



UNIVERSIAL PERIODIC REVIEW WORKING GROUPS ADVOCACY DOCS

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NO HUMAN RIGHT TO HEALTHCARE IN THE UNITED STATES

The United States Government does not refer to health care as a Right.

In its recent submission to the United Nations, the US Government ignores its obligations under the UDHR and other international mechanisms, which it has signed and/or ratified. The report submitted in February of 2015 does not even refer to healthcare as a Right, but rather as a "measure". (*see: UPR report of the US Government section H paragraphs 100 and 101*). This is a regression from its 2010 report, which at least referred to health care as a Right.

Health Insurance is NOT Health Care.

In the US, health insurance is a huge profit making business that pays dividends to shareholders and multi-million dollar bonuses to its executives. This is a far different system than other countries' health insurance. Therefore, when the US says it is taking "measures" to provide its residents with healthcare, what it is actually saying is that it is providing the opportunity for individuals to purchase health insurance. Allowing the purchase of insurance is not the same as giving access to health care. Health insurance treats health as a profit-making commodity. People pay premiums all year, but cannot see a medical provider until they have ALSO paid a deductible amount out of their own pocket. This deductible varies but is frequently as high as \$5,000.00 US. In other words even if every premium is paid timely, the insured cannot go to the doctor until they have spent an additional amount out of their own pocket. Even AFTER paying premiums and deductibles, there is a cost sharing at the point of service such that many cannot seek medical services they need.

Clearly, the most vulnerable residents of the US, particularly those who live in poverty and/or are not citizens, suffer the most from this system. To say that allowing people to purchase insurance equates to giving them medical care is like saying that fire insurance keeps houses from catching fire.

In the words of one person interviewed:

"I simply don't understand what happened. I was told that the ACA would allow me to get the healthcare I need. I pay my premium every month. Now that I am really sick, I cannot go to work and have little income. I thought that by paying my monthly premiums I would be able to get the care I need. It turns out I cannot go to see my doctor, because I have not yet spent \$2,000 this year out of my own pocket AFTER paying premiums. Even after paying premiums for the year, which amount to thousands of dollars, and paying the \$2,000 deductible, I must bring money with me when I go to the doctor's office for a co-pay. "

Susan- a Vermont resident age 27

States Are Not Allowed to Implement Universal Healthcare

The political climate in Washington DC makes it difficult for the federal government to enact new human rights laws. Vermont, however, has enacted a law to provide health care as a publicly funded public good, and declared healthcare to be a human right to all residents within its border. (*see Act 48 of Vermont; legislature.vermont.gov/bill/status/2016/H.48*) Other States are pursuing similar legislation.

Implementation of that law is difficult, because it is broader than federal law. Vermont and other states need waivers from the Federal Government, allowing them to implement universal healthcare instead of health insurance. Canada's universal healthcare began in one province, and was adopted by other provinces because it was working. The same is possible in the United States if the individual states were encouraged to provide healthcare as a human right.

Suggested Questions for the United States Government

1. Will the US affirm, according to its UDHR obligations, healthcare as a human right and use that term in any and all reports relative to healthcare?
2. Will the US assist any State in treating healthcare as a human right including the granting of waivers, executive orders and funds to allow implementation of that right?

Recommendations for the United States Government

To protect healthcare as a Human right the US government should:

1. Reference healthcare as a Right, not a measure, in any and all official documents and/or reports; and
2. Commit to the issuance of an Executive Order allowing States a waiver of the ACA so the State may offer universal healthcare within their borders; and
3. Issue waivers to States relative to allow States to utilize Medicare and Medicaid funds or universal care systems
4. Take steps to allow States to apply grant funding available for implementation of the ACA to instead fund universal care.

Submission to the United Nations on the
Occasion of the Universal Periodic Review of the United States
Second cycle
Twenty-Second Session of the UPR
Human rights Council
April-May 2015

Submitted by: The Vermont Workers Center (VWC)

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1. SUMMARY - Right to health:

Despite accepting recommendations from the various UN human rights bodies, the right to health in the US remains unrecognized. The most vulnerable sections of the population continue to suffer from lack of health care. While the U.S. proclaims advancement in this cause with the advent of a federal health insurance exchange, this does not address the right to healthcare- only the right to purchase health insurance. Maintaining a for-profit, insurance-based system has nothing to do with actual healthcare. Access to purchase that insurance does not increase access to actual healthcare. Further, large segments of the population within the borders of the US are denied even the right to health insurance based upon their immigration status. Healthcare is frequently tied to employment, and employers providing that insurance are now allowed to provide only what agrees with the employer's personal religious views. Health insurance is not healthcare, and tying a human right to employment or citizenship vitiates the existence of that right.

2. SUGGESTED RECOMMENDATIONS:

1. Ensure that public funds distribution by the US through CMS or other sources are used to provide actual healthcare, and allow States with innovative plans to use those funds to provide a non-insurance-based system of universal healthcare;
2. Institute a universal Healthcare system for all persons with the borders of the U.S. As an interim measure to instituting a nationwide universal healthcare plan, ensure that the most vulnerable sections of the population, and especially immigrants, are allowed to fully participate in healthcare, not just emergency healthcare;
3. Decouple healthcare from employment so that an essential human right is no longer tied to employment status and health coverage is not subject to an employers religious views.
4. Penalize States within the US by cutting back on federal funding if they do not guarantee access to actual healthcare.

ENDNOTES/FOOTNOTES

1. 2010 UPR recommendation number 95 accepted by the U.S.
2. ICCPR concluding observation 15 relative to health
3. US Supreme Court decision in *Burwell v. Hobby Lobby*, [573 U.S.](#) (2014)
4. UDHR Articles 2, 25 and 29

NATIONAL LAW CENTER ON HOMELESSNESS & POVERTY

Lawyers Working to End Homelessness

In the United States, the 2014 two-bedroom Housing Wage is \$18.92. This national average is more than two-and-a-half times the federal minimum wage, and 52% higher than it was in 2000. In no state can a full-time minimum wage worker afford a one- bedroom or a two-bedroom rental unit at Fair Market Rent.
—National Low Income Housing Coalition, Out Of Reach (2014)

I'm just simply baffled by the idea that people can be without shelter in a country, and then be treated as criminals for being without shelter. The idea of criminalizing people who don't have shelter is something that I think many of my colleagues might find as difficult as I do to even begin to comprehend.



The United States has international obligations to implement the human right to housing

The United States of America recognized the human right to housing in The Universal Declaration of Human Rights, as well as a number of other international covenants and declarations. In 2010, the U.S. accepted recommendations during the Universal Periodic Review to:

1. Reduce homelessness;
2. Reinforce legal protections for homeless persons;
3. Create adequate, affordable housing for all segments of American society; and
4. Take further measures to address discrimination and inequalities in housing.¹

The United States has failed to honor its treaty obligation to implement the human right to housing

Since the 2010 Universal Periodic Review, the U.S. has received findings and recommendations on its failure to uphold the right to housing or protect the rights of homeless persons—from the Human Rights Committee,² the Committee on the Elimination of Racial Discrimination,³ and the Special Rapporteurs on the Human Right to Adequate Housing and on the Right to Safe Water and Sanitation.⁴

With regards to the housing-specific recommendations accepted by the U.S., since 2010:

1. Homelessness has not been reduced. U.S. law provides no entitlement to housing assistance for low income people; recognition of a right to even basic shelter is extremely limited. Despite gains for some sub-populations including veterans and chronically homeless individuals, the number of homeless families, children, and unaccompanied youth has risen since 2010. Thousands of federal, state, and local government-owned properties remain vacant even as families are forced onto the streets. Domestic violence remains a leading cause of homelessness among women. Lack of a right to counsel in civil cases concerning housing leads to wrongful evictions and foreclosures.
2. Homeless persons remain vulnerable to threats. Despite the lack of adequate housing or even shelter, many homeless people in the United States regularly have no choice but to face the degradation of performing basic bodily functions—sitting, eating, sleeping, and going to the bathroom—in public. This is compounded when they are criminally punished for engaging in these basic, life-sustaining activities. The enforcement of these laws which deny homeless persons' humanity leads to a climate which permits brutal violence against homeless persons to take place.
3. Housing affordability remains at crisis levels. One quarter

of renters pay more than 50% of their income on housing; conversely, only one quarter of

renters eligible for federal housing assistance actually receive it, and the federal budget for developing and maintaining public housing and providing for low-income housing

subsidies have decreased. No binding requirements exist for jurisdictions to plan for and create incentives for the production of sufficient adequate, affordable housing for low-income persons. Lack of affordable housing remains a principal cause of homelessness in the U.S.

4. Discrimination on the basis of race, disability, gender, national origin, criminal background, and a number of other characteristics remains persistent in the housing market. Foreclosures and the lack of maintenance of foreclosed properties by institutional owners have taken a disparate toll in minority communities. This leads to the persistence of segregated, inadequate housing conditions for many minorities. The federal government is failing to use its full powers to correct these inequities, and in some cases is promoting them.

Suggested Questions for the United States Government

1. Will the U.S. affirm housing as a human right and its obligation to ensure its progressive implementation on a non-discriminatory basis?
2. Will the U.S. implement the recommendations of the Human Rights Committee and Committee on the Elimination of Racial Discrimination to reduce the criminalization of homelessness?

Suggested Recommendations for the United States Government

To comply with its human rights obligations, the U.S. should:

1. Affirm housing as a human right and commit to its progressive implementation on a non-discriminatory basis;
2. Increase its efforts to protect the rights of homeless persons, including by discouraging criminalization through funding incentives and guidance and instead ensuring adequate housing is provided;
3. Take steps to track and combat violent crimes against homeless persons;
4. Broaden its limited definition of homeless persons to enable more people to access benefits;
5. Provide a right to counsel in all civil cases involving the potential loss of housing;
6. Increase access to adequate, affordable housing for extremely low income persons through federal funding and promoting market regulations to increase income-targeted housing development;
7. Increase enforcement of housing anti-discrimination laws;
8. Reduce the impact of federal lending policies that disproportionately harm communities of color, including requiring maintenance of federally-owned or –insured foreclosed homes;
9. Create and adequately support mechanisms to ensure the implementation of treaty body and UPR recommendations throughout the federal government and at the state and local level.

For more information:

See our stakeholder report at: http://nlchp.org/documents/UPR_Housing_Report_2014

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NATIONAL LAW CENTER ON HOMELESSNESS & POVERTY

Lawyers Working to End Homelessness

There is no public bathroom...after 11pm and if you have been trespassed from the public park then you are not allowed to use that bathroom any time or you will go to jail. I have had to degrade myself and use the restroom outside on many occasions, including when on my menstrual cycle... Not to mention the police catching me and giving me a fine that I couldn't pay or a court date, and then I have to be put on the sex offender website...just for using the bathroom in a bush!

Criminalization of homelessness is cruel, inhuman, and degrading treatment

Picture a person forced to sleep on a cold, concrete slab; woken up repeatedly throughout the night; kicked and humiliated; exposed to the elements; harassed by law enforcement; attacked by dogs; sleep-deprived; threatened with starvation; prevented from using sanitary facilities; and generally deprived of their basic human dignity. Can you tell whether this is a prisoner facing cruel, inhuman, and degrading treatment, or a homeless person living on the streets of America? So why is it that when a government allows these conditions to happen to one of these victims, it's a human rights abuse, but when it happens to the other, it's just a question of economic policy?

Criminalization of homelessness is increasing in the U.S.

