measures taken to implement the Prison Rape Elimination Act and on the standards developed by the National Prison Rape Elimination Commission in 2009 to detect, prevent, reduce, and punish prison rape, as well as on the implementation thereof.

(b) Please provide data on the prevalence of this problem.

(c) Please indicate steps taken to ensure that all allegations of violence in detention centres are investigated promptly and independently, as well as that perpetrators are prosecuted and appropriately sentenced.

(d) Information on steps taken to ensure that victims can seek redress, including appropriate compensation. Information should also be provided on the number of requests for redress made, the number granted and the amounts ordered and those actually provided in each case.

Please provide information on the impact and effectiveness of these measures in reducing cases of sexual violence in detention centres.

In light of the Committee's previous concluding observations, please elaborate on the measures adopted by the State party to ensure that women in detention are treated in conformity with international standards, as well as on the implementation of these measures (para. 33). Furthermore, please provide information on the impact and effectiveness of these measures in reducing cases of ill-treatment of detained women.

Please provide updated information on steps taken to address the concern about the conditions of detention of children, in particular about the fact that they may not be completely segregated from adults and the use of excessive force in juvenile prisons (para. 34). Please provide information on the impact and effectiveness of these measures in improving detention of children. Furthermore, please provide information on the status and content of the draft legislation Juvenile Justice and Delinquency Prevention Reauthorization Act of 2009, which would reform the juvenile justice system.

Please describe steps taken to prohibit the sentencing of juveniles to life imprisonment without the possibility of parole, as recommended by the Committee in its previous concluding observations (para. 34).

Please indicate if the State party has reviewed the use of electroshock devices and regulated their use, restricting it to substitution for lethal weapons, as recommended by the Committee in its previous concluding observations (para. 35). Are such devices still used to restrain persons in custody?

Please describe steps taken to improve the extremely harsh regime imposed on detainees in "super-maximum security prisons", in particular the practice of prolonged isolation.

Please provide information on steps taken to address the reports of inhumane conditions at Guantánamo Bay, in particular experienced by children, including by allowing phone calls with family members and providing detainees with educational opportunities and materials. Information should be provided on the impact and effectiveness of these measures in improving the detention conditions at Guantánamo Bay.

Please inform the Committee of steps taken to address the reports of inconsistent and inadequate medical care for immigrant women held by United States Immigration and Customs Enforcement detention system and for HIV-positive immigration detainees.

Please describe steps taken to end the practice of corporal punishment in schools, in particular of mentally and/or physically disabled students.

Please provide information on steps taken to:

(a) Prevent and punish violence and abuse of women, in particular women belonging to racial, ethnic and national minorities. Do these measures include providing specific training for those working within the criminal justice system and raising awareness about the mechanisms and procedures provided for in national legislation on racism and discrimination?

(b) Address the report of an increase in incidences of domestic violence, rape and sexual assault (National Crime Victimization Survey, December 2008).

(c) Ensure that reports of violence against women are independently, promptly and thoroughly investigated, and that perpetrators are prosecuted and appropriately punished.

Please include statistical data on the number of complaints concerning violence against women and the related investigations, prosecutions, convictions and sanctions, as well as on compensation provided to victims.

The Committee expressed its concern about reports of brutality and use of excessive force by law enforcement officials and ill-treatment of vulnerable groups, in particular racial minorities, migrants and persons of different sexual orientation (para. 37). Such concerns have also been voiced by the Committee on the Elimination of Racial Discrimination and the Human Rights Committee (CERD/C/USA/CO/6, para. 25, and CCPR/USA/CO/3/Rev.1, para. 30). Please:

(a) Describe steps taken to address this concern. Do these steps include establishing adequate systems for monitoring police abuses and developing adequate training for law enforcement officials? Furthermore, please indicate steps taken by the State party to ensure that reports of police brutality and excessive use of force are independently, promptly and thoroughly investigated and that perpetrators are prosecuted and appropriately punished. Information should also be provided on the impact and effectiveness of these measures in reducing cases of police brutality and excessive use of force.

(b) Provide information on measures taken by the State party to put an end to racial profiling used by federal and state law enforcement officials. Have the federal Government and state governments adopted comprehensive legislation prohibiting racial profiling? Statistical data should also be provided on the extent to which such practices persist, as well as on complaints, prosecutions and sentences in such matters.

#### **Other issues**

Please provide updated information on the State party's position on extending an invitation to the special procedure mandate holders who have requested a visit, especially to the request of the Special Rapporteur on the question of torture to visit Guantánamo Bay, as well as the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, the Special Rapporteur on the question of torture, the Working Group on Arbitrary Detention and the Working Group on Enforced or Involuntary Disappearances with regard to their joint study into secret detention. Information should also be provided on the State party's position on extending an open standing invitation to special procedure mechanisms.

Please provide:

(a) Information on steps taken to become a party to the Optional Protocol to the Convention.

(b) Clarification of whether the State party is considering becoming a party to the Rome Statute of the International Criminal Court.

Please indicate what steps have been taken by the State party to accept the competence of the Committee under article 22 of the Convention.

Please indicate any changes in the State party's position on withdrawing its reservations, declarations and understandings lodged at the time of ratification of the Convention.

Please provide information on steps taken to establish an independent national human rights institution in accordance with the Paris Principles.

Please clarify the State party's position with regard to the interpretation of "territory under the State party's jurisdiction". Does the State party apply the provisions of the Convention which have been named as applicable to "territory under the State party's jurisdiction" to all persons under the effective control of its authorities, of whichever type, wherever located in the world?

Please provide updated statistical data, disaggregated by sex, ethnicity and conduct, on:

(a) Complaints related to torture and ill-treatment allegedly committed by law enforcement officials, and investigations, prosecutions, penalties and disciplinary action relating to such complaints;

(b) The enforcement of the Civil Rights of Institutionalized Persons Act by the Department of Justice, in particular with respect to the prevention, investigation and prosecution of acts of torture, or cruel, inhuman or degrading treatment or punishment in detention facilities.

Please describe steps taken to establish a federal database to facilitate the collection of statistics and information, as requested by the Committee (para. 42) and the Rapporteur on follow-up in his letter of 8 August 2008.

Please provide updated information on investigations into alleged ill-treatment perpetrated by law enforcement personnel in the aftermath of Hurricane Katrina.

Please provide updated information on measures taken by the State party to respond to any threats of terrorism and please describe if, and how, these measures have affected human rights safeguards in law and practice and how it has ensured that those measures taken to combat terrorism comply with all its obligations under international law. Please describe the relevant training given to law enforcement officers, the number and types of convictions under such legislation, the legal remedies available to persons subjected to anti-terrorist measures, whether there are complaints of non-observance of international standards and the outcome of these complaints.

#### **General information on the national human rights situation, including new measures and developments relating to the implementation of the Convention**

Please provide detailed information on the relevant new developments on the legal and institutional framework within which human rights are promoted and protected at the national level that have occurred since the previous periodic report, including any relevant jurisprudential decisions.

Please provide detailed relevant information on the new political, administrative and other measures taken to promote and protect human rights at the national level, since the previous periodic report, including on any national human rights plans or programmes, and the resources allocated thereto, their means, objectives and results.

Please provide any other information on new measures and developments undertaken to implement the Convention and the Committee's recommendations since the consideration of the previous periodic report in 2006, including the necessary statistical data, as well as on any events that have occurred in the State party and are relevant under the Convention.

-----