



The
CENTER for
VICTIMS of
TORTURE

**United States' Compliance with the
International Covenant on Civil and Political Rights**

**Center for Victims of Torture
Shadow Report to the Fifth Periodic Report of the United States**

**139th Session of the Human Rights Committee, Geneva
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The Center for Victims of Torture (CVT) respectfully provides this submission in advance of the 139th session of the UN Human Rights Committee (the “Committee”) and its review of the United States of America (U.S.).¹

CVT was founded in Minneapolis, Minnesota, in 1985, in order to provide mental health and psychosocial services to torture survivors who are refugees or asylum seekers. In addition to our offices in Minnesota, we work within the U.S. in Arizona (at the U.S. southern border), Georgia, and Washington, DC. Outside the U.S., CVT has operations in Ethiopia (Amhara, Tigray, Gambella and Addis Ababa); Kenya (Kakuma and Nairobi); Uganda (Gulu and Isinguru); Jordan (Amman); and Iraq (Erbil and the Kurdistan region). CVT has projects in other international locations that cannot be disclosed for security reasons.

Over nearly 40 years, CVT clinicians have provided direct healing care to tens of thousands of torture survivors, as well as their families and communities. We work to build the capacity of a variety of civil society stakeholders that support survivors, whether through rehabilitation services or otherwise. And we advocate – both directly, and through assistance to human rights defenders across the globe – for States to respect, protect, and fulfill human rights; in particular, for States to adhere to their obligations under the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, and related international law.

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Excessive Use of Force by Law Enforcement

I. Issue Summary

On average, more than 1,000 people in the United States are killed each year by the police.² Thus far, in 2023, 558 civilians have been killed by U.S. law enforcement.³ In the year prior, police reportedly killed 1,243 people.⁴ In recent years, the number of fatal shootings carried out by law enforcement has slightly increased, and 2022 marked the highest number of U.S. civilians killed by police on record to date.⁵ Moreover, significant racial disparities continue to persist in the context of U.S. policing.⁶ Based on population, Black Americans are about 2.7 times more likely to be killed by law enforcement than White Americans.⁷ Though accounting for roughly 14 percent of the U.S. population, Black people are killed by police at more than twice the rate of White people.⁸ Latinx people are about 1.6 times more likely to be killed by law enforcement than White people,⁹ while Native Americans are roughly 3 times more likely to be fatally shot by police than White people.¹⁰ Ultimately, excessive use of force by law enforcement officials against racial minorities remains a pervasive issue in the United States.

Notable disparities in use of force can also be identified between particular police departments.¹¹ Data gathered from metropolitan police agencies on both fatal and nonfatal police shootings from 2013–2021 indicated that law enforcement in Miami, Oakland, and New York City “had among the lowest rates of police shootings per every 10,000 arrests.”¹² On the other hand, “Detroit, Columbus, Kansas City and Oklahoma City *consistently* had among the highest rates of police shootings each year.”¹³ Use of force data from more than 1,200 police agencies demonstrates that use of “less lethal” force, such as tasers, batons, and pepper spray, clearly differs across large departments as well.¹⁴ Such findings are indicative of the incongruent use of force standards and independent accountability structures existing across major U.S. cities.¹⁵

Despite the prevalence of excessive use of force in the United States, accountability for law enforcement remains vastly insufficient. First, very rarely do police departments rule against law enforcement officers in misconduct investigations.¹⁶ The 2013–2021 Police Scorecard report found that across over 1,500 departments, “only 1 in every 9 civilian complaints of police misconduct was ruled in favor of civilians.”¹⁷ Additionally, “[o]f the 510 jurisdictions that reported 25 or more complaints, only 19 jurisdictions (4%) sustained

² *Fatal Force: Police Shootings Database*, The Washington Post (Sep. 6, 2023), <https://www.washingtonpost.com/graphics/investigations/police-shootings-database/>.

³ *Mapping Police Violence Interactive Database*, Campaign Zero (Jul. 31, 2023) <https://mappingpoliceviolence.org/>.

⁴ *Id.*

⁵ *Supra* note 2.

⁶ *The Police Scorecard Database*, Police Scorecard (accessed Sep. 12, 2023) <https://policescorecard.org/findings>.

⁷ *Id.*

⁸ *Supra* note 2.

⁹ *Supra* note 6.

¹⁰ Elle Lett, Emmanuella Ngozi Asabor, Theodore Corbin, and Dowin Boatright, “Racial inequity in fatal US police shootings, 2015–2020,” *Journal of Epidemiology and Community Health* (Oct. 2020), <https://www.chea.upenn.edu/wp-content/blogs.dir/70/files/sites/70/2020/10/Racial-Inequity-in-Fatal-US-Police-Shootings.pdf>.

¹¹ *Supra* note 6.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

the majority of civilian complaints reported to them.”¹⁸ Such findings are indicative of a need for particular U.S. cities and departments to examine and implement better investigative practices for substantiating police misconduct.¹⁹ More specifically, departments in states that prohibit police unionization were more likely to sustain civilian complaints, while states with “Police Bill of Rights” laws revealed a reduced likelihood to sustain complaints against police officers.²⁰ In regard to use of force complaints, the report determined that civilians who reported excessive use of force had only a 1 in 31 chance of their complaint being upheld.²¹ Altogether, lack of administrative accountability for law enforcement remains a pervasive issue in the United States.²²

In addition to the deficit in administrative accountability, officer accountability in the criminal justice system remains notably insufficient as well. In particular, “[o]nly 2% of all killings by police from 2013-2021 have resulted in an officer being charged with a crime and 1% of killings resulted in a criminal conviction.”²³ The 2021 ACLU Coalition Letter to UN African Group on Ensuring Effective Accountability for Police Violence in U.S. likewise reported that between 2013 and 2020, roughly 98.3 percent of police killings did not result in officers being charged with a crime.²⁴ Considering that U.S. law enforcement kill nearly 1,000 civilians each year, the lack of criminal charges and convictions against law enforcement is particularly staggering.²⁵ Furthermore, the guilty verdict against Derek Chauvin in the case of George Floyd has done little to address the impunity for police killings in the U.S.²⁶ Federalism and decentralized police institutions persist as two daunting obstacles for ending impunity.²⁷

II. Relevant Questions in the Human Rights Committee’s List of Issues²⁸

14) Please indicate what steps the State party is taking to limit excessive use of force by law enforcement officials against civilians, particularly those belonging to racial minorities. Describe the mechanisms in place to hold law enforcement officials who use excessive force accountable, and include data on the investigations and prosecutions pursued in cases of firearm use by law enforcement officials. Indicate the relevant laws and describe the legal standards under domestic law on the appropriate use of force and firearms by law enforcement and security forces during arrest, during demonstrations, in custody, in anti-terrorism or anti-poaching operations, and under any other circumstances where force may be used. Explain how such laws are compliant, in law and in practice, with the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. Please comment on reports that nine states and Washington, D.C. do not have laws on the use of lethal force by their enforcement officials.

¹⁸ Id.

¹⁹ Id.

²⁰ Id.

²¹ Id.

²² Id.

²³ Id.

²⁴ Letter from Coalition of Non-Governmental Organizations to Ministers of Foreign Affairs of African States (May 10, 2021) <https://www.aclu.org/documents/coalition-letter-un-african-group-ensuring-effective-accountability-police-violence-us>.

²⁵ Id.

²⁶ Id.

²⁷ Id.

²⁸ List of issues prior to submission of the fifth periodic report of the United States of America, (CCPR/C/USA/QPR/5), Adopted by the Committee at its 125th session (4–29 March 2019) at ¶ 14.