In recent years, as the impact of the foreclosure and economic collapse continues and government funding for housing declines, few affordable housing alternatives remain for families pushed to the brink. As visible homelessness grows, an increasing number of U.S. jurisdictions discriminately target homeless people under ordinances which prohibit particular behaviors such as sitting or lying in public spaces, loitering, begging, trespassing, public urination or defecation, and camping.¹ In just the past three years, city-wide laws bans on camping have increased 60%, on loitering by 35%, on sitting or lying by 43%, and camping in cars by a whopping 119%.² In most of these cities, homeless individuals far outnumber available shelter beds or housing opportunities. Therefore, homeless individuals must go without sleep, using the bathroom, or other services, or be subject to criminal prosecution for simply trying to survive.

Criminalization is a human rights violation

During its first Universal Periodic Review, in response to concerns favor of ... the homeless to allow them the full enjoyment of their favor of ... the homeless to allow them the full enjoyment of their rights and dignity.³ In 2012, the U.S. Interagency Council on Homelessness (USICH) issued a report recognizing criminalization

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treatment in their reviews of the U.S., called for its abolition at the local level and for federal funding incentives to promote decriminalization.⁵ In November 2014, the Committee Against Torture inquired about the U.S.'s adherence, or lack thereof, to the HRC and the CERD's recommendations.⁶ This builds on the condemnation of the Special Rapporteurs on Racism,⁷ Adequate Housing,⁸ Water & Sanitation,⁹ and Extreme Poverty.¹⁰

Despite the USICH issuing its report on criminalization and beginning to address criminalization as a human rights violation, many communities – receiving millions of dollars in federal housing and law enforcement grants - continue to pass these ordinances, and the federal government has yet to implement the recommendations of the HRC and CERD to create funding incentives to discourage criminalization at the local level.

Suggested Question for the United States Government

Will the U.S. implement the recommendations of the Human Rights Committee and Committee on the Elimination of Racial Discrimination to reduce the criminalization of homelessness?

Suggested Recommendations for the United States Government

To comply with its human rights obligations, the U.S. should:

1. Increase its efforts to protect the rights of homeless persons, including by discouraging criminalization through funding incentives and instead ensuring adequate housing is provided;
2. Affirm housing as a human right and commit to its progressive implementation on a non-discriminatory basis.

For more information:

See our stakeholder report at: http://nlchp.org/documents/UPR_Housing_Report_2014 Contact: Eric Tars, etars@nlchp.org, +1-202-638-2535 x. 120

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-Sir Nigel Rodley, Chair,
UN Human Rights
Committee, Former Spec.
Rapp. on Torture, Closing
Statement on U.S. CAT
Review (2014)

Access to Justice in the United States: Ensuring Meaningful Access to Counsel in Civil Cases

ISSUE SUMMARY

Legal representation is fundamental to safeguarding fair, equal, and meaningful access to the legal system. In the United States, millions of poor and low-income people must navigate the civil court system without legal representation, facing potential crises including termination of tenancy, loss of child custody, and immigration removal, simply because they cannot afford a lawyer.¹

The U.S. Supreme Court has recognized a right to counsel in criminal cases. No such right, however, is recognized in the civil context.

Federal programs to provide civil counsel are underfunded, and have severe restrictions on the services they can provide.² The Legal Services Corporation (LSC) was created to promote equal access to justice and provide grants for civil legal assistance to low-income Americans. Annual federal funding for LSC is currently at its third-lowest level ever in inflation-adjusted dollars,³ despite the fact that the population eligible for assistance has grown to an all-time high.⁴

Moreover, organizations, like Maryland Legal Aid, which take even a single dollar of LSC-funding face significant restrictions on all of their activities,⁵ including the clients they can serve and the legal advocacy tools they can bring to bear to address clients' problems. Organizations that receive any LSC-funding are barred from representing undocumented and even some documented immigrants, the incarcerated and certain public housing residents.⁶ Clients they are permitted to represent are prevented from accessing important legal remedies, strategies and options available to others who can pay for lawyers because LSC-funded organizations cannot file class actions, initiate legislative activity, or do grassroots organizing. The result is a crisis in unmet civil legal need, which disproportionately impacts racial, ethnic and national minorities and women.⁷

LEGAL FRAMEWORK

UDHR Article 10; ICCPR Articles 2, 14, and 26; CERD Articles 5 and 6.

⁵ Maryland Legal Aid's entire budget of approximately \$24 million dollars is affected by LSC restrictions, even though LSC-funding comprises less than 16% of the total budget.

⁶ *About Statutory Restrictions on LSC-funded Programs*, Legal Services Corporation, <http://www.lsc.gov/media/factsheets/about-statutory-restrictions-lsc-funded-programs> (last visited Feb. 18, 2015).

⁷ Comm. on the Elimination of All Forms of Racial Discrimi-

nation, *Concluding Observations of the Committee on the Elimination of Racial Discrimination: United States of America*, ¶ 22, U.N. Doc. CERD/C/USA/CO/6 (May 16, 2008);

Columbia Human Rights Institute, *Equal Access to Justice: Ensuring Meaningful Access to Counsel in Civil Cases, Including Immigration Proceedings* 3, (July 2014), available at

¹ Legal Services Corporation, *Documenting the Justice Gap in America* 24, (Sep. 2009), available at http://www.lsc.gov/sites/default/files/LSC/pdfs/documenting_the_justice_gap_in_america_2009.pdf.

² *Id.* at 24.

³ *LSC Funding*, Legal Services Corporation, <http://www.lsc.gov/congress/lsc-funding> (last visited Feb. 18, 2015); *Funding History*, Legal Services Corporation, <http://www.lsc.gov/congress/funding/funding-history> (last visited Feb. 18, 2015).

⁴ Legal Services Corporation, *LSC FY 2015 Budget Request Sent to Congress*, (Mar. 4, 2014), available at <http://www.lsc.gov/media/press-releases/lsc-fy-2015-budget-request-sent-congress>.

UN TREATY BODY AND EXPERT RECOMMENDATIONS

In the past year, the UN Committee on the Elimination of All Forms of Racial Discrimination and the UN Human Rights Committee have both raised concerns about access to justice in the United States, and in particular access to legal representation in civil cases, including in immigration proceedings.⁸ Additionally, in its most recent review, the UN Committee Against Torture urged the United States to “guaran-

tee access to counsel” in removal proceedings.⁹

PROGRESS MADE SINCE FIRST UPR

Since its first UPR, the United States has made important progress in improving access to civil counsel for indigent litigants. In 2010, the U.S. Department of Justice created the Access to Justice Initiative and the Legal Aid Interagency Roundtable, which together work to integrate civil legal aid into federal activities.¹⁰ In 2014, the Administration created a new program called Justice AmeriCorps. The program works to provide legal services to a limited number of unaccompanied minors in immigration proceedings.¹¹ While these initiatives are promising,

⁸ International Convention on the Elimination of All Forms of Racial Discrimination, Concluding observations on the combined seventh to ninth periodic reports of the United States of America, para. 18, 23, U. N. Doc. CERD/C/USA/CO/7-9 (Sep. 25, 2014); International Covenant on Civil and Political Rights, Concluding observations on the fourth periodic report of the United States of America, para. 15, U. N. Doc. CCPR/C/USA/CO/4 (Apr. 23, 2014).

⁹ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Concluding observations on the third to fifth periodic reports of United States of America, para. 18, U.N. Doc. CAT/C/USA/CO/3-5 (Nov. 20, 2014).

¹⁰ *Legal Aid Interagency Roundtable Toolkit*, United States Department of Justice, <http://www.justice.gov/atj/legal-aid-interagency-roundtable-toolkit> (last visited Feb. 18, 2015). See also *Access to Justice*, United States Department of

they do not fully address the civil justice gap. Every year, millions of people in the United States still must navigate the civil justice system on their own, due to their inability to afford legal representation.

SUGGESTED QUESTION

Please provide information on measures the federal government is taking to address the civil justice gap, including measures to fully fund and ease restrictions on the federal Legal Services Corporation, expand and make permanent the Access to Justice Initiative, and establish a right to counsel in civil cases where basic human needs are at stake, including in civil immigration removal proceedings.

SUGGESTED RECOMMENDATIONS

In its efforts to ensure equal and meaningful access to justice, the United States should:

- make the U.S. Department of Justice’s Access to Justice Initiative permanent and expand its capacity;
- support full funding for the federal Legal Services Corporation and the removal of restrictions that prevent legal services lawyers from providing necessary services;
- prioritize the establishment of a right to legal counsel for immigrants, including unaccompanied minors, in civil immigration proceedings and indigent litigants in other federal civil cases where basic human needs are at stake; and
- support state-level efforts to establish a right to counsel in certain civil cases.



HUMAN RIGHTS INSTITUTE

Ensuring Human Rights Implementation at the Federal, State and Local Level*

ISSUE SUMMARY

In the United States, subnational government actors are essential to human rights implementation. This includes the over 150 agencies that enforce human and civil rights laws, governors, state attorneys general, mayors, legislators and law enforcement. State and local actors have jurisdiction over a range of human rights issues, such as housing, education, and criminal justice.¹

In recent years, the U.S. has repeatedly affirmed that state and local actors play a pivotal role in comprehensive human rights implementation² and taken some encouraging steps to communicate with them on human rights.³ **However, the U.S. continues to lack a comprehensive or coordinated approach to human rights promotion and protection at the federal, state and local level.**

- No permanent government entities support human rights education, monitoring or implementation.
- No focal point exists to offer guidance on human rights.
- The United States lacks a national human rights monitoring body, such as an NHRI.
- The federal government has not disseminated Concluding Observations or UPR recommendations to state and local governments.

What currently exists at the federal level is an ad-hoc and under-resourced approach to human rights education, reporting and implementation, without meaningful avenues for state and local government participation.⁴

As a result, there are significant gaps between the U.S.' human rights commitments and state and local practice. Many state and local actors lack the

capacity necessary to effectively monitor and implement human rights because they are unaware of human rights treaties *and* face resource and staffing constraints.

A comprehensive and effective approach to human rights implementation will require federal mechanisms and initiatives to support and coordinate state and local efforts to comply with international human rights treaty standards through education, training and other means.

LEGAL FRAMEWORK

ICCPR Article 50; CERD Articles 2 and 7; CAT Articles 2 and 10

According to article VI of the U.S. Constitution, ratified treaties constitute “the supreme Law of the Land.” As the U.S. affirmed when ratifying the ICCPR, CERD and CAT, federal state and local authorities share responsibility for implementing international human rights obligations.⁵

While existing case law and the federal system prevent the federal government from compelling state and local governments to comply with human rights obligations, there are numerous avenues available for the federal government to support state and local human rights implementation.

UPR AND UN TREATY BODY RECOMMENDATIONS

During the 2010 UPR, the U.S. accepted recommendations to:

- Review Federal and State laws to bring them in line with international human rights;

- Incorporate human rights training and education into policies; and
- Consider establishing an NHRI.⁶

The treaty bodies have reiterated the need for the U.S. to establish a more comprehensive approach to monitoring and implementation. In 2014, the Human Rights Committee called for expanded human rights monitoring mechanisms and financial and human resources to this effort.⁷ The CERD called for a permanent mechanism to coordinate monitoring and education at the state and local level.⁸

PROGRESS MADE SINCE LAST UPR

The U.S. UPR Report offers some steps that the U.S. has taken to improve subnational human rights implementation, such as training state and local agencies and including state and local officials in delegations for recent U.N. human rights reviews.⁹ The State Department has also sent letters to state and local governments focused on treaty reporting.¹⁰ While positive, current efforts remain ad-hoc and limited in scope.

Institutionalized and transparent federal mechanisms are essential to establish a comprehensive and coordinated approach to human rights monitoring and implementation and ensure that state and local governments can reach their full potential to promote and protect human rights.

SUGGESTED QUESTION FOR THE REVIEW

Please indicate what measures the United States is taking to establish an institutionalized, transparent and coordinated approach to human rights monitoring and implementation at the federal, state and local level, including the extent to which the federal government will support state and local efforts through education, training and funding.

SUGGESTED RECOMMENDATIONS

To ensure effective domestic human rights implementation, and fulfill its human rights obligations and commitments, the United States, should, at a minimum:

- Work across federal agencies and departments to identify avenues for more comprehensive **education and training** for state and local agencies and officials on their human rights obligations, including U.N. recommendations.
- Consider mechanisms to **provide resources and funding** to state and local agencies and officials to engage in human rights monitoring and implementation.
- **Take proactive measures to support establishment of transparent and effective federal mechanisms** mandated to coordinate with state and local officials around human rights monitoring and implementation at the federal, state and local level, including:
 - o a federal focal point to coordinate an liaise with state and local actors regarding human rights implementation,
 - o a reinvigorated Inter-Agency Working Group on Human Rights, and
 - o a National Human Rights Monitoring Mechanism, such as a strengthened U.S. Commission on Civil and Human Rights.

News from Michigan Welfare Rights Organization and Detroit People's Water Board

Friday, October 17, 2014

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Michigan Water and Housing Crises Take International Stage

United Nations officials hear testimony from and about resident's problems with basic needs

DETROIT – Michigan Welfare Rights Organization (MRWO) the Detroit People's Water Board and We The People of Detroit were among the many community groups that organized residents to testify before United Nations officials on water and housing in Michigan. X number of people packed the Wayne County Community College Fort Street location to hear how water shutoffs to thousands of Detroit families have affected the health and welfare of the city.

"Once again, the international spotlight on Detroiters trying to carve out dignified lives while being denied basic necessities of life," said **Maureen Taylor of Michigan Welfare Rights Organization and the Detroit People's Water Board**. "Thousands of families are still without water. The National Nurses Associations cited the shutoffs as a health problem. The UN has now stepped in again after declaring water to be a human right. National and international groups have stepped up. We need the Mayor to do the same.

Catarina de Albuquerque, Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation and Leilani Farha, Special Rapporteur on Adequate Housing took testimony from community members. Organizers have been advocating for a Water Affordability Plan to stem the crisis of the shut-offs.

"The only humane course of action in a city with the highest poverty rate in the nation is to have people pay for water based on income," said **Sylvia Orduno of Michigan Welfare Rights Organization and the Detroit People's Water Board**. "Shut-offs only

further devastate people in a city with inadequate housing and transportation and a Health Department that's been drastically cut. There is only so much people should have to put up with. They should at least have affordable water."

NEWS RELEASE

Detroit's water shut-offs target the poor, vulnerable and African Americans

DETROIT! NEW YORK (20 October 2014) —The unprecedented scale of water shut-offs taking place in Detroit is disproportionately affecting the most vulnerable and poorest, most of whom are African American, two United Nations human rights experts have warned today. So far this year over 27,000 residences have had water services disconnected.

At the end of a three-day visit to Detroit*, the UN Special Rapporteurs on the human right to water and sanitation, Catarina de Albuquerque, and on the right to adequate housing, Leilani Farha, stressed that all decisions that affect access to water and to adequate housing for residents of Detroit should be guided by human rights.

"It is contrary to human rights to disconnect water from people who simply do not have the means to pay their bills," Ms. de Albuquerque said. "I heard testimonies from poor, African American residents of Detroit who were forced to make impossible choices – to pay the water bill or to pay their rent."

The utility has passed on the increased costs of leakages due to an aging infrastructure onto all remaining residents by increasing water rates by 8.7 percent.

"This, combined with the decreased number of customers, and increased unemployment rate, has made water bills increasingly unaffordable to thousands of residents in Detroit living under the poverty line. In addition, repeated cases of gross errors on water bills have been reported, which are also used as a ground for disconnections. In practice, people have no means to prove the errors and hence the bills are impossible to challenge," she added.

"Tenants and owners are living with such stress and uncertainty, fearing they won't be able to pay their water bill and will eventually be evicted or suffer foreclosure," Ms. Farha said. "Such situations go against internationally recognized human rights standards."

The Special Rapporteurs noted that measures taken so far, including the Mayor's 10 Point Plan, have not been of assistance to those who are chronically poor and face water shut-offs. More worryingly, the city has no data on how many people have been and are living without tap water, let alone information on age, disabilities, chronic illness, race or income level of the affected population.

In that regard, the experts called for the establishment of a mandatory federal water and sewerage affordability standard. In addition, they said, "special policies and tailored support for people in particularly vulnerable circumstances must be introduced.

“The indignity suffered by people whose water was disconnected is unacceptable,” Ms. de Albuquerque stressed. “A woman whose water had been cut explained that her teenage daughters had to wash themselves with a bottle of water during menstruation, and had to refrain from flushing the toilet to save water.”

“I also listened to numerous stories of fear: mothers who fear losing their children because their water was shut off; heads of households who fear losing access to water without any prior notice; others who fear receiving unaffordable and arbitrary water bills,” the expert added.

“I heard repeated testimonies of people stating that they had been charged for the Detroit Water and Sewerage Department’s infrastructure deficiencies, including leakages, and also the utility’s lack of competence in dealing with errors in billing or requests for assistance,” Ms. Farha said.

“I am alarmed by the fact that many residents were not provided with any advance notice before their water was shut off and there seems to be no administrative or legal remedies for disputed bills and water disconnections,” she added.

“The City of Detroit should restore water connections to residents unable to pay and to vulnerable groups of people including persons with disabilities, the chronically ill, and households with small children”, stressed Ms. de Albuquerque.

“Every effort should be made by all levels of government to ensure that the most vulnerable are not evicted from or lose their housing as a result of water shut-offs or water bill arrears. Where an individual or family is rendered homeless due to water shut-offs, the city of Detroit must have in place emergency services to ensure alternate accommodation with running water is available”, stated Ms. Farha.

The Special Rapporteurs recalled that the United States is bound by international human rights law, including the right to life as well as the right to non-discrimination concerning housing, water and sanitation and the highest attainable standard of health.

“These obligations apply to all levels of Government – federal, state and municipal,” Ms. de Albuquerque and Ms. Farha underscored.

ENDS

Catarina de Albuquerque is the first UN Special Rapporteur on the right to safe drinking water and sanitation. She was appointed by the Human Rights Council in 2008. Ms. de Albuquerque is a Professor at the Law Faculties of the Universities of Braga, Coimbra and of the American University’s Washington College of Law. She is a senior legal advisor at the Prosecutor General’s Office. She was awarded the Human Rights Golden Medal by her country’s Parliament. Learn more, log on to:
<http://www.ohchr.org/EN/issues/WaterAndSanitation/SRWWater/Pages/SRWWaterIndex.aspx>

Leilani Farha is the UN Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context. She took her function in June 2014. Ms. Farha is the Executive Director of the NGO Canada Without Poverty, based in Ottawa, Canada. A lawyer by training, for the past 20 years Ms. Farha has worked both internationally and domestically on the implementation of the right to adequate housing for the most marginalized groups and on the situation of people living in poverty. Learn more, log on to: <http://www.ohchr.org/EN/issues/Housing/Pages/HousingIndex.aspx>

Submission to the United Nations on the
Occasion of the Universal Periodic Review of the United States
Second cycle
Twenty-Second Session of the UPR
Human rights Council
April-May 2015

Submitted by: The Vermont Workers Center (VWC)

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Page Break

2.
3.

SUMMARY - Right to Association for Workers ; protection of guest workers and human trafficking:

Despite accepting recommendations from the various UN human rights bodies, the right to association for workers in the US remains inadequate. Workers are prohibited from organizing in so-called “right to work” States. This exclusion of workers from the protection of labor laws encourages human trafficking. Guest workers are subjected, to violations of many human rights Others are denied the protection of unions based upon their immigration status. health in the US remains unrecognized. The most vulnerable sections of the population continue to suffer from lack of health care. While the U.S. proclaims advancement in this cause with the advent of a federal health insurance exchange, this does not address the right to healthcare- only the right to purchase health insurance. Maintaining a for-profit, insurance based system has nothing to do with actual healthcare. Access to purchase that insurance does not increase access to actual healthcare. Further, large segments of the population within the borders of the US are denied even the right to health insurance based upon their immigration status. Healthcare is frequently tied to employment, and employers providing that insurance are now allowed to provide only what agrees with the employer’s personal religious views. Health insurance is not healthcare, and tying a human right to employment or citizenship vitiates the existence of that right.

SUGGESTED RECOMMENDATIONS:

3.
 2. Ensure that public funds distribution by the US through CMS or other sources are used to provide actual healthcare, and allow States with innovative plans to use those funds to provide a non-insurance-based system of universal healthcare;
 3. Institute a universal Healthcare system for all persons with the borders of the U.S. As an interim measure to instituting a nationwide universal healthcare plan, ensure that the most vulnerable sections of the population, and especially immigrants, are allowed to fully participate in healthcare, not just emergency healthcare;
 1. Decouple healthcare from employment so that an essential human right is no longer tied to employment status and health coverage is not subject to an employers religious views.

5. Penalize States within the US by cutting back on federal funding if they do not guarantee access to actual healthcare.

4. ENDNOTES/FOOTNOTES

2. 2010 UPR recommendation number 95 accepted by the U.S.

3. ICCPR concluding observation 15 relative to health

4. US Supreme Court decision in *Burwell v. Hobby Lobby*, [573 U.S.](#) (2014)

5. UDHR Articles 2, 25 and 29
-

Key Facts About Human Rights Violations & Sex Work

~ For the 2015 Universal Periodic Review of the UNITED STATES OF AMERICA~

Throughout the U.S., pervasive criminalization and stigmatization of sex workers, and those profiled as such, prevents them from fully exercising their human rights, including their civil, political, social and economic rights. People of color, transgender or gender non-conforming people (particularly transgender women of color), migrants, people experiencing homelessness, youth, and HIV-positive people bear a high burden of these human rights violations. Sex workers, and people the police profile as such, face rape, extortion, humiliation, assault, sexual harassment, discrimination and other violence at the hands of law enforcement. While incarcerated, they face additional violence and cruel, inhuman or degrading treatment. Criminalization and stigma can also lead to the denial of their rights to housing, healthcare, parenting and other reproductive rights, education, incomes, and employment. This denial can occur both through direct discrimination, and through the heavy toll that a criminal record—including felony convictions for sex work in some states—can have on people seeking access to these basic rights. Law enforcement officials, including police, prosecutors and judges, also frequently fail to recognize that sex workers can be victims of crime, and thus deny justice or support to sex workers who seek their help.