III. U.S. Government Response²⁹

The U.S. government reply concerning excessive use of force by law enforcement against civilians, particularly those belonging to racial minorities, begins the discussion with an emphasis on an executive order signed by President Trump on June 16, 2020. Specifically, the executive order on “Safe Policing for Safe Communities” is stated to develop and incentivize a number of policing reforms. Moreover, the U.S. notes the efforts being pursued by the state and federal government with respect to the killing of George Floyd in Minnesota. However, the U.S. reply neglects to provide the now reached verdicts regarding the officers charged in the murder of George Floyd. Officer Derek Chauvin was “found guilty of unintentional second-degree murder, third-degree murder and second-degree manslaughter.”³⁰ Former police officers J. Alexander Kueng, Thomas Lane, and Tou Thao were convicted of depriving George Floyd of his civil rights and for failing to intervene in Derek Chauvin’s use of excessive force.³¹

Following discussion on the George Floyd case, the U.S. details the existing mechanisms for holding officers accountable for use of excessive force. The U.S. briefly notes the possibilities for administrative action against officers for use of excessive force, in addition to the criminal charges officers may face under state law. Thereafter, the U.S. government proceeds with a discussion on the relevant legal standards for determining whether an officer has violated certain constitutional or federal statutory rights of civilians. In response to the Committee’s request that the U.S. comment on reports that nine states and Washington D.C. do not have laws on the use of lethal force by their enforcement officials, the U.S. reports that use of force, including lethal force, by state officials is subject to federal law and the U.S. Constitution. Thus, the U.S. recognizes that while certain individual states have their own specific laws on use of force, all law enforcement agencies of the U.S are subject to the constitutional standard for deadly use of force. Moreover, the U.S. clarifies that where a state statute or law enforcement agency policy is more protective of individual rights than the Constitution, the agency would be required to meet those standards as well.

In reply to the Committee’s reference to the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, the U.S. maintains that such principles are non-binding, and moreover, vary from U.S. law and policy. The U.S. therefore acknowledges that U.S. law enforcement agencies are not required, nor advised by the government, to adopt the Basic Principles as a standard for conducting operations. Lastly, the U.S. discusses efforts regarding police-community relations. Specifically, the U.S. highlights the establishment of the President’s Commission on Law Enforcement and the Administration of Justice in January 2020 and the work of the Department of Justice’s (“DOJ”) Office of Community Oriented Policing Services.

²⁹ Fifth periodic report submitted by the United States of America under article 40 of the Covenant pursuant to the optional reporting procedure, due in 2020, (CCPR/C/USA/5) beginning at ¶ 49.

³⁰ Laurel Wamsley, *Derek Chauvin Found Guilty of George Floyd’s Murder*, NPR, (Apr. 20, 2021), <https://www.npr.org/sections/trial-over-killing-of-george-floyd/2021/04/20/98777911/court-says-jury-has-reached-verdict-in-derek-chauvins-murder-trial>.

³¹ Julia Jones & Christina Maxouris, *3 former Minneapolis police officers found guilty of violating George Floyd’s civil rights*, CNN (Feb. 24, 2022), <https://www.cnn.com/2022/02/24/us/george-floyd-federal-civil-rights-trial-jury-thursday/index.html>; Daniella Silva, *3 officers found guilty on federal charges in George Floyd’s killing*, NBC (Feb. 24, 2022), <https://www.nbcnews.com/news/us-news/jury-reaches-verdict-federal-trial-3-officers-george-floyds-killing-rcna17237>.

IV. Recommended Questions

- a. What is being done to balance the power that police exercise over people in the U.S. to change law enforcement's dependency on guns to police, as opposed to less lethal and de-escalation tactics?
- b. Why does the U.S. government continue to propagate the militarization of the police by providing military grade weapons of war through Department of Defense programming (1033 & 1122)?
- c. With the police in the U.S. killing over 1,000 people in the country, why have foundation changes to law enforcement policies and practices not been majorly adapted? In addition, elaborate specifically on qualified immunity and its needed purpose in the aftermath of so many civilian deaths?

V. Suggested Recommendations

- a. The U.S. should require at the federal and state levels legislation and regulations concerning use of force and firearms that is more strenuous, focused on protecting civilians. Currently, most police officers are trained to shoot civilians when in doubt of safety. However, the opposite should be routine policy, and police should only shoot when absolutely necessary and as a last resort. These laws and policies would be written taking standards of legality, necessity, and proportionality into consideration.
- b. The U.S. should outlaw the practice of qualified immunity and amend the Law Enforcement Officers' Bill of Rights to include acceptable practices of force, in line with international human rights standards. It should also be outlined in greater detail when a police officer will be held accountable for unsanctioned violence.
- c. The U.S. should establish clear, enforceable, and universal consequences for unsanctioned violence, coercion, abuse, and retaliation committed by police officers. Mechanisms of accountability should include, but are not limited to, an independent investigation, suspension of the officer(s) in question without compensation until completion of investigation, termination of employment based on outcome of investigation, court hearings/trials, and reports from policing agencies detailing investigation and steps moving forward.
- d. Reporting of incidents of excessive or deadly force should be universally required for all law enforcement agencies.
- e. Officers and agencies should be provided training and resources that establish these expectations and make them prepared to make decisions in the field that reflect these priorities. These trainings could include the establishment of a deeper critical thinking process for life and death decisions, situational training, and training in de-escalation, negotiation, and less-lethal forms of physical intervention.
- f. The U.S. needs to establish a Bill of Rights for civilians during interactions with law enforcement or add this as an amendment to the country's constitution. This document should make clear abuse or torture as punishment, excessive force, sexual abuse or coercion by police is illegal and/or unconstitutional.
- g. Victims of police brutality and the family members of those murdered by police should be allocated state and federal funds as reparations for their hardship, in addition to any medical, psychological, and funeral costs.

Racial Discrimination in the U.S. Criminal Justice System

I. Issue Summary

Despite the reforms implemented by the United States in the past decade, the government has failed to sufficiently remedy the breadth and severity of the systematic racial harm located within the U.S. criminal justice system.³² Nearly two million people face incarceration in detention and correctional facilities across the U.S., and of the incarcerated population, Black people are imprisoned “at a rate three times higher than white people.”³³ Latinx and Indigenous populations also experience markedly disproportionate punishment in the criminal justice system.³⁴ In addition to overrepresentation of ethnic and racial minorities in detention, deeply discriminatory practices in charging and policing subject members of underrepresented racial groups to the most severe punishments available.³⁵ More specifically, “[o]ne out of seven people in prison are serving a life sentence, and nearly half of that group is Black.”³⁶ The death penalty is also executed in a discriminatory and disparate manner.³⁷ For instance, “[i]n 2021, more than half of the people executed were Black, and approximately 60% of people sentenced to death were Black or Latinx.”³⁸

The damaging harms of mass incarceration extend beyond effects on incarcerated persons and lead to adverse economic, psychological and physical outcomes for families and communities as well.³⁹ Nearly half of adults in the U.S. have an immediate family member who has been incarcerated.⁴⁰ Further, “Black people are 50% more likely to have experienced familial incarceration than whites, and they are three times as likely to have had a family member incarcerated for a year or longer. Research also shows that . . . Black children are six times more likely than their white peers to have had a parent behind bars.”⁴¹ Children of incarcerated parents become more likely to face poor academic and health outcomes, while communities as a whole often experience greater distrust in law enforcement and dissolution of informal networks for averting local crime.⁴² Ultimately, the existence of pervasive racial and ethnic disparities in detention and sentencing continue to impact individuals, families and communities. The legislative reforms enacted by the U.S. government have yet to effectively remedy ongoing racial inequities in mass incarceration, severity of sentencing, and application of the death penalty. Consequently, further steps must be taken in order to address racial disparities in the U.S. criminal justice system.

³²Submission from the American Civil Liberties Union and Human Rights Watch on the US CERD Review, ACLU (Jul. 14, 2022), https://www.aclu.org/sites/default/files/field_document/combined_hrw_aclu_cerd_submission_0.pdf.

³³ Id.

³⁴ Id.

³⁵ Id.

³⁶ Id.

³⁷ Id.

³⁸ Id.