Previous UN Body Recommendations

In its prior UPR process, the U.S. accepted Recommendation 86, requiring it to “[u]ndertake awareness-raising campaigns for combating stereotypes and violence against [LGBT people], and ensure access to public services, paying attention to the special vulnerability sex workers to violence and human rights at has taken no steps to implement Recommendation 86, while passing laws and pursuing policies that directly contradict this commitment, putting sex workers at heightened risk of violence and human rights abuses. In 2014, UN Human Rights Committee challenged the U.S. Justice Department’s claim that arresting and jailing people charged with sex work offenses is a humane or effective way to fight trafficking. The Committee called on the U.S. to align its anti-trafficking initiatives with human rights norms, which reject criminalizing sex workers

“Police referred to the rapist—who had personal connections

“big teddy bear,” and said they felt bad for him.”

- From a 2014 interview with a sex worker in New Jersey who attempted to report a rape to police

Suggested Recommendations to the US Government for the 2015 Universal Periodic Review

Implement Recommendation 86 by ensuring respect for the human rights of sex workers and people profiled as such; including their rights to healthcare, education and housing; and their right to be free from violence by government and non-government actors.

Take measures to decrease violence towards sex workers and people profiled as such, by implementing campaigns to end the harms of stigmatization and criminalization.

Question for the US Government

What measures is the government taking to protect sex workers and people profiled as sex workers from violence, including violence from police and other state actors?

Contact: Best Practices Policy Project: Dr. Penelope Saunders, +1-917-817-0324, bestpracticespolicyproject@gmail.com; Desiree Alliance: Cristine Sardina, director@desireealliance.org; Sex Workers Outreach Project-NY: www.swop-nyc.org

Immigrant Family Detention in the United States

Every year, the U.S. Department of Homeland Security (DHS) imprisons hundreds of thousands of non-citizens in administrative immigration detention. In the summer of 2014, however, in response to the increased number of Central Americans arriving at the U.S.-Mexico border, the U.S. government dramatically expanded its detention of immigrant families, including those with young children. Prior to the summer of 2014, the United States had largely abandoned detention of immigrant families, maintaining only one residential shelter for immigrant families in Pennsylvania with capacity for 96 people. But in June 2014, the government abruptly reversed course, announcing plans to expand family detention. Since that time, the government opened three new family detention facilities: first, a 646-bed, make-shift family detention facility in Artesia, New Mexico (which ceased operation in December 2014); then in August 2014, a family detention facility in Karnes County, Texas, with almost 600 beds, run by the GEO private prison company, and most recently, in December 2014, a facility in Dilley, Texas, which currently holds several hundred mothers and children, but will ultimately have the capacity to hold 2400 people – making it the single largest immigration detention facility in the nation. Dilley is run and operated by the largest private prison company in the United States—Corrections Corporation of America.

The majority of the families detained in these facilities are Central American women and children who have fled extreme violence in their countries and are seeking political asylum. According to DHS, approximately 70 percent of the women and children in family detention demonstrate a credible fear of returning to their country of origin, which means they have a significant possibility of establishing eligibility for asylum. However, even though many of these women and children are eligible for release on bond or their own recognizance, and even though most have family members or friends residing in the U.S. who have offered them a place to live and support while their asylum cases are pending, the U.S. government imposed a blanket no-release policy for the express purpose of sending a deterrent message to other Central Americans who might be considering migrating to the U.S. In December 2014, the ACLU challenged this policy in federal court, seeking a preliminary injunction to stop the government from detaining these families for deterrence purposes. The District Court agreed with the ACLU's arguments and blocked the government from locking up families for deterrence purposes, requiring instead that their detention be based on an individualized determination of danger or flight risk. Rather than using the court's ruling as an opportunity to change its unlawful policy, however, the government is continuing to fight the ruling, recently filing a motion with the court to reconsider its decision. Moreover, although the government is technically complying with the injunction by setting bonds for some detained families, the bonds set are very high, usually at either \$7,500 or \$10,000, and sometimes as high as \$15,000. Because most families do not have the money to pay such bonds, they remain detained until they can seek a bond hearing from an immigration judge, which prolongs their detention by several weeks at a minimum. Meanwhile, in a separate lawsuit to enforce the *Flores* Settlement Agreement (which provides standards and limitations on the detention of children), the U.S. government has continued to rely on deterrence arguments to justify the incarceration of children and their mothers at detention facilities.

International human rights law strongly disfavors the use of immigration detention, and rejects it completely for children. Detention harms children's health. Their physical and psychological development suffers during detention, and the harms can be long-lasting. Being held in a prison-like setting, even for a short period of time, can cause psychological trauma for children and increase their risk factor for future mental disorders. According to Physicians for Human Rights and the Bellevue/NYU Program for Survivors of Torture, detention can also exacerbate the trauma experienced by both children and adults who have fled violence in their home countries – precisely the population detained in these new facilities. In addition, there have been allegations of abusive conditions at the different family detention facilities, including sexual abuse, threats by guards to separate mothers from their children, retaliation against mothers for engaging in actions to protest their detention, and inadequate mental health and medical care. Finally, U.S. policies and practices in constructing remote detention facilities like Artesia, Dilley, and Karnes directly result in unfair hearings. There are few private or free legal service providers available in those rural areas to provide representation in often complex legal proceedings, and it is difficult to prepare cases

for asylum or other forms of relief from inside a detention facility where access to counsel, phone services, supporting witnesses, and evidence is severely limited. The vast majority of detained mothers and children do not have immigration counsel, and the government is not providing counsel for these families. At the same time the government is moving with great speed to deport Central American families as quickly as possible.

Recently, dozens of international and domestic organizations [wrote](#) to President Obama, calling upon his administration to cease its use of family detention. In his November 20, 2014 memorandum, “Policies for the Apprehension, Detention and Removal of Undocumented Immigrants,” DHS Secretary Jeh Johnson explains that “field office directors should not expend detention resources on aliens who are known to be suffering from serious physical or mental illness, who are disabled, elderly, pregnant, or nursing, who demonstrate that they are primary caretakers of children or an infirm person, or whose detention is otherwise not in the public interest.” Nearly all the detained mothers are primary caregivers of their children. Many of the mothers and children in family detention have physical or mental illnesses, many are survivors of horrific abuse and trauma, many are nursing, and some children have evidence of disabilities. Yet the government has generally not considered these circumstances in deciding to detain them. In 2011, the United States supported the UPR recommendations that it “reconsider alternatives to detention” (rec. 212), “investigate carefully each case of immigrants’ incarceration” (rec. 183), and “adapt the detention conditions of immigrants in line with international human rights law” (rec. 184). In its 2015 UPR report response, the United States claims that immigrants are detained “only after an individualized determination that detention is appropriate or required by law.” But in expanding family detention, the U.S. government’s conduct directly contravenes the UPR recommendations and its obligations under international human rights law.

Recommended Questions

1. Why has the U.S. government expanded its use of family detention, rather than investing in community-based alternatives to detention with case management services?
2. What is the U.S. government doing to ensure adults and children in detention are provided legal representation?
3. Will the U.S. government commit to ending its unlawful policy of detaining bond-eligible families for deterrence purposes, rather than continuing to defend its policy in federal court as it is currently doing?
4. Will DHS halt the imposition of prohibitively high bonds (\$7,500 and up), and ensure that each family is considered for release on reasonable bond?

Suggested Recommendations

1. Halt the detention of families and children. Abandon the no-bond policy and ensure that every parent and child receives an individualized assessment of the need to detain. Ensure that the detention of families and children is only used as a last resort, for the shortest period of time possible. Use and expand the use of community-based alternatives to detention with case management services in place of institutional detention.
2. Investigate all complaints regarding conditions of confinement or abuse, ensure that officers who abuse immigration detainees are held accountable, and revise oversight protocol, training, and other policies to prevent inappropriate conditions of confinement or officer behavior in the future.
3. Adopt policies to ensure that all detained families are provided immigration counsel and an adequate opportunity to prepare their asylum and deportation defense cases.

For more information, contact the Human Rights Program of the ACLU: humanrights@aclu.org

Last updated: April 17, 2015

U.S. Failure to Return Personal Belongings of Migrant Deportees

In fiscal year 2014, U.S. authorities [deported](#) approximately 316,000 individuals, of which 96.1 percent were returned to Mexico, Honduras, Guatemala, and El Salvador. Once deported, migrants are highly vulnerable to violence and abuse, which is greatly exacerbated by the routine failure of U.S. authorities to return key belongings to migrants, including cash, prescription medications, cell phones, or identification documents.

This border-wide concern has been reflected in numerous reports, including in documentation gathered by the University of Arizona and released in March of 2013 as preliminary findings to their [report](#), *In the Shadow of the Wall: Family Separation, Immigration Enforcement and Security*. In more than 1,000 interviews conducted from 2010 to 2012 in shelters at Mexico's northern border from Tijuana to Nuevo Laredo and in Mexico City, researchers found that 39 percent of individuals reported "having belongings taken and never returned" upon deportation.

For more than a decade, U.S. border policy has focused on deterrence-based strategies, which have created an increasingly complicated process through which migrants are processed from the point of apprehension until their subsequent deportation. This process is embodied by what U.S. Customs and Border Protection (CBP) calls a "consequence delivery system," which includes the Alien Transfer Exit Program (also known as lateral repatriations) and criminal prosecution and imprisonment for illegal entry and re-entry, including those channeled through Operation Streamline. The increased use of Federal District Courts to prosecute migrants criminally for illegal entry and re-entry has resulted in multiple transfers of migrant custody between federal law enforcement agencies, a factor that has been shown to increase the likelihood that migrants' belongings will fail to follow them until the point of their repatriation.

For example, an individual may be apprehended by CBP and spend a few hours in short-term custody, then be transferred to U.S. Marshals custody for pre-trial detention in a county jail, and then sent after conviction to a Bureau of Prisons facility to serve out a sentence, at which time they end up released to U.S. Immigration and Customs Enforcement (ICE) custody to effectuate their removal.

Each of these agencies (CBP and ICE under the Department of Homeland Security and U.S. Marshals and Bureau of Prisons under the Department of Justice) maintains distinct protocols for handling belongings. The U.S. Marshals policy permits them to accept limited, specific items (for example, a wedding ring, prescription glasses, no more than \$50 in cash, and so on). CBP's overarching policy is to hold all non-perishable personal belongings for up to 30 days, at which time they will be destroyed per a written agreement signed by the migrants prior to leaving CBP custody—often without their knowledge of how long they will be in the custody of U.S. authorities. Individuals may authorize a third party to retrieve these belongings on their behalf. However, this 30-day window is often unrealistically short given the challenges detainees may face in identifying and contacting someone able to collect their belongings, as well as the bureaucratic hurdles faced by a detainee who receives a sentence longer than 30 days.

Although CBP has a general belongings policy, different practices are followed in some sectors. For example, in the CBP El Paso and Tucson Sectors, staff members of the Office of Protection of Migrants of the Mexican Consulates in Tucson and El Paso retrieve and store the belongings of individuals referred from CBP to Operation Streamline proceedings. Consulate staff members then mail belongings to Mexico City (in consular pouches), which are then sent to the regional offices for Mexico's Secretariat of Foreign Relations (*Secretaría de Relaciones Exteriores*, or SRE) for the property owners to retrieve. Although these individuals may ultimately receive some or all of their belongings, this process may take several months and does not always prevent the vulnerability migrants experience when first deported to Mexico, typically in the border region, without their belongings. Furthermore, long distances

and travel costs may be an additional barrier for some retrieving their belongings at SRE offices. In addition, the Mexican Consulates can only help those individuals who have provided an exact, current address in Mexico. This practice also does not address the need to return belongings to individuals who are from other Latin American or Central American countries. A better policy solution would ensure that belongings follow migrants throughout the custody transfers from one U.S. agency to another and that belongings are returned to them prior to repatriation.