³⁹ Id.; Ashley Nellis, Ph.D., *Mass Incarceration Trends*, The Sentencing Project (Jan. 25, 2023) <https://www.sentencingproject.org/reports/mass-incarceration-trends/>.

⁴⁰ *Supra* note 32.

⁴¹ Id.

⁴² Nellis, *supra* note 39.

II. Relevant Questions in the Human Rights Committee's List of Issues⁴³

7) Please provide information on the steps taken to address racial disparities in the criminal justice system, such as overrepresentation of individuals belonging to racial and ethnic minorities in detention, the disproportionate representation of minorities in pretrial detention, including on account of the bail system, and the disproportionate length of sentences for racial and ethnic minorities.

III. U.S. Government Response⁴⁴

The U.S. begins the discussion with an affirmative statement that addressing racial discrimination in the criminal justice system is taken seriously by the U.S. government. Thereafter, the U.S. responds to the Committee's request for information regarding racial disparities in the criminal justice system with reference to the Fair Sentencing Act of 2010. The Fair Sentencing Act reduced the notable sentencing disparity between offenses involving powder cocaine and those involving crack cocaine. However, as the U.S. notes, because the regulation did not apply retroactively, the legislation failed to remedy certain racial and ethnic disparities among those sentenced before 2010 for cocaine offenses carrying a mandatory minimum sentence.

To remedy this issue, the First Step Act was enacted in 2018, which authorized retroactive application of the Fair Sentencing Act. The U.S. emphasizes that the First Step Act also shortened mandatory minimum sentences for certain non-violent drug offenses and firearm offenses, in addition to expanding the "drug safety valve provision," allowing greater opportunity for judges to deviate from mandatory minimum sentences for non-violent drug offenses. The U.S. response further addresses the recidivism reduction programming required by the First Step Act, and specifically, the development of the Prisoner Assessment Tool Targeting Estimated Risk and Needs ("PATTERN"). In discussing the PATTERN tool for predicting risk of recidivism, the U.S. asserts that it was designed to be neutrally predictive across all races and ethnic groups.

IV. Recommended Questions

- a. The U.S. government has continuously released State Department reports on the human rights violations committed by other governments in their country's prisons. Why are many of these same inhumane practices, such as denial of food and water, dog attacks, forced and painful positions, sexual assaults, threats, overcrowding of prisons with limited health care, and solitary confinement allowed to continue in U.S. prisons?
- b. The U.S. houses the most prisoners in the world yet is nowhere near one of the safest countries in the world. What is being done to lower crime rights in lieu of excessive incarceration?
- c. How long will the country keep minimum sentences in place? Will the country move into more restorative justice practices and/or community development and funding as crime prevention?

⁴³ *Supra* note 28 at ¶ 7.

⁴⁴ *Supra* note 29 at ¶ 17.

- d. With over a million people incarcerated, what does the country plan to do to decrease the amount of people incarcerated, close some prisons, and make the conditions at other prisons more human and beneficial to rehabilitation, reintegration, and lower recidivism?

V. **Suggested Recommendations**

- a. Close a significant number of prisons, especially those with failing living conditions.
- b. Abolish juvenile life without parole.
- c. Abolish the death penalty.
- d. Abolish life without the possibility of parole.
- e. Abolish involuntary servitude of the incarcerated.
- f. Fast track the release of those incarcerated for nonviolent offenses.
- g. Release anyone incarcerated for marijuana related offenses in states and federally as it becomes legalized.
- h. Make an ordering system, and revisit all cases to look for racial bias, coherence, and/or negligence, with the intent of retrying and/or resentencing where required.

Infringements on Freedom of Assembly and Protestor Rights

I. Issue Summary

In the midst of the protests and demonstrations following the murder of George Floyd, there was a severe increase in police violence and repression of protests in the United States.⁴⁵ The use of pepper spray on large crowds and rubber bullets, in addition to city-wide curfews and high number of arrests, speak to the severe and heightened response of municipalities and law enforcement against protesters.⁴⁶ Altogether, the “police arrested more than 11,000 people across the United States.”⁴⁷ Reports by journalists indicated that rubber bullets were used in myriad locations, including major cities such as Phoenix, Los Angeles, Atlanta, and Minneapolis.⁴⁸ At least 62,000 National Guard soldiers were deployed in two dozen states, while President Donald Trump called for mass arrest of protestors over social media.⁴⁹ Additionally, the UN High Commissioner for Human Rights found “at least 200 reported incidents of journalists covering the protests being physically attacked, intimidated, or arbitrarily arrested, despite their press credentials being clearly visible.”⁵⁰ Ultimately, the response of U.S. authorities in the midst of the 2020 protests and demonstrations raised significant cause for concern in protecting the rights of protestors and freedom of assembly.

In the wake of the protests, state laws on demonstrations have become increasingly restrictive.⁵¹

II. Relevant Questions in the Human Rights Committee’s List of Issues⁵²

25) Please comment on reports that state laws on demonstrations are increasingly restrictive. Indicate the steps the State party is taking to eliminate the excessive use of force by police officers during protests. Explain the necessity of the federal 1033 programme, which provides surplus military weapons and equipment to state and local police authorities, and comment on related reports of heavily militarized responses to local protests.

III. U.S. Government Response⁵³

In response to the Committee’s request that the U.S. comment on the increasingly restrictive nature of state laws on demonstrations, the U.S. questions the assumption that such laws are in fact more restrictive. The U.S. references a quote by the Attorney General stating, “the Constitution protects the right to speak and assemble freely, but it provides no

⁴⁵ Letter from Coalition of Non-Governmental Organizations to Members of the United Nations Human Rights Council (Jun. 8, 2020), <https://wp.api.aclu.org/documents/coalition-letter-request-un-independent-inquiry-escalating-situation-police-violence-and>.

⁴⁶ Id.

⁴⁷ Id.

⁴⁸ Id.

⁴⁹ Id.

⁵⁰ Id.

⁵¹ See *US Protest Law Tracker*, International Center for Not-For-Profit Law (INCL), (Accessed Sep. 12, 2023) <https://www.icnl.org/usprotestlawtracker/> for information regarding state and federal legislation introduced since January 2017 that restricts the right to peaceful assembly; see *Reforms Introduced to Protect the Freedom of Assembly*, INCL, (Accessed Sep. 12, 2023) <https://www.icnl.org/post/analysis/reforms-introduced-to-protect-the-freedom-of-assembly> for introduced reforms to protect the Freedom of Assembly and for potential recommendations on protecting protestor rights; see *Anti-Protest Laws in the United States*, First Amendment Watch, (Accessed Sep. 12, 2023) <https://firstamendmentwatch.org/deep-dive/states-rush-to-pass-anti-protestor-laws/> for a 2023 update on anti-protest laws in the U.S. and lawsuits surrounding state legislation.

⁵² *Supra* note 28 at ¶ 25.

⁵³ *Supra* note 29 at ¶ 102.

right to commit violence or defy the law.” Thereafter, the U.S. asserts that while many of the demonstrations following the murder of George Floyd were peaceful, several cities across the U.S. experienced rioting, violence, looting and arson. Consequently, the U.S. finds that violence and property destruction ultimately undermines the rights of peaceful protestors and interferes with the constructive community engagement required to address identified grievances. In particular, the U.S. emphasizes its role in ensuring the rule of law.

Following its statements on the need to contain violence and rioting, the U.S. concedes that a number of states have enacted laws in recent years to restrict certain activities related to demonstrations and protests. For example, such laws include heightened penalties for riot offenses, protestors who conceal their identities, and protestors who trespass on private property. Other restrictions include limitations on liability for deaths caused by law enforcement officers while dispersing riots and unlawful assemblies, temporary bans on protests in certain locations, and new penalties for protestors who interfere with traffic. The government takes the position that to the extent that certain legal or constitutional issues arise from such laws, those issues may be addressed in the judicial system.