Consequences of Failing to Return Migrants' Belongings Prior to Repatriation

Individuals often find themselves in unfamiliar cities upon deportation. Those deported without their cell phones, IDs, or currency to towns where they lack any contacts face significant hurdles to access resources or integrate into Mexican society. Some wind up homeless and unable to get a job because they can't prove to prospective employers who they are. Others try to return to the original towns in Mexico they left years ago, but to get there they have to acquire enough money for transportation and then they face a slew of checkpoints put up by federal, military, and municipal police that are difficult to pass through without a proper form of ID. In addition, they are unable to cash checks or even be reunited with their children because they cannot verify their identity without an ID.

Several media and human rights reports suggest that the practice of not returning belongings makes migrants, who are already targets of crime and violence, even more vulnerable to abuse upon repatriation. This is an even greater problem when migrants are returned to areas with exceptionally high indices of homicide, kidnapping, and other forms of violence. Mexico's National Human Rights Commission [identified](#) over 200 cases of migrant kidnappings, impacting over 11,000 victims during a six-month timeframe in 2010. This vulnerability is compounded when migrants are deported without their belongings. A 2012 CNN investigative [piece](#) identified the failure to return belongings as a practice that puts migrants at increased risk of violence.

While the U.S. UPR submission states that the "United States has an unwavering commitment to respect the human rights of all migrants, regardless of their immigration status," the report fails to recognize the hardships and real risks associated with failure to return migrants' belongings and the need to establish and enforce an inter-agency agreement ensuring the return of migrants' personal belongings.

Suggested Recommendations

1. The U.S. government should develop and implement an inter-agency agreement among Customs and Border Protection, U.S. Marshals, Bureau of Prisons, and Immigration and Customs Enforcement that will ensure the return of personal belongings, including cell phones, IDs, currency, and other key belongings, to migrants at the moment of release or repatriation.
2. The agreement should also instruct these agencies that belongings are not to be destroyed or disposed of while an individual is still in custody, except those specific items whose nature or condition requires their immediate destruction (such as food that is perishable).
3. All detainee funds should be returned in cash in the currency of the destination country, or in U.S. currency, whichever is preferred by the migrant.

For more information, contact the Human Rights Program of the ACLU: humanrights@aclu.org

Last updated: April 17, 2015

The Universal Periodic Review of the United States of America: *Rights of Immigrants*

Second Cycle

Twenty-Second Session of the UPR

Human Rights Council

I. Protect the right to liberty and security of the person

The United States has the largest immigration detention infrastructure in the world. Due to mandatory detention laws, an insufficiently rigorous custody determination process (“Risk Classification Assessment”), and a 2014 policy of detaining mothers with their young children in order to deter future migration, hundreds of thousands of immigrants are detained without proper justification each year, often in subpar conditions and without adequate access to due process.

Suggested recommendations:

- Do not use immigration detention as a mechanism to deter future migration.
- Make immigration detention a measure of last resort and detain migrants for immigration status only pursuant to an individualized determination in which a judge (not the detaining entity) provides a justification for the need to detain.
- Immediately eliminate the use of family detention due to the harmful developmental and psychological effects, which are especially pronounced for children.
- Increase the use of appropriate alternatives to detention, including community-based and case-management models. Disfavor detention by electronic GPS monitoring and prohibit its use on children.
- Codify adequate civil detention standards for Customs and Border Patrol (CBP) and Immigration Customs Enforcement (ICE) such that they have the force of law and confer a cause of action in court for detainees. End the use of solitary confinement (segregation) for protective custody purposes. Given that many individuals are placed in solitary confinement because of a special vulnerability, which makes them more susceptible to abuse, individuals who cannot be safely detained within the general detention population should be released from detention, with conditions of release, if necessary.

Contact organizations: Pangea Legal Services, Bianca@pangealegal.org; [Detention Watch Network](http://DetentionWatchNetwork.org), msmall@detentionwatchnetwork.org

II. Respect the principle of *non-refoulement*

Suggested recommendations:

- Protect the credible fear process by rescinding the government’s 2014 Lesson Plan on Credible Fear of Prosecution and Torture Determinations, which unreasonably weakens the preliminary asylum screening process and puts migrants at risk of *refoulement*.
- Improve trainings for CBP officials to ensure their understanding of and compliance with existing law and procedure with respect to the treatment of asylum-seekers.
- Monitor and audit individual CBP officers’ compliance with asylum screening procedures on a periodic basis, and ensure that failure to comply with the proper standards results in concrete disciplinary measures.
- Improve conditions at the border to ensure that detention conditions do not drive people to abandon relief claims.
- Reform regulations to allow asylum notwithstanding a prior removal order.
- Given the complexity of asylum law and to prevent confusion among CBP officers, remove the following sentence from CBP Field Guidance: “If an alien asserts a fear or concern which is clearly unrelated to an intention to seek asylum or a fear of persecution, then the case should not be referred to an asylum officer.”

Contact organization: Pangea Legal Services, bianca@pangealegal.org

III. Ensure respect for the rights of immigrant workers

U.S. labor law enforcement relies heavily on individual employee complaints.

Suggested recommendations:

- Increase resources devoted to education and outreach so that individuals, especially immigrants, are aware of their rights and remedies under labor laws.
- Ensure that victims of exploitative employment practices are protected from retaliation and deportation when they report abuses.

Contact organization: The Advocates for Human Rights, abergquist@advrights.org

Many agricultural workers live in employer-owned or -controlled housing. Agricultural workers are exempted from the protection of many labor laws. They often suffer from wage theft, poor housing, lack of healthcare, sexual violence, and human trafficking—problems exacerbated by the isolation of living in the employer’s housing. Workers are denied access to justice, to healthcare, and to society because employers, often with the acquiescence or assistance of law enforcement, harass, threaten with violence and with arrest, and otherwise deny outreach workers’ access to the housing.

Suggested recommendations:

Using existing authority:

- Condition farm labor contractors’ registration certificates and employers’ use of the H-2A guest-worker program on adherence with the right of access for outreach workers.*
- Use a complaint and monitoring mechanism at USDOL or USDOJ to track access violations by employers and local law enforcement agencies.
- Educate government agencies, including local law enforcement, about the rights of outreach workers/human rights defenders.

Contact Organization: Maryland Legal Aid (MDLAB), nnorton@mdlab.org

*MDLAB did not formulate and does not take a position on this recommendation or on any portion of this document not within this section on access to worker housing; contact Sarah Paoletti, Paoletti@law.upenn.edu.

IV. Enforce protections against discrimination targeting immigrants

Undocumented immigrants fear that contacting law enforcement as a victim or witness will lead to deportation. Existing protections for undocumented crime victims are not effectively implemented.

Suggested recommendations:

- Collaborate with state and local governments to establish clear points of contact for U-visa certification and provide regular training for those points of contact.
- Agencies enforcing civil anti-discrimination laws should establish protocols for reviewing U-visa certification requests to ensure that victims of discrimination and exploitation who are also victims of serious crimes can be identified and certified for U-visas.
- Agencies enforcing civil anti-discrimination laws should monitor the collaboration between Immigration and Customs Enforcement and local and state law enforcement under the Priority Enforcement Program (set to succeed the Secure Communities Program) to guard against racial profiling and other forms of racial discrimination.

Contact organization: The Advocates for Human Rights, abergquist@advrights.org

V. Promote the right to housing for immigrants

Suggested recommendations:

- Remove eligibility restrictions based on immigration status for housing assistance.
- Prohibit landlords from requesting information regarding a prospective tenant’s immigration or citizenship status, including a Social Security number.
- Increase enforcement of fair housing rules through an efficient, timely complaint process that ensures individuals receive an effective remedy for discrimination.

Contact organization: The Advocates for Human Rights, abergquist@advrights.org

Migrant Farmworker Access to Justice and Healthcare

ISSUE SUMMARY⁵

Many migrant farmworkers in the U.S. live in employer-controlled housing. Employers and law enforcement officers prevent legal, healthcare, union and other outreach workers from visiting the migrants in their housing. This results in a denial of migrants' access to justice, healthcare and society generally.

1-3 million migrant farmworkers work every year in the American agriculture industry. 89% are minorities, 72% are foreign born, and they are overwhelmingly poor.

Largely due to a history of racism, these workers are still discriminated against under the law. They are exempted from the protection of many basic state and federal labor laws. They do not get paid overtime, and often are not guaranteed even the minimum wage. They face lawful retaliation if they try to join or organize unions or take any concerted action to improve their wages or work conditions.

This vulnerable population routinely suffers wage theft, extremely sub-standard housing, physical abuse, sexual violence and human trafficking. Farm work is one of the most dangerous jobs in America. Fatality rates in agriculture are seven times the national average. Farmworkers are often exposed to dangerous pesticides, suffer from heat stress, and have much higher incidences of HIV, infant mortality, and tuberculosis than the general population.

Many of these migrant workers live in housing that is provided and controlled by their employer and is on or near the farm where they work. This "labor camp" housing is often in rural areas, far from towns and community resources. Because farmworkers often do not have their own transportation, and cannot speak English, they are frequently dependent on their employers to access the world beyond their workplace and the labor camp. They, therefore, do not have independent access to community services, including legal and healthcare services.

Because of migrants' geographic and societal isolation legal, healthcare, union and other social service organizations conduct outreach to the farmworkers in the labor camps where they live, during non-working hours. These workers, like all other free people, should have the right to have visitors in their homes.

However, specific and detailed allegations report employers denying legal, healthcare, and social service outreach workers access to migrant farmworkers in labor camps. Outreach workers regularly experience harassment, are threatened with arrest, and are arrested, for criminal trespass at the housing, and are threatened with or subjected to violence by owners and operators of migrant labor camps.

There is no clear federal law granting a right of access and the law varies state by state. However, this interference and arrest occurs even in states where there is a clear right of access under state law.

The existing limitations on legal advocates' and other migrant rights advocates' access to labor camps severely impedes migrant farmworkers' access to justice, which is a human right in itself but also an essential prerequisite for the protection and promotion of all other human rights.

The U.S. UPR report asserts that it has increased outreach to agricultural workers, it vigorously enforces laws protecting migrant workers, and it wants to end violence against and slavery among agricultural workers. Given the millions of agricultural workers and thousands of migrant labor camps across the country, judging the seriousness of these claims requires asking questions that get beyond anecdotes.

LEGAL FRAMEWORK

The issue of farm labor camp access relates to the following UPR Recommendations, which the US supports: 104, 165, and 193, and these UPR Recommendations, which the US supports in part: 67, 81, 99, 192, 207, and 214.

⁵This factsheet is based on a September 2014 UPR submission by a group of dozens of legal, healthcare, union, anti-trafficking and other organizations from across the U.S. Link: https://www.wcl.american.edu/humright/center/documents/ISOLATEDBYFORCE-MIGRANTCAMPACCESS_FINALwAttachments.pdf.

QUESTIONS FOR THE UNITED STATES

1. **What steps is the U.S. taking at the national and sub-national levels to ensure that legal, healthcare, union, religious and other outreach workers have access to migrant workers in employer-controlled housing?**
2. **How many unannounced visits has the U.S. made to camps when workers are present?**
3. **How many times has the U.S. acted on complaints or conducted an investigation related to the denial of access? How many times has U.S. imposed fines or other penalties for interference with the right of access? How many prosecutions has the U.S. undertaken?**

RECOMMENDATIONS

The United States should, utilizing existing statutory and regulatory authority, take the following steps to address violations of migrant workers' rights:

- Ensure access to workers in employer-controlled housing by community service providers – including legal services, healthcare, union, education and religious outreach workers;
- Take all reasonable measures at national and sub-national levels to protect, respect and fulfill the rights of migrant workers. Provide for and ensure the right of freedom of assembly and association, freedom from arbitrary arrest, the right to personal security, the right to due process, and the right to non-discrimination of outreach workers and farmworkers by ensuring migrant labor camp access, as required by Articles 6, 7, 8, and 10 of the UDHR, Articles 2, 14, 19, 22 and 26 of the ICCPR, and articles 5 and 6 of the CERD;
- Investigate and monitor local law enforcement agencies' and others' actions that interfere with the right to migrant labor camp access through discriminatory enforcement or non-enforcement of the law, intimidation or threats of arrest;
- Train federal, state and local officials on the right of access for outreach workers and agricultural workers;
- Utilize a complaint mechanism to track violations by employers and local law enforcement agencies; and utilize procedures for responding to those violations, and mechanisms to monitor and investigate recurring problems; and
- Educate the public and government agencies, including local law enforcement agencies, city and state elected officials, and state regulatory agencies about the rights of human rights defenders, who they are, and the range of rights they seek to protect.



Please watch a short video about this issue: www.youtube.com/watch?v=3XF71pJOD1o

For more information contact Nathaniel Norton, Maryland Legal Aid: nnorton@mdlab.org

Universal Periodic Review (UPR) Recommendations to be addressed at the September 12th consultation with civil society
Immigration

U.S. supports:

80: Spare no efforts to constantly evaluate the enforcement of the immigration federal legislation, with a vision of promoting and protecting human rights.

104: Make further efforts in order to eliminate all forms of discrimination and the abuse of authority by police officers against migrants and foreigners, especially the community of Vietnamese origin people in the United States.

108: Prohibit and punish the use of racial profiling in all programs that enable local authorities with the enforcement of immigration legislation and provide effective and accessible recourse to remedy human rights violations occurred under these programs.

144: Increases its efforts to eliminate alleged brutality and use of excessive force by law enforcement officials against, inter alia, Latino and African American persons and undocumented migrants, and to ensure that relevant allegations are investigated and that perpetrators are prosecuted.

164, 184, and 210: (164) Ensure that detention centers for migrants and the treatment they receive meet the basic conditions and universal human rights law; (184) Adapt the detention conditions of immigrants in line with international human rights law; (210) Protect the human rights of migrants, regardless of their migratory status.

165: Further foster its measures in relation to migrant women and foreign adopted children that are exposed to domestic violence.

183: Investigate carefully each case of immigrants' incarceration.

185: Ensure that migrants in detention, subject to a process of expulsion are entitled to counsel, a fair trial and fully understand their rights, even in their own language.

208: Prohibit, prevent and punish the use of lethal force in carrying out immigration control activities.

212: Reconsider alternatives to the detention of migrants.

213: Ensure access of migrants to consular assistance.

214: Make greater efforts to guarantee the access of migrants to basic services, regardless of their migratory status.

220: Smarten security checks so as to take into account the frequent homonymy specific to Moslem names so as to avoid involuntary discrimination against innocent people with such names because of namesakes listed as members of terrorist groups.

223: Inform Foreign Missions regularly of efforts to ensure compliance with consular notification and access for foreign nationals in United States custody at all levels of law enforcement.

U.S. supports in Part:

79 and 105: (79) Attempt to restrain any state initiative which approaches immigration issues in a repressive way towards the migrant community and that violates its rights by applying racial profiling, criminalizing undocumented immigration and violating the human and civil rights of persons; (105) Avoid the criminalization of migrants and ensure the end of police brutality, through human rights training and awareness-raising campaigns, especially to eliminate stereotypes and guarantee that the incidents of excessive use of force be investigated and the perpetrators prosecuted.

82: Adopt a fair immigration policy, and cease xenophobia, racism and intolerance to ethnic, religious and migrant minorities.

102: Revoke the national system to register the entry and exit of citizens of 25 countries from the Middle-East, South Asia and North Africa, and eliminate racial and other forms of profiling and stereotyping of Arabs, Muslims and South Asians as recommended by CERD.

207: End violence and discrimination against migrants.

Labor

U.S. supports:

115: Consider taking further action to better ensure gender equality at work.

192: Recognize the right to association as established by ILO, for migrant, agricultural workers and domestic workers.

193: Prevent slavery of agriculture workers, in particular children and women.

U.S. supports in Part:

81: Take the necessary measures in favor of the right to work and fair conditions of work so that workers belonging to minorities, in particular women and undocumented migrant workers, do not become victims of discriminatory treatment and abuse in the work place and enjoy the full protection of the labor legislation, regardless of their migratory status.

US Human Rights Network UPR - Children's Rights Workgroup

The Children's Rights Workgroup with the US Human Rights Network believes all children deserve to be treated with dignity, no matter their race, ethnicity, class, gender, sexuality, or gender identity. Persistent and consistent discriminatory treatment by the US systemically violates their human right to special care and protection, survival and development, cultural and bodily integrity, and self-determination. We are concerned with these issues and make the following recommendations:

Foster care children receive psychotropic medications at rates nine to thirteen times higher than other children, and Black children are the highest disproportionate group in foster care. Because Black girls are often victims of prejudicial attitudes in psychiatric diagnosing - which makes them vulnerable to the over-prescribing of psychotropic medications - **we ask** that the US government collect and share data that is disaggregated by race, age, and gender-identity to determine the full extent that Black girls in foster care are being prescribed psychotropic drugs.

Report Submission: Over-Medication of Psychotropic Drugs & African-American Girls in Foster Care

Contact: Stephanie Franklin sfranklin@franklinlaw.us

Approximately 300,000 – 500,000 Hispanic children are legally hired to work in agriculture in violation of international law, 182. **We ask** for the removal of this exemption, so children are not exposed to pesticides, heat, and harsh work which compromise their education and health.

Report Submission: Legal Child Labor in U.S. Agriculture

Contact: Julia Perez, julia.ecl.perez@hotmail.com

Over 2 million children experience parental incarceration –Indigenous, African-American or Latino children are disproportionately affected. **We ask** that the federal and state governments require courts to consider the impact of parental incarceration on children and allow judges to exercise discretion in sentencing parents to an alternative to incarceration.

Contact: Patricia Allard, pat@justicestrategies.net

Blog of Children of Incarcerated Parents: <http://www.justicestrategies.org/coip>

Thousands of youth in the U.S. face human rights violations in adult jails and prisons, where they are confined as a result of laws in various states that allow youth, sometimes as young as twelve, to be criminally charged and tried as adults. **We ask** that the federal and state governments reform laws to ensure that youth under 18 are neither tried or sentenced as adults; nor detained or incarcerated in adult jails and prisons.

UPR Civil Society Submission: Youth Criminally Tried and Incarcerated as Adults.

Contacts: International Women's Human Rights Law Clinic, jm.kirby@law.cuny.edu; ACLU Michigan/ Juvenile Life Without Parole Initiative, Deb Labelle, +1-734-996-5620; Correctional Association of New York/Juvenile Justice Project, Angelo R. Pinto, Esq., 212.254.5700, ext. 325, apinto@correctionalassociation.org.

RIGHTS OF CHILDREN – CHILD LABOR

Approximately 300,000 – 500,000 Hispanic children are legally hired to work in U.S. agriculture in violation of international law, ILO 182. Please ask for the removal of this exemption from the Fair Labor Standard Act which allows children 12 and under to work in harsh conditions such as extreme heat, exposure to pesticides, and hard labor which compromise their health and education.

The United States has shown they are opposed to child labor by signing ILO 182. Just this year they announced they would spend \$26 million dollars to eliminate child labor^{6, 7, 8} globally. Yet, the laws and protections for children in agriculture remain unequal. Since 2001 the U.S. Congressional House committee has failed to pass legislation to remove the 1938 exemption. As a result of this inaction, the most impoverished children work in conditions doing harvesting work many adults in the U.S. will not perform.

I was one of these children. I defeated the odds but the statistics are not good for the children who labor in agriculture as documented in my UPR report and by other organizations. Memories of myself as a powerless child compel me to try to change the law to save future generations from this type of hardship. I am requesting your support in asking the U.S. to take action for the children in their own country.

RECOMMENDATIONS

Recognize that pesticide exposure via the harvesting work itself and pesticide drift is hazardous to children along with the heat, repetitive motions, and relatively heavy produce loads. Take measures to remove the 75 year old exemption for child labor in agriculture while recognizing the exception for the children of farm owners. Equalize the child labor laws by Presidential Executive Action if necessary since the CARE bill failed to leave Congressional House Committee since 2001⁹. Also, increase the minimum age of tobacco harvesting to eighteen due to the extremely toxic nature of work.

Grant the same labor rights to agriculture workers as those afforded other workers in any other industry including the right to organize, minimum wage, overtime, and workmen's compensation.

⁶ <http://www.dol.gov/opa/media/press/ilab/ILAB20150067.htm>

⁷⁷ <http://www.dol.gov/opa/media/press/ilab/ILAB20150038.htm>

⁸ <http://www.dol.gov/opa/media/press/ilab/ILAB20150331.htm>

⁹ <http://roybal-allard.house.gov/news/documentsingle.aspx?DocumentID=130055>

The United Nations CERD (Convention on Elimination of Racial Discrimination) 2014 Recommendations¹⁰ pertaining to agricultural workers:

Reviewing its laws and regulations in order to protect all migrant workers from exploitative and abusive working conditions, including by raising the minimum age for harvesting and hazardous work in agriculture under the Fair Labor Standards Act in line with international labor standards and ensuring effective oversight of labor conditions.

The UPR report, Legal Child Labor in U.S. Agriculture, is endorsed by organizations and other non-profits have voiced strong support for the elimination of legal child labor in U.S. agriculture.

My contact information follows. I will gladly send the report, and more information. Please let me know your thoughts and whether you can make a recommendation for the elimination of legal child labor in U.S. agriculture.

Julia Perez, MSEE
Associate Director, The Harvest

(480) 330 - 8239 cellular number

Julia.ecl.perez@hotmail.com

Video: <http://www.theharvestfilm.com/>

10



NATIONAL PLAN OF ACTION FOR RACIAL JUSTICE

Suggested Recommendations for the United States Government

The Obama Administration must adopt a **National Plan of Action for Racial Justice** that fully complies with its human rights obligations to eliminate all forms of racial discrimination in the United States and fully implements CERD. We call on the Obama Administration to develop this Plan of Action in partnership with communities directly affected by structural racism across the country.

The State of Racial Discrimination in the United States

Police killings and profiling of black and brown people highlighted the need for comprehensive action in fighting racial discrimination in the United States. Many of us heard about the killings by law enforcement of Michael Brown, Eric Garner, and 12 year old Tamir Rice. For every victim whose name we know, many more go unnamed. With regards to the issue of violence, the killing of black women and girls - transgender and cisgender - remains nearly invisible. This year alone, at least 7 Trans women have been killed, most of them Black. We therefore call on the U.S. Government, to adopt a comprehensive national plan of action that explicitly recognizes economic, social, cultural, civil, political, sexual and environmental rights to combat racism, racial discrimination and protect minority rights.