Last, the U.S. addresses the 1033 Program and authorized transfer of military equipment to local law enforcement. The U.S. informs that an Executive Order issued by President Trump reversed some prior limitations on the ability of law enforcement to acquire certain equipment for combatting crime and terrorism. The government asserts that the equipment is used in a variety of ways, while preference is given to equipment requests involving counterterrorism or drug related crimes. Finally, the U.S. references mechanisms of accountability for law enforcement agencies who abuse the program.

IV. Recommended Questions

- a. If the right to protest is guaranteed in the country’s constitution, why has the infringement of constitutional rights been allowed consistently?

V. Suggested Recommendations

- a. Dismantle the 1033 and 1122 programs.
- b. Prohibit the use of traditional guns and rubber bullets on protestors.
- c. Provide clear and strict training and guidelines on the usage of less-lethal weaponry at protests, such as but not limited to: tear gas, water, and tasers
- d. Refer to the need for legislation and standards for use of force in policing outlined earlier.
- e. Refer to the need for clear, enforceable, and universal consequences for unsanctioned violence, coercion, abuse, and retaliation committed by police officers outlined earlier.
- f. Refer to the need effective training outlined earlier.

Guantánamo Bay Detention Camp

I. Issue Summary

The Guantánamo Bay Detention Camp, now in its 22nd year, remains open. The Biden administration has stated its intent to close the prison and has transferred 10 detainees.⁵⁴ Currently, there are 30 individuals held in detention - all Muslim men who have been detained for over 15 years, in violation of Articles 9 and 26 of the ICCPR.⁵⁵

In June 2023, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (SRCT) concluded that the current conditions at Guantánamo Bay constitute “ongoing cruel, inhuman, and degrading treatment...and may also meet the legal threshold for torture,” a violation of Article 7, the prohibition on torture.⁵⁶ The SRCT documented unnecessary surveillance of detainees; use of force and restraints; inconsistent standard operating procedures and inadequate training of guards; inadequate physical and mental healthcare; detainees’ limited access to family members, including communication and visits; ongoing arbitrary detention; and Article 14 violations of fair trial and due process rights.⁵⁷

Of the 30 detainees who remain, 16 have been cleared for transfer by an administrative mechanism called the Periodic Review Board (PRB), with some having been cleared over a decade ago. Of the cleared detainees, 11 are Yemenis, one stateless person (Rohingya), and one each from Tunisia, Libya, Somalia, and Kenya. Three detainees still have not been cleared by the PRB. Eleven detainees are in the military commissions system. Nine are undergoing prosecution in three separate cases. One detainee pled guilty in 2022 and is awaiting sentencing; one other was convicted in 2008 and is serving a life sentence which he is presently challenging because his sentence was imposed on the basis of information that included a significant amount of evidence obtained or derived through torture.⁵⁸

Many detainees were subject to enforced disappearance and endured torture at the hands of the CIA or the U.S. military prior to their transfer to Guantánamo, as well as at Guantánamo, a violation of Article 7.⁵⁹ None has received any form of remedy or rehabilitation in violation of Article 2. They suffer from the physical and psychological consequences of torture, including traumatic brain injuries, physical scars, chronic headaches, musculoskeletal pain, hearing impairments, visual issues, neurological damage, recurring nightmares, insomnia, memory lapses, persistent fatigue, anxiety, depression, and post-traumatic stress disorder (PTSD).⁶⁰ Additionally, they experience the effects of

⁵⁴ Ellie Kaufman, *Biden administration says it intends to close Guantanamo prison*, CNN (Feb. 12, 2021), <https://www.cnn.com/2021/02/12/politics/biden-guantanamo-bay/index.html>; Carol E. Lee & Courtney Kube, *Newest transfer brings Guantanamo detainee population down to 30; Biden administration wants to cut it still more*, NBC News (Apr. 20, 2023), <https://www.nbcnews.com/politics/national-security/transfer-drops-guantanamo-population-30-biden-wants-to-close-rcna80478>.

⁵⁵ Hina Shamsi, *20 Years Later, Guantánamo Remains a Disgraceful Stain on Our Nation. It Needs to End*, ACLU, Jan. 11, 2022 <https://www.aclu.org/news/human-rights/20-years-later-guantanamo-remains-a-disgraceful-stain-on-our-nation-it-needs-to-end>; *The Guantanamo Docket*, N.Y. Times (Aug. 11, 2023), <https://www.nytimes.com/interactive/2021/us/guantanamo-bay-detainees.html>.

⁵⁶ U.N. Human Rights Special Procedures, *Technical Visit to the United States and Guantánamo Detention Facility by the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism at ¶ 49* (14 June 2023), <https://www.ohchr.org/sites/default/files/documents/issues/terrorism/sr/2023-06-26-SR-terrorism-technical-visit-US-guantanamo-detention-facility.pdf> at [hereinafter “Technical Visit”].

⁵⁷ *Id.*

⁵⁸ *The Guantanamo Docket*, *supra* note 55.

⁵⁹ Shamsi, *supra* note 55.

⁶⁰ *Effects of Torture*, Center for Victims of Torture, <https://www.cvt.org/resources/effects-of-torture/>.

prolonged and indefinite detention, which include severe and chronic anxiety, a profound sense of dread, elevated stress levels leading to harmful consequences, depression, PTSD, personality changes, and permanent detachment from their families and communities - compromising any possibility of returning to a normal life.⁶¹

Guantánamo's medical care system remains inadequate to provide proper care to detainees. Independent medical experts,⁶² former military personnel,⁶³ and human rights organizations⁶⁴ have long documented deficiencies such as medical histories of detainees which are devoid of information about past trauma and torture, insufficient staffing, and scarce equipment including malfunctioning imaging machines. Proper care of detainees is further hindered by U.S. law, which prohibits the transfer of detainees to the U.S. for any reason, including medical emergencies.⁶⁵

In 2014, the Committee recommended that the U.S. government “ensure that any criminal cases against detainees held in Guantánamo...are dealt with through the criminal justice system rather than military commissions, and that those detainees are afforded the fair trial guarantees enshrined in Article 14 of the Covenant.”⁶⁶ However, the broken military commissions continue to operate, in violation of Articles 14 and 26. Currently there are nine detainees in three active cases, six of whom face the possibility of the death penalty, including defendants in *United States v. Khalid Sheikh Mohammed, et al.*, those alleged to be most responsible for the September 11, 2001, attacks. The active cases are currently in pre-trial litigation.

In a 2021 U.S. Senate Judiciary Committee hearing, Brigadier General John Baker (Ret.), former Chief Defense Counsel for the Military Commissions Defense Organization (MCDO), stated “At the heart of the commissions’ problems is their original sin, torture.”⁶⁷ The SRCT also found torture to be the “most significant obstacle” to upholding the 9/11 victims’ rights to justice, accountability, and transparency, calling it a “betrayal of the rights of victims.”⁶⁸ Gen. Baker further added that after 20 years, none of the active cases have trial dates, and “trial is further away today than it was when I joined the MCDO in 2015.”⁶⁹

⁶¹ *Punishment Before Justice: Indefinite Detention in the U.S.*, Physicians for Human Rights <https://phr.org/wp-content/uploads/2011/06/indefinite-detention-exec-summ-june2011.pdf>.

⁶² *Closing Guantanamo: Ending 20 Years of Injustice, Hearing Before the S. Comm. on the Judiciary*, 117th Cong. (Dec. 7, 2021) (statement for the record of independent medical experts), https://www.cvt.org/wp-content/uploads/Medical-Experts-Statement_12-7-SJC-GTMO-Hearing_FINAL.pdf

⁶³ *Closing Guantánamo: The National Security, Fiscal, and Human Rights Implications: Hearing Before the S. Comm. on the Judiciary*, 113th Cong. (Jul. 24, 2013) (testimony of Brigadier General (Retired) Stephen Xenakis), <https://www.judiciary.senate.gov/imo/media/doc/7-24-13XenakisTestimony.pdf>; Carol Rosenberg, *Guantánamo Bay as Nursing Home: Military Envisions Hospice Care as Terrorism Suspects Age*, N.Y. Times (Apr. 27, 2019), <https://www.nytimes.com/2019/04/27/us/politics/guantanamo-bay-aging-terrorism-suspects-medical-care.html>.