The National Plan of Action for Racial Justice

The first Universal Periodic Review of the United States Government concluded with a recommendation (Recommendation: 92.111) that called for a National Plan of Action to address racial justice. In addition, the CERD concluding observations included a call for the United States Government to adopt a National Plan of Action for Racial Justice. Lastly, the Working Group for People of African Descent has also made similar recommendations.

The National Plan of Action for Racial Justice would allow for a comprehensive action plan that would be adopted by the federal government and applicable to all levels of government to address persistent contemporary forms of racial discrimination and race disparities in almost every sphere of life. Our current civil rights laws are simply not enough to advance racial equality and human rights for all. They do not address inequalities in access to healthcare and housing, or address the legacies of racism inherent in immigration law, or law enforcement policies that result in excessive incarceration of African Americans and Latinos.

A National Plan of Action for Racial Justice would help create concrete targets for achieving, long overdue racial equality and reduce race disparities in the U.S. In short, we need a way for the government, national and local, to be held accountable when it comes to addressing structural racism in the U.S, and we need it in writing with signatures to know that it's real.

The U.S. has ratified the International Convention on the Elimination of all forms of Racial Discrimination (ICERD) and is obligated to address structural racism. The National Plan of Action will identify concrete steps the Obama Administration intends to take to meet its human rights obligations and fully comply with ICERD.

For More Information:

US Human Rights Network

upr@ushrnetwork.org

Racial Discrimination and Policing in the U.S.

While the U.S. is quick to censure other states for their human rights records, its own record is impugned by deep-rooted racism that pervades many of its state institutions. Though civil society has long been trying to draw attention to this problem, the aftermath of the police killing of Mike Brown, Jr., in Ferguson, Missouri sparked a growing national movement for racial justice not only to address policing issues around brutality, racial profiling, increasing militarization, and a lack of police accountability but also to strike at the root causes of structural racism that results in the political and economic marginalization of Black and Brown communities in the United States.

Though we acknowledge that the recently released U.S. Department of Justice investigation of the Ferguson Police Department¹¹ and the 21st Century Task Force on Policing Interim Report¹² are direct products of the mobilization of countless young people from Ferguson to New York City to Cleveland, mere reports and investigations are not enough to address the deep inequalities and injustices caused by brutal policing and mass incarceration.

The Presidential Task Force's series of recommendations, while not going far enough and lacking enforcement mechanisms, also make clear how broken and dangerous policing practices are throughout the country. The findings of the Ferguson DOJ investigation reiterate what is common knowledge among the Black community—policing and criminal justice practices in Ferguson are racially discriminatory, designed to eke out fines and fees from low-income residents who are targeted and criminalized for their inability to pay, and result in the disproportionate incarceration of Black residents.

Even the U.S. government has recognized, however, that this scenario is not particular to Ferguson – this pattern of racial discrimination is widespread and common across police departments nationwide.¹³ Across the country, Black and Brown people are three times more likely to be searched during a traffic stop than white motorists, are twice as likely to be arrested and almost four times as likely to experience the use of force during encounters with the police. Over 1.68 million black men are under correctional control in the US, not counting jails. That's over three times as many black men as were enslaved in 1850. And Black women are three times more likely than white women to be incarcerated. Ferguson is not an anomaly. The government must take steps to deal with the deep political, social and economic inequities it has produced in a concerted, not piecemeal, fashion.

More concerning, it is important to note that transgender women of color are disproportionately impacted by physical violence, discrimination and structural oppression at every intersection. Structural oppression manifests in many ways. In the United States, Transgender people of color are legally denied access to housing, education, healthcare and employment opportunities. It is legal to deny employment to trans people in 39 U.S. States. Trans women of color are 50x more likely to be impacted by HIV. Over 40% of trans people attempt suicide. Trans people of color are disproportionately impacted by high rates of criminalization and over-policing. The average income of Black Trans people is less than \$10,000 per year. It is time that the U.S. divest from legal structural oppression and invest in the economic, social and cultural rights of all Americans including transgender people of color.

To move beyond rhetoric into actions that bring about deep systemic change, the U.S. must establish and implement:

- **Oversight mechanisms** that address widespread police impunity, brutality and racism. (CAT Conc. Obs. 26) This must start with:
 - o The withholding of Federal Funds for departments that do not comply with DOJ best practices (including data reporting, use of force standards). In order to

¹¹ http://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf

¹² <http://www.cops.usdoj.gov/policingtaskforce>

¹³ http://www.nytimes.com/2015/03/08/us/ferguson-became-symbol-but-bias-knows-no-border.html?hp&action=click&pgtype=Homepage&module=first-column-region®ion=top-news&WT.nav=top-news&_r=0

change entrenched practices there must be financial consequences for abusive and discriminatory departments.

- o The passing of legislation that addresses racial profiling such as the End Racial Profiling Act (CERD Conc. Obs. 8, ICCPR Conc. Obs. 7)
- o Demilitarization of the police through the passage of the Stop Militarization Act (CAT Conc. Obs. 25)
- o Developing best practices on treatment of LGBTQ populations, including appropriate search and seizure procedures
- o Development of community-based accountability mechanisms that allow for meaningful community input into police practices and excessive force. This should not be tokenistic but rather binding and include community control over police priorities, budgets, strategies, procedures, training and discipline.
- A **National Plan of Action**, which would also address the underlying causes of racism, police brutality and impunity. (CERD Conc. Obs. 25) This includes:
 - o Developing an overarching plan founded on divestment from policies that over-police and over-criminalize Black and Brown communities and investment in social programs that make communities safer and healthier in the long term—including education opportunities, full employment, health services and housing.
 - o Reducing the role of police in schools – police are not necessary in schools and need not be involved in deciding what are the appropriate disciplinary interventions for school-based misbehavior. Educators, social workers and counselors, students and community leaders should be resourced to play this role.
 - o Immigration enforcement should be decoupled from local police enforcement for civil infractions or non-serious crimes
 - o End the historic legalized discrimination of transgender people.

Suggested Questions:

1. Does the U.S. plan to develop a National Plan of Action to address structural forms of discrimination and racism that perpetuate social and economic marginalization of Black and Brown communities by over-criminalizing them and under-resourcing the institutions that serve them like schools and health centers?
2. Given the high rate of killings by law enforcement officers of unarmed Black men and boys in particular, what kinds of mechanisms does the U.S. intend to put into place (beyond the oft-repeated but relatively weak measures—like the ability to bring a traditional tort suit—to which the U.S. points in all of its submissions) and support at the federal, state and local levels to make police more accountable to the communities they serve and to give communities input into the structures that govern and control their lives, like law enforcement?
3. Given the escalatory potential, war-zone mindset and anxiety produced by law enforcement's wielding of military equipment and gear (particularly during peaceful public demonstrations but also in operations involving suspicion of non-serious, nonviolent crimes), what steps will the U.S. federal government take to demilitarize the police, repossess the excess military equipment distributed to law enforcement departments across the country, and recalibrate the culture of policing away from military-style simulations?



**Excerpt from
Report of the United States of America
Submitted to the U.N. High Commissioner on LGBT Issues
Universal Periodic Review**

Discrimination against lesbian, gay, bisexual, and transgender individuals Recommendations 86 and 112

35. Equal protection of the rights of LGBT individuals is critically important to the United States, and we have made extraordinary strides to overcome obstacles and institutional biases that too often affect these individuals.

36. In a landmark 2013 ruling, *United States v. Windsor*, the U.S. Supreme Court struck down the federal government's ban on recognizing same-sex marriages. Since then, we have worked to implement that decision by treating married same-sex couples the same as married opposite-sex couples with respect to the relevant benefits and obligations, to the greatest extent possible under the law. As a result, married same-sex couples are now eligible for many federal benefits and recognition, including in the areas of taxation, immigration, student financial aid, and military and veterans' benefits. As of January 2015, same-sex couples can marry in 36 of our 50 states and the District of Columbia.

37. In the area of education, we have resolved a number of cases involving harassment of LGBT individuals in public schools. For example, in 2013, the U.S. government entered into a first-of-its-kind settlement agreement with the Arcadia Unified School District in California to resolve allegations of discrimination against a transgender student. In 2014, the U.S. Department of Education released guidance describing the responsibilities of colleges, universities, and public schools to address sexual violence and other forms of sex discrimination, including discrimination based on gender identity.

38. In the area of policing, in 2014, DOJ's Community Relations Service launched transgender training for law enforcement officials that help improve officer understanding and community relations.

39. In the area of employment, President Obama signed an order prohibiting federal contractors from discriminating against applicants and employees on the basis of sexual orientation or gender identity and adding gender identity as a prohibited basis for discrimination in federal employment. Furthermore, the U.S. government has taken the position that federal law prohibiting sex discrimination in employment extends to discrimination based on gender identity, including transgender status, and that LGBT workers stigmatized for failing to meet sex-based stereotypes may also pursue discrimination claims. In 2011, President Obama also announced the final repeal of the "Don't Ask, Don't Tell" law that barred gay men and lesbians from serving openly in the military.

Criminal Justice

44. In 2012, we issued regulations implementing the Prison Rape Elimination Act to prevent, detect, and respond to sexual abuse in federal, state, and local confinement facilities. These regulations include greater protections for juvenile offenders in adult facilities; new restrictions on cross-gender observation and searches; minimum staffing ratios in juvenile facilities; expanded medical and mental health care, including reproductive health care, for victims of prison rape; greater protections for LGBT and gender non-conforming inmates; and independent audits of all covered facilities.

Gender equality in the workplace

74. U.S. law prohibits compensating men and women differently for the same or similar work, as well as any discrimination in compensation based on sex. However, the “gender gap” in pay persists. Full-time workingwomen earn only about 78 percent of their male counterparts’ earnings. We have established a high level task force to better respond to the issue, and continue to diligently enforce laws that address gender discrimination in pay in the workplace and seek justice for victims of sex-based wage discrimination.

Access to food and healthcare

100. The United States has undertaken many initiatives domestically to promote food security and expand health care. The Affordable Care Act has increased health coverage options and quality through new consumer protections, the creation of the Health Insurance Marketplaces—a new means for uninsured people to enroll in health coverage—and additional support for state Medicaid and Children’s Health Insurance Programs. It requires most health plans to cover ten categories of essential health benefits, including preventive services, maternity and prenatal care, hospitalizations, and mental health and substance use disorder services. (...)

Access to education

104. In 2013, we issued guidance to institutions of higher education to help them promote diversity on their campuses. Guidance was also issued for elementary and secondary schools, school districts, and higher education institutions seeking to achieve a diverse student body.

Homelessness and access to housing, water, and sanitation

105. Housing and homelessness—The United States is committed to ending homelessness, and has made great progress in this area. For example, in 2010, we launched Opening Doors, a strategic plan aimed at ending homelessness among

veterans by the end of 2015; chronic homelessness by 2016; and homelessness for families, youth, and children by 2020; and setting a path to eradicate all types of homelessness in the United States. HUD's statistics show that since that launch, chronic homelessness has dropped 21 percent, homelessness among families has declined 15 percent, and homelessness among veterans has fallen by 33 percent. In 2016, the new National Housing Trust Fund is expected to begin distributing funds to increase and preserve affordable housing for very low-income and homeless individuals. Additionally, federal law guarantees immediate access to a free appropriate public education for children and youth experiencing homelessness.