⁶⁴ *DEPRIVATION AND DESPAIR: The Crisis of Medical Care at Guantánamo*, Center for Victims of Torture and Physicians for Human Rights, June 26, 2019, https://www.cvt.org/wp-content/uploads/2023/06/2019_phr-medical-report_v5_0.pdf

⁶⁵ National Defense Authorization Act for Fiscal Year 2023, H.R. 7776, 117th Cong. § 1031 (2022) <https://www.congress.gov/bills/117/congress/117th-congress/house-bill/7776/text>

⁶⁶ Concluding observations on the fourth periodic report of the United States of America, CCPR/C/USA/CO/4, <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqKb7yhsijKy20sgGcLSyqccX0g1nmMFNOUOQBx7X%2BI55yhIwIkDk6CF0OAdiqu2L8SNxDB4%2BVRPkf5gZFbTOO3y9dLrUeUaTbS0RrNO7VHzyxGDJ%2F>

⁶⁷ *Closing Guantanamo: Ending 20 Years of Injustice, Hearing Before the S. Comm. on the Judiciary*, 117th Cong. (Dec. 7, 2021) (testimony of Brigadier General (Retired) John G. Baker), <https://www.judiciary.senate.gov/imo/media/doc/Baker%20Testimony2.pdf>.

⁶⁸ Technical visit, *supra* note 56 at ¶ 10.

⁶⁹ *Supra* note 67.

Though detainees have the right to habeas corpus, the U.S. government continues to contest habeas petitions, including in cases of individuals that the government itself has cleared for release.⁷⁰

In 2014, the Committee recommended the U.S. “should expedite the transfer of detainees designated for transfer.”⁷¹ Since the last review, President Obama transferred a total of 198 detainees, and President Trump one. As of September 2023, President Biden has transferred 10.

In September 2022, the Biden administration appointed a Senior Representative for Guantánamo Affairs in the Bureau of Counterterrorism in the State Department, who is responsible for monitoring the circumstances of former detainees as well as negotiating transfers of those cleared. The majority of those cleared cannot be repatriated to their home countries such as Yemen, Somalia, Libya, Syria, and Afghanistan because of a Congressional ban on transfers to those countries, and the government must work with the international community to facilitate successful third-country resettlements. However, the slow progress of transfers and resettlements is deeply concerning and a violation of Article 9. The SRCT noted that the Senior Representative “is not as senior a position as the prior Special Envoy for Guantánamo Detention Closure, and that the Ambassador did not visit the men at Guantánamo until seven months into her tenure, bringing into question whether her office is undertaking an appropriately detainee-centered and comprehensive approach.”⁷²

Transfer negotiations include assurances regarding security and humane treatment of detainees by receiving countries. It is official U.S. policy not to transfer a person to a country if it determines that it is more likely than not that the individual could be tortured.⁷³ However, some former detainees have experienced further deprivation of their human rights, and some have been subjected to continued arbitrary detention and torture and other ill-treatment.⁷⁴

The latest transfer in April 2023 of Mr. Saeed Bakhouch to Algeria demonstrates this problem remains ongoing. Despite humane treatment assurances from the Algerian government, Mr. Bakhouch was put in pre-trial detention immediately after being transferred. He remains in detention and is subjected to conditions that constitute torture or other ill-treatment. The Algerian authorities are proceeding with charges allegedly based on information provided by the U.S. government. As such, both the U.S. and Algeria are in violation of Article 7. Furthermore, the U.S. may be in violation of its *non-refoulement* obligations by transferring a detainee to a country where his rights would likely have been violated. Despite being made aware of Mr. Bakhouch’s current circumstances, the U.S.

⁷⁰ *Man Cleared for Release from Gitmo Presses Judge to Act on Long Stalled Case as Medical Condition Worsens*, Center for Constitutional Rights (Nov. 7, 2022), <https://ccrjustice.org/home/press-center/press-releases/man-cleared-release-gitmo-presses-judge-act-long-stalled-case>

⁷¹ *Supra* note 66.

⁷² Technical visit, *supra* note 56 at ¶ 56.

⁷³ *Guantánamo Detainee Transfer Policy and Recidivism: Hearing Before the House Subcommittee on Oversight and Investigations of the Committee on Armed Services*, 114th Cong. 42 (2011) (statement of Ambassador Daniel Fried, Special Envoy for the Closure of the Guantánamo Bay Detention Facility), (available at <https://www.govinfo.gov/content/pkg/CHRG-112hhrg67391/html/CHRG-112hhrg67391.htm>).

⁷⁴ Noa Yachot, *Exclusive: many resettled Guantánamo detainees in legal limbo, analysis shows*, Guardian, (Jan. 9, 2022), <https://www.theguardian.com/us-news/2022/jan/09/guantanamo-resettled-no-legal-status>.

government has shown disregard and has been unable to effectively intervene on Mr. Bakhouch's behalf.⁷⁵

The SRCT also noted there is no "adequate system in place by the U.S. Government to address the health, welfare, employment, housing, or well-being of those transferred, including the failure of receiving governments to respect the rights of those transferred." In 30% of cases, detainees lack permanent legal status which affects their ability to access healthcare, travel, employment opportunities, and other social services.⁷⁶

Under Article 2 of the ICCPR, the U.S. is obligated to provide remedy, redress, and rehabilitation to those whose rights it has violated. Presently, there is no judicial, administrative, or legislative mechanism to provide remedy to those currently or formerly detained. Despite admissions by the U.S., there has been no meaningful justice for the international law crimes and systematic human rights violations that U.S. officials committed.

II. Relevant Questions in the Human Rights Committee's List of Issues⁷⁷

17. With reference to the Committee's previous concluding observations (para. 21), please provide information on the detainees in the Guantánamo Bay facility, including:

(a) What plans are in place for the closure of the detention facility at Guantánamo Bay;

(b) Whether new detainees have been incarcerated in the facility during the reporting period, and the legal basis for their detention;

(c) The status and whereabouts of the previously reported 73 transferred detainees, and whether those transfers were made pursuant to diplomatic assurances, and the status of the five detainees previously approved for transfer;

(d) A description of the remaining inmate population, including the current number of detainees, disaggregated by detention status (those in the pretrial phase, convicted detainees and those retained without charge);

(e) Timelines for prosecution or release, including details on the envisaged jurisdiction and forum in the event of prosecution, and timelines for the pending trials;

(f) The current status of Executive Order 13567, establishing a periodic review of detainees at the Guantánamo Bay facility who have not been charged, convicted or designated for transfer;

(g) The number of habeas corpus petitions filed on behalf of detainees before federal courts to challenge the legality of their detention, and the current status of those petitions;

⁷⁵ Letter from Coalition of Non-Governmental Organizations to Ambassador Kaidanow, US Department of State Senior Representative for Guantánamo Affairs (July 26, 2023), <https://ccrjustice.org/organizational-sign-letter-state-department-re-saeed-bakhouch-former-gitmo-detainee-imprisoned>.

⁷⁶ Technical visit, *supra* note 56 at ¶ 60, ¶ 63.

⁷⁷ *Supra* note 28 at ¶ 17.

(h) Any measures taken to strengthen due process guarantees in military commission trials.

III. U.S. Government Response⁷⁸

The government's response to the Committee begins with stating a policy that is contradictory to that of the current administration. As noted in the Sixth Periodic Report submitted by the U.S. on the Convention Against Torture and elsewhere, the Biden administration's intent is to close Guantánamo. However, the administration has not officially revoked Executive Order 13823—Protecting America Through Lawful Detention of Terrorists, which establishes a policy of keeping Guantánamo open.

The U.S response provides updated numbers of transfers since 2015, and mentions the government was given humane treatment assurances by countries to which detainees were repatriated or resettled but fails to provide an update on the exact status and whereabouts of the transferred men. Currently, there is no even minimally effective mechanism to monitor or support former detainees. As noted above, those transferred are subjected to human rights violations despite humane treatment assurances. The situation of the men resettled in Kazakhstan and the United Arab Emirates remains particularly concerning. Noted by the SRCT, “in Kazakhstan former detainees effectively remain under house arrest and are unable to live a normal and dignified life due to the secondary security measures put in place post transfer and in the United Arab Emirates, multiple former detainees were subject to arbitrary detention and torture, and one remains detained in incommunicado detention.”⁷⁹ The United States government has been made aware of the circumstances of these men and has not intervened on their behalf.

The government response further states detainees are “treated humanely,” and the government “takes very seriously its responsibility to provide for the safe and humane care of detainees.”⁸⁰ However, as noted above, the SRCT concluded current conditions constitute “ongoing cruel, inhuman, and degrading treatment...and may also meet the legal threshold for torture.”⁸¹ Recent statements by UN experts, the UN Working Group on Arbitrary Detention, and the International Committee of the Red Cross (ICRC) also raise concerns regarding the state of medical care. Among them, they note the “withholding of medical care,”⁸² “consistent deficiencies in medical knowledge, equipment, medical care, and living conditions,”⁸³ which violate the detainees' right to health, and “accelerated aging” of detainees.⁸⁴

In June 2022, Guantánamo's Chief Medical Officer testified that healthcare offered to detainees is equivalent to primary care, and specialized procedures or treatments were not

⁷⁸ *Supra* note 29 at ¶ 64.

⁷⁹ Technical visit, *supra* note 56 at ¶ 62.

⁸⁰ *Supra* note 29 at ¶ 64.

⁸¹ Technical visit, *supra* note 56 at ¶ 49.

⁸² Opinion No. 66/2022 of the U.N Working Group on Arbitrary Detention concerning Zayn al-Abidin Muhammad Husayn (Abu Zubaydah) (United States of America, Pakistan, Thailand, Poland, Morocco, Lithuania, Afghanistan and the United Kingdom of Great Britain and Northern Ireland), <https://www.ohchr.org/sites/default/files/documents/issues/detention-wg/opinions/session95/A-HRC-WGAD-2022-66-Advance-Edited-Version.pdf>.

⁸³ Fionnuala Ní Aoláin, Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, et al, Remarks of Seven Special Procedures Regarding the Continuing Deterioration in the Physical and Mental Health of Detainee Mr. Nashwan al-Tamir at Guantanamo (Jan. 11, 2023) (available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=27797>).

⁸⁴ *Guantanamo: Detaining authorities must adapt to the needs of a rapidly ageing population*, ICRC (Apr. 21, 2023), <https://www.icrc.org/en/document/guant%C3%A1namo-detaining-authorities-must-adapt-needs-rapidly-ageing-population>.

available.⁸⁵ In February 2023, the current Senior Medical Officer testified he was treating detainees for “active issues;” that patient medical records omitted information about the exact torture techniques to which they were subjected and other information from their time in CIA black sites; and that medical care was not trauma-informed nor culturally competent.⁸⁶ The UN experts urged the United States to “ensure a human rights-based and gender and culturally-sensitive approach to the provision of healthcare services to all detainees.”⁸⁷

IV. **Recommended Questions**

- a. What efforts is the U.S. government making to resettle or repatriate the 16 cleared detainees?
- b. What steps is the U.S. taking to end the failed military commissions?
- c. Will the U.S. adopt a policy not to use, or defend use of, evidence in any way tainted by torture in any proceeding for any purpose?
- d. What measures have been taken to comprehensively and effectively investigate and prosecute the torture and cruel, inhuman or degrading treatment of detainees in U.S. custody since September 11, 2001?
- e. What measures is the United States taking to ensure that torture victims are ensured effective remedy – including rehabilitation – and justice?

V. **Suggested Recommendations**

- a. Transfer without delay the 19 men who are not charged with a crime, beginning with those cleared for release.
- b. Pursue plea agreements with detainees the government is prosecuting or will prosecute.
- c. Quickly develop and implement a plan to provide comprehensive, trauma-informed, culturally competent medical care to detainees.
- d. Conduct oversight and monitoring of diplomatic assurances and repatriation and resettlement practices to ensure compliance with international human rights law.
- e. Provide effective remedies and redress, including adequate compensation and rehabilitation.
- f. Adopt a formal policy not to use, or defend use of, evidence in any way tainted by torture in any proceeding for any purpose.

⁸⁵ Umar A Farooq, *Guantanamo detainee used as 'prop' for torture training losing battle for medical care*, Middle East Eye (Oct. 7, 2022), <https://www.middleeasteye.net/news/ailing-guantanamo-detainees-legal-battle-medical-care>.

⁸⁶ Carol Rosenberg (@carolrosenberg), X (Feb. 28, 2023, 9:01 AM), <https://twitter.com/carolrosenberg/status/1630592596710916097>.

⁸⁷ *Supra* note 83.

Conditions of Immigration Detention

I. Issue Summary

Under the Biden administration, the use of immigration detention remains rampant, and the number of individuals held in ICE (U.S. Immigration and Customs Enforcement) detention is increasing. According to the American Civil Liberties Union (ACLU), over 30,000 people are held in immigration detention each day in violation of Articles 9, 10, 13 and 26. Despite President Biden's campaign promise to end the use of private prison companies for immigration detention and an executive order in 2021 to discontinue such contracts, ICE detention has grown.⁸⁸

The consequences of indefinite immigration detention are intensified in people who have been traumatized before being detained. For survivors of torture, even detention for a short period can be extremely harmful, exacerbating mental health symptoms.⁸⁹ Former UN Special Rapporteur on Torture Nils Melzer has identified prolonged and indefinite detention of migrants as a significant cause for concern as it relates to the prohibition of torture and other ill-treatment, a violation of Article 7. More specifically, the "legal limbo" in which migrants are kept may amount to torture or other ill-treatment under international law.⁹⁰

Detainees in ICE detention are subject to solitary confinement, unsanitary conditions, medical abuse and neglect, force-feeding, and sexual abuse, violations of Article 7.⁹¹ In January 2019, a report by the Office of the Inspector General of the Department of Homeland Security (DHS) on ICE detention contractors found "serious deficiencies such as significant understaffing, failure to provide sufficient mental health observation, and inadequate monitoring of detainees with criminal histories."⁹² DHS reports on two dozen facilities from 2017-2019 obtained by National Public Radio in 2023 documented instances of negligent medical care, pepper spraying of mentally ill detainees, retaliation for filing complaints, a cockroach found on a medical exam table and medical instruments covered in grime.⁹³ A September 2022 report by the Office of the Inspector General also found issues at the Torrance detention facility related to critical staffing shortages and violations of ICE detention standards. Specifically, Torrance failed to meet standards in several key areas, including facility conditions, security, medical care, use of force, detainee classification, communication, and access to legal services. In addition, there were inconsistencies in the facility's response to COVID-19.⁹⁴ A February 2023 report found

⁸⁸ Eunice Cho, *Unchecked Growth: Private Prison Corporations and Immigration Detention, Three Years Into the Biden Administration*, ACLU (Aug. 7, 2023) <https://www.aclu.org/news/immigrants-rights/unchecked-growth-private-prison-corporations-and-immigration-detention-three-years-into-the-biden-administration>

⁸⁹ Taylor Koehler, *Arbitrary & Cruel: How U.S. Immigration Detention Violates the Convention against Torture and Other International Obligations*, Center for Victims of Torture, (2021) https://www.cvt.org/wp-content/uploads/2023/06/Arbitrary_and_Cruel_d5_FINAL.pdf

⁹⁰ Nils Melzer (Special Rapporteur on Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment), *Report of the Special Rapporteur to the Human Rights Council Thirty-Seventh Session*, ¶ 25, U.N. Doc. A/HRC/37/50 (Nov. 23, 2018).

⁹¹ Priscilla Alvarez, *Detained immigrants on hunger strike over poor conditions at ICE facilities were force-fed, report says*, CNN (Jun. 25, 2021), <https://www.cnn.com/2021/06/23/politics/ice-immigrants-hunger-strikes-force-fed/index.html>; Maurizio Guerrero, *Torture with impunity runs rampant in ICE facilities*, PRISM (Jun. 15, 2023), <https://prismreports.org/2023/06/15/torture-rampant-ice-facilities/>; *Suicide Attempt at New Mexico ICE Detention Center Less Than 4 Months After Death by Suicide at Same Facility Already Under Intense Scrutiny for Chronic & Severe Federal Standards Violations*, Innovation Law Lab (Dec. 8, 2022), <https://innovationlawlab.org/press-releases/another-suicide-attempt-at-torrance/>

⁹² *Department of Homeland Security Office of Inspector General, OIG-19-18, ICE Does Not Fully Use Contracting Tools to Hold Detention Facility Contractors Accountable for Failing to Meet Performance Standards (2019)*. <https://www.oig.dhs.gov/sites/default/files/assets/2019-02/OIG-19-18-Jan19.pdf>

⁹³ Leila Fadel & Tom Dreisbach, *NPR investigation reveals significant failures at immigrant detention facilities*, NPR (Aug. 16, 2023), <https://www.npr.org/2023/08/16/1194115251/npr-investigation-reveals-significant-failures-at-immigrant-detention-facilities>

⁹⁴ *Department of Homeland Security Office of Inspector General, OIG-22-75, Violations of ICE Detention Standards at Torrance County Detention Facility (2022)*. <https://www.oig.dhs.gov/sites/default/files/assets/2022-09/OIG-22-75-Sep22.pdf>

violations of the government’s own detention standards at ICE’s Port Isabel Service Processing Center, including “torn bedding and several plumbing issues...use of force, requests and grievances, classification documentation, and adherence to COVID-19 protocols.”⁹⁵

In 2020, at Irwin County Detention Center in Georgia, a nurse on staff alleged that women detained at the center had been routinely subjected to medical abuse, neglect, and mismanagement, including unnecessary gynecological procedures that resulted in some women being stripped of their ability to have children without their knowledge or consent.⁹⁶ Nine UN mandate holders, including the UN Special Rapporteur on Torture, expressed concerns about violations of the prohibition of torture and ill-treatment at Irwin.⁹⁷ The UN Special Rapporteur on Torture has explicitly recognized forced sterilization as a form of torture and other cruel, inhuman and degrading treatment.⁹⁸ The facility has since been closed.

Stewart Detention Center in Georgia, also owned and operated by private prison company CoreCivic, is one of the largest immigration detention centers in the country and remains one of the deadliest.⁹⁹ In May 2023, civil society organizations called for investigations into human rights abuses such as medical neglect and sexual assault. Since 2006, there have been eleven deaths at Stewart. The most recent death occurred in April 2023.¹⁰⁰ A 2023 report by the DHS inspector general found detainees were inappropriately and repeatedly disciplined. Moreover, the facility's grievance and staff-detainee communication programs were deficient, as ICE did not adhere to the provided visitation schedule for detainees. The medical unit at Stewart did not conduct routine medical requests appropriately and failed to comply with certain medical care standards.¹⁰¹

In 1992, the Committee recognized that prolonged solitary confinement may amount to a violation of the ICCPR’s prohibition on torture and other ill-treatment. In 2019, the International Consortium of Investigative Journalists analyzed more than 8400 records describing the placement of detainees in solitary confinement in facilities operated by ICE, and the data showed that more than half of the solitary confinements exceeded 15 days. In 2020, former UN Special Rapporteur on Torture Nils Melzer reaffirmed that solitary confinement exceeding 15 days is a form of torture or other ill treatment.¹⁰² In July 2023, three civil society organizations filed a complaint with the DHS demanding an

⁹⁵ Department of Homeland Security Office of Inspector General, OIG-23-13, *Violations of Detention Standards at ICE’s Port Isabel Service Processing Center* (2023). <https://www.oig.dhs.gov/sites/default/files/assets/2023-02/OIG-23-13-Feb23.pdf>

⁹⁶ Koehler, *supra* note 50

⁹⁷ Communication from Mandates of the UN Special Rapporteur on the Human Rights of Migrants and Eight Additional Mandate Holders to the U.S. of January 15, 2021, US USA 34/2020, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25835>

⁹⁸ Juan Mendez (Special Rapporteur on Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment), Report of the Special Rapporteur to the Human Rights Council Twenty-Second Session, ¶¶ 46, 48, U.N. Doc. A/HRC/22/53 (Feb. 1, 2013).

⁹⁹ Jose Olivares, *ICE Review of Immigrant’s Suicide Finds Falsified Documents, Neglect, and Improper Confinement*, The Intercept (Oct. 23, 2021), <https://theintercept.com/2021/10/23/ice-review-neglect-stewart-suicide-corecivic/>

¹⁰⁰ *Human rights groups call for closure of Stewart Detention Center*, Albany Herald (May 2, 2023), https://www.albanyherald.com/local/human-rights-groups-call-for-closure-of-stewart-detention-center/article_ea9881e8-e8f8-11ed-b0a7-27e20a2bf0e9.html; Emily Wu Pearson, *Immigrant in Southwest Georgia detention center dies*, WABE (Apr. 8, 2023), <https://www.wabe.org/immigrant-in-detention-in-southwest-georgia-dies/>

¹⁰¹ Department of Homeland Security Office of Inspector General, OIG-23-38, *Results of an Unannounced Inspection of ICE’s Stewart Detention Center in Lumpkin, Georgia* (2023). <https://www.oig.dhs.gov/sites/default/files/assets/2023-08/OIG-23-38-Jul23.pdf>

¹⁰² Koehler, *supra* note 50

investigation into “increased and arbitrary use of solitary confinement,” at the Denver Contract Detention Facility in Aurora, Colorado.¹⁰³

The prohibition on torture and other ill-treatment includes the principle of *non-refoulement*, “which prohibits States from ‘deporting’ any person to another State’s jurisdiction or any other territory where there are substantial grounds for believing that he or she would be in danger of being subjected to torture or ill-treatment.”¹⁰⁴

Former UN Special Rapporteur on Torture Nils Melzer expressed concern with the use of “refoulement in disguise,” where immigration detention and its associated policies are intentionally designed and used “to prompt migrants to withdraw their requests for asylum, subsidiary protection or other stay and agree to ‘voluntary’ return in exchange for their release.”¹⁰⁵ Between 2017-2018, the number of “voluntary” deportations reached a seven-year high due to long processing times of cases.¹⁰⁶ In 2020 during the COVID-19 pandemic, many detainees in ICE custody also sought “voluntary” deportations due to the likelihood of contracting COVID in the detention facilities.¹⁰⁷ In 2020, Cuban detainees in Louisiana and Georgia stated they were coerced and threatened by ICE guards to sign forms for “voluntary” deportation.¹⁰⁸

Conditions in U.S. Customs and Border Protection (CBP) detention centers located at the border are equally and grossly inadequate. In 2019, then UN High Commissioner for Human Rights Michelle Bachelet stated she was “appalled by the conditions in which migrants and refugees – children and adults – are being held in detention in the United States of America after crossing the southern border,” as children were separated from families and held in ‘cages.’¹⁰⁹

In 2019, two reports by the DHS inspector general found “dangerous overcrowding and prolonged detention of children and adults,” and unsanitary conditions in CBP detention centers in El Paso and Rio Grande Valley.¹¹⁰ Independent medical experts found “extreme cold temperatures, lights on 24 hours a day, no adequate access to medical care, basic sanitation, water, or adequate food.” According to one physician, “The conditions within

¹⁰³ Tatiana Flowers, *Immigrant rights groups allege increased, arbitrary use of solitary confinement at ICE detention center in Aurora*, The Colorado Sun (Jul. 18, 2023) <https://coloradosun.com/2023/07/18/aurora-contract-detention-facility-complaint/>

¹⁰⁴ Koehler, *supra* note 50

¹⁰⁵ Report of the Special Rapporteur, *supra* note 50 at ¶ 20, ¶ 43

¹⁰⁶ Immigrants in detention choosing ‘voluntary departure’, PBS Newshour (May 11, 2019) <https://www.pbs.org/newshour/show/immigrants-in-detention-choosing-voluntary-departure>

¹⁰⁷ Laura Gottesdiener, Die in detention or at home? U.S. pandemic forces cruel choice on asylum seekers, Reuters (Jul. 6, 2020) <https://www.reuters.com/article/us-health-coronavirus-usa-immigration-in-idUSKBN247145>

¹⁰⁸ Monique O. Madan, Cuban Detainees: ICE Forced Us To Sign Forms Saying We Wanted To Go Back, ‘Visit’ Family, *Miami Herald*, (Oct. 30, 2020) <https://www.miamiherald.com/news/local/immigration/article246671252.html>

¹⁰⁹ U.N. High Commissioner for Human Rights, *Bachelet Appalled by Conditions of Migrants and Refugees in Detention in the US* (Jul. 8, 2019) [https://www.washingtonpost.com/immigration/kids-in-cages-house-hearing-to-examine-immigration-detention-as-democrats-push-for-more-information/2019/07/10/3cc53006-a28f-11e9-b732-41a79c2551bf_story.html](https://www.ohchr.org/en/press-releases/2019/07/bachelet-appalled-conditions-migrants-and-refugees-detention-us#:~:text=GENEVA%20(8%20July%202019)%20%2D,after%20crossing%20the%20southern%20border; Maria Sacchetti, ‘Kids in cages’: House hearing examines immigration detention as Democrats push for more information, The Washington Post (Jul. 10, 2019) <a href=)

¹¹⁰ Quinn Owen, *Nearly 900 migrants found at Texas facility with 125-person capacity: DHS watchdog*, ABC News, (May 31, 2019) <https://abcnews.go.com/Politics/900-migrants-found-texas-facility-125-person-capacity/story?id=63404988>; Department of Homeland Security Office of Inspector General, *OIG-19-46, Management Alert DHS Needs to Address Dangerous Overcrowding Among Single Adults at El Paso Del Norte Processing Center* (2019), <https://www.oig.dhs.gov/sites/default/files/assets/2019-05/OIG-19-46-May19.pdf>; Department of Homeland Security Office of Inspector General, *OIG-19-51, DHS Needs to Address Dangerous Overcrowding and Prolonged Detention of Children and Adults in the Rio Grande Valley* (2019), <https://www.oig.dhs.gov/sites/default/files/assets/2019-07/OIG-19-51-Jul19.pdf>; Joel Rose & John Burnett, *DHS Inspector General Finds ‘Dangerous Overcrowding’ in Border Patrol Facilities*, National Public Radio, (Jul. 2, 2019) <https://www.npr.org/2019/07/02/738179391/dhs-inspector-general-finds-dangerous-overcrowding-in-border-patrol-facilities>

which they are held could be compared to torture facilities.”¹¹¹ Similar problems remained persistent in 2021 and 2022.¹¹²

In 2023, four children died in CBP custody. Two deaths were linked to lack of adequate care and medical neglect, the cause death of one child was not immediately made available, and one child was terminally ill.¹¹³ In the recent death of an eight-year-old girl, Anadith Danay Reyes Alvarez in May 2023, authorities were made aware of her medical conditions but declined to take her to a hospital despite multiple pleas by her mother. Reports also revealed that Reyes Alvarez and her family were detained by CBP for a week, despite rules which state detainees cannot be held in CBP custody for longer than three days.¹¹⁴

II. Relevant Questions in the Human Rights Committee’s List of Issues¹¹⁵

16) Describe steps taken to impose strict limits nationwide, in prisons and detention facilities, on the use of solitary confinement, and to abolish the practice for anyone under the age of 18 or living with a serious mental health condition.

Please provide information on the conditions within immigrant detention facilities, both publicly and privately owned, including access to health care. Describe the conditions within migration detention facilities specifically for family units, unaccompanied minors, pregnant women and persons with special needs, and comment on the alleged use of “ice boxes” and of forced labour. In addition, provide information on the recently reported use of force by Customs and Border Protection officers at the southern border, including the use of tear gas, smoke and pepper spray on migrants, and describe any oversight mechanisms in place to limit the use of force by such authorities.

III. U.S. Government Response¹¹⁶

The United States’ response to the Committee cites the reports by the DHS inspector general regarding inadequate detention conditions and mentions that once corrective measures were taken by each detention center, the inspector general closed recommendations. However, as noted above, the findings of the reports persist. The U.S. government mentions Aurora Center in Colorado as one of the centers where corrective action was taken, yet in 2023 complaints were filed for prolonged and arbitrary use of solitary confinement there. Furthermore, the 2019 report on two dozen facilities, and the 2022 and 2023 reports by the Office of the Inspector General on conditions at Torrance

¹¹¹ Serena Marshall, Lana Zak, & Jennifer Metz, *Doctor compares conditions for unaccompanied children at immigrant holding centers to 'torture facilities'*, ABC News (Jun. 23, 2019) <https://abcnews.go.com/Politics/doctor-compares-conditions-immigrant-holding-centers-torture-facilities/story?id=63879031>

¹¹² Camilo Montoya-Galvez, *"They never saw the sun": Lawyers describe overcrowded conditions for children in Border Patrol custody*, CBS News (Mar. 12, 2021), <https://www.cbsnews.com/news/migrant-children-detained-in-overcrowded-conditions/>; Department of Homeland Security Office of Inspector General, *OIG-22-80, Del Rio Area Struggled with Prolonged Detention, Consistent Compliance with CBP's TEDS Standards, and Data Integrity* (2022), <https://www.oig.dhs.gov/sites/default/files/assets/2022-10/OIG-22-80-Oct22.pdf>; Department of Homeland Security Office of Inspector General, *OIG-23-23, Results of Unannounced Inspections of CBP Holding Facilities in the Yuma and Tucson Areas* (2023), <https://www.oig.dhs.gov/sites/default/files/assets/2023-06/OIG-23-29-Jun23.pdf>

¹¹³ Camilo Montoya-Galvez, *Migrant girl with illness dies in U.S. custody, marking fourth such death this year*, CBS News (Jul. 11, 2023) <https://www.cbsnews.com/news/unaccompanied-migrant-child-dies-us-custody-fourth-such-death-this-year/>; Marlón Gonzalez & Nomaan Merchant, *'He wanted to live the American Dream': Honduran teen dies in US immigration custody*, The Hill (May 13, 2023) <https://thehill.com/homenews/ap/ap-politics/honduran-teen-dies-in-us-immigration-custody-weeks-after-crossing-southern-border/>

¹¹⁴ Camilo Montoya-Galvez, *Nurse denied ambulance requests before migrant child died in U.S. custody, officials find*, CBS News (Jun. 2, 2023) <https://www.cbsnews.com/news/unaccompanied-migrant-child-dies-us-custody-fourth-such-death-this-year/>

¹¹⁵ *Supra* note 28 at ¶ 16

¹¹⁶ *Supra* note 29 at ¶ 84.

County Detention Facility and Port Isabel Service Processing Center demonstrate that these problems are systemic and not limited.

IV. Recommended Questions

- a. What steps is the Biden administration taking to limit the use of immigration detention?

V. Suggested Recommendations

- a. Given the profound harm that immigration detention causes – both independently and by exacerbating previous trauma – the system should be phased out entirely.