Black Women's Blueprint, UPR

2015

I. TOPIC: CIVIL RIGHTS AND DISCRIMINATION
Police Brutality and Sexual Assault Against Women of Color

II. ISSUE:

Women of African descent suffer disproportionately high levels of rape and sexual violence but are less likely to have their cases prosecuted and perpetrators of sexual assaults are more likely to escape punishment, especially if the perpetrator is a state official. USDOJ data indicates that Black women are 35% more likely than their white counterparts to be victims of violence and account for a full third of intimate partner homicides. However, they comprise only 8% of the U.S. population. A thorough analysis of federal data published in 2014 by Corey Rayburn Yung, associate professor at the University of Kansas School of Law, concludes that between 1995 and 2012, police departments across the country systematically under-counted and under-reported sexual assaults. After nearly two years of work, he estimates conservatively that between 796,213 and 1,145,309 sexual assault cases never made it into national FBI counts during the studied period. Where sexual assault is concerned, while it is standard knowledge that 70% of cases of sexual assault are underreported each year, this number is higher within Black communities. Black women experience rape at a rate of 22% higher than white women and mixed women experience sexual assault at a rate 50% higher than white women. According to research by The National Black Women's Health Imperative in 2003, 40% of Black women reported coercive contact of a sexual nature by the age of 18. An initial review of an anonymous survey in progress since 2011, administered by Black Women's Blueprint indicates that number may be closer to 60%.

Research shows an undeniable, complex and often cyclical connection between violence against women in Black communities and poverty. Violence can jeopardize women's economic wellbeing, often leading to homelessness, unemployment, interrupted education and health, mental health, and other daily stressors and struggles. In turn, poverty increases the risk of domestic violence, dating violence, stalking and sexual violence; it can make women and children more dependent on others for survival and, therefore, less able to control their safety, to consent to sex, and to meaningfully address their own victimization.

III. RELEVANT HISTORY:

As a party to the International Convention on the Elimination of all forms of Racial Discrimination, the International Covenant on Civil and Political Rights and other human rights treaties, the U.S. is bound by the provisions of the Conventions. Under Article 2 of the ICCPR, the U.S. must respect and ensure the rights recognized in the Convention without distinctions based on race, color, sex, language, political or other opinion, national or social origin, property, birth or other status. In signing and ratifying CERD, it must "condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms." In addition, the U.S. must guarantee the right to equal treatment before the law, to security of the person from violence whether at the hand of the state or a private individual, and to equality in such areas as employment, housing and schooling.

To ensure that state actors are also held accountable and policies combat discrimination, it must "review governmental, national and local policies, and . . . amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it

exists.” Unfortunately, the United States has failed to identify and eliminate public policies and practices that have an unjustifiable racially disparate impact, regardless of whether they are accompanied by racist intent.

IV. ACTION TAKEN OR NOT TAKEN ON RELEVANT HISTORY:

The U.S. has made some efforts to address human rights violations but many of the factors that contribute or result in racial discrimination and racial disparities in the U.S. have not been adequately addressed. Consequently, women of African descent continue to face disproportionately high rates of *poverty* and are

subjected to sexual violence. This even more troubling when we take into consideration that U.S. compliance with ICERD requires more than the presence of laws prohibiting racial discrimination and sexual violence. It requires an examination of whether the non-discrimination and equality guaranteed by law are actually enjoyed in practice. It is the clear that black women do not enjoy full equality under the law. If it is to satisfy its treaty obligations, the United States must take greater responsibility for the role it plays--and has played--in creating and perpetuating racial discrimination and inequality.

The U.S. also continues to negate obligations that are linked to economic, social and cultural rights. The data discussed above clearly indicates that the U.S. has not fulfilled its obligations to protect the right to non-discrimination in the enjoyment of rights articulated under Article 5 of ICERD.

V. REQUESTED RECOMMENDATION(S):

- i. In its 2013 Government response to the CERD Committee, the U.S. reiterated its commitment to ensure that response to violence against women “empower survivors and hold offenders accountable is a response driven and defined by the community itself.” We commend the U.S. for its commitment and strongly urge the government to provide adequate funding to community driven responses to sexual violence.
- ii. Request that the Department of Justice launch a federal investigation into the Officer Holtzclaw and other under-reported but systematic violations by police officers against black women.
- iii. Enact federal legislation that requires the federal government to record complaints of police violence and misconduct, including excessive use of force, rape and racial profiling.
- iv. The U.S. definition of racial discrimination which is narrow and requires intent is contrary to ICERD. In order to comply with ICERD, the U.S. should adopt the ICERD disparate impact standard of discrimination which offers broad protections against modern forms of discrimination such as implicit bias and structural racism.
- v. Adopt a adopting a national work plan, as recommended by UPR in 2010, to address police brutality.

VI. QUESTION:

- i. We commend the U.S. for designating CEDAW as a priority for ratification but could you elaborate on the specific steps that have been taken to prepare for the ratification process?
- ii. We understand that there are federal and State legislation to combat racial discrimination but give the fact that the existing framework makes it difficult to prosecute police officers for police brutality, including rape, is the U.S. taking additional steps, such as adopting a national work plan, as recommended by UPR in 2010, to address police brutality, particularly against people of color?
- iii. About 27 % of African-Americans live below the poverty line and since families headed by a single adult are more likely to be headed by women, black women are at a greater risk of poverty. This is linked to violence as violence jeopardizes women's economic well being, often leading to homelessness, interruption in education and unemployment. What steps does the United States plan to take to combat the links between sexual assault and poverty?

VII. CONTACT INFORMATION: Netsanet Tesfay, Human Rights Attorney at Black Women's Blueprint, ntesfay@blueprintny.org



Sexual Violence in the U.S. Military

Universal Periodic Review of the United States

Sexual violence and rape in the United States military is perpetrated at alarming rates, with one in three service women experiencing sexual assault. Service members who report incidents of sexual violence are denied their right to due process and redress, and are frequently subjected to retaliation, stigma and harassment within the military. The U.S. government's policies have not been sufficient to adequately address the problem of sexual violence or the culture of impunity that exists in the U.S. military.

CULTURE OF IMPUNITY:

The U.S. military justice system fails to properly prosecute and punish perpetrators of sexual violence. Even when prosecuted, perpetrators often receive minimal or no punishment, are tried for minor offenses, or given the option to resign from the military. Furthermore, after reporting unwanted sexual conduct, survivors frequently face retaliation, stigma, harassment, and even termination of their military careers.

DISCRIMINATION IN OBTAINING VETERANS BENEFITS:

Once discharged from the military, survivors of sexual violence continue to face discrimination and governmental refusal to recognize or address the harms they have suffered, and they are less likely to be approved for disability compensation when compared to other veterans suffering from PTSD.

CHAIN OF COMMAND:

Under the current military justice system, the accused's commander has authority to make key decisions about responding to sexual violence claims. However, commanders' close working relationships with the accused, interest in retaining experienced service members, and need to ensure the military success of their mission compromises their ability to handle cases impartially and afford redress to sexual violence survivors.

LACK OF ACCESS TO COURTS:

Survivors of military sexual violence do not have access to federal courts to seek redress for the government's failure to prevent sexual assault and address specific allegations, a right assured to all civilian citizens

The United States' failure to adequately address sexual violence in the military constitutes a violation of international human rights law as noted by both the Special Rapporteur on Violence Against Women, Rashida Manjoo¹, and the Committee Against Torture.²

Special Rapporteur Manjoo recommended that

the military ensure a no-tolerance policy for rape and allow victims to bring claims against the military in civilian courts. The Committee Against Torture recommended that the U.S. increase its effort to prevent and eradicate sexual violence in the military.

SUGGESTED QUESTIONS FOR THE UNITED STATES:

1. What steps is the U.S. taking to ensure that complaints of military sexual violence are adequately prosecuted and punished as provided by law, and to ensure that every survivor receives an adequate remedy?
2. What measures is the U.S. taking to ensure that survivors of military sexual violence and related human rights violations have meaningful access to redress through civilian federal courts?
3. How will the U.S. ensure impartiality in its prosecution and adjudication of cases involving sexual violence in the U.S. military when the accused's commander has prosecutorial discretion?
4. What efforts will the U.S. undertake to ensure that its new anti-retaliation laws—prohibiting and punishing retaliation against service members who report unwanted sexual conduct—are being successfully implemented?
5. Why does the U.S. Department of Veterans Affairs continue to impose a different evidentiary standard for disability benefits for veterans who suffer from Post-Traumatic Stress Disorder based on military sexual trauma, as compared to other stressors?

SUGGESTED RECOMMENDATIONS FOR THE UNITED STATES:

1. Take all necessary measures to prevent sexual violence in the military and ensure a safe working environment, including effectively implementing and enforcing the prohibition of retaliation against service members who report unwanted sexual contact;
2. Ensure impartial and effective prosecution and redress of sexual violence allegations by removing the decision whether to prosecute and punish alleged perpetrators from the chain of command;
3. Extend the jurisdiction of civil courts in cases involving violations of human rights by the military, including cases of sexual violence perpetrated by military members;
4. Ensure that officers and military personnel responsible for human rights violations, particularly sexual violence, receive adequate punishments and are never given the opportunity to resign from the military in lieu of prosecution; and
5. Follow-up on the recommendations of the UN Committee Against Torture and Special Rapporteur on Violence Against Women to ensure equal access to disability compensation to veterans who are survivors of military sexual violence.

FOR MORE INFORMATION:

Read our full UPR submission at <http://www.lawschool.cornell.edu/Clinical-Programs/global-gender-justice/upload/UPR-Submission-Sexual-Violence-in-the-US-Military.pdf>, or contact Anne-Claire Blok at anne-claire.blok@cornell.edu.

“While I was on active duty, I was violently raped by a fellow Marine. I went to report my attack only to have my superiors laugh in my face and refuse to allow me to seek medical care. That in itself was traumatic, but what followed was complete torture. Justice was denied to me, and retaliation ensued.”

– STEPHANIE SCHROEDER, UNITED STATES MARINE CORPS

² Report of the Special Rapporteur on Violence against Women, its causes and consequences, Rashida Manjoo, Addendum, Mission to the United States of America, A/HRC/17/26/Add.5, para. 22-31, June 6, 2011.

³ Concluding Observations on the Combined Third to Fifth Periodic Reports of the United States of America, CAT/C/USA/CO/3-5,

The Excessive Militarization of American Policing

As the nation watched Ferguson, Missouri, in the aftermath of the death of Michael Brown, it saw a highly and dangerously militarized response by law enforcement. Media reports indicate that the Ferguson Police Department responded to protests and demonstrations with “armored vehicles, noise-based crowd-control devices, shotguns, M4 rifles like those used by forces in Iraq and Afghanistan, rubber-coated pellets and tear gas.” Law enforcement’s response in Ferguson gave pause to many, and brought the issue of police militarization to national attention, especially in Washington, where President Obama said “[t]here is a big difference between our military and our local law enforcement, and we don’t want those lines blurred.” Militarized policing is not limited to situations like those in Ferguson or emergency situations—like riots, barricade and hostage scenarios, and active shooter or sniper situations—that Special Weapons And Tactics (SWAT) were originally created for in the late 1960s. Rather, SWAT teams are now overwhelmingly used to serve search warrants in drug investigations, with the number of these teams having grown substantially over the past few decades. Dr. Peter Kraska has estimated that the number of SWAT teams in small towns grew from 20% in the 1980s to 80% in the mid-2000s, and that as of the late 1990s, almost 90% of larger cities had them. The number of SWAT raids per year grew from 3,000 in the 1980s to 45,000 in the mid-2000s. Today, there are an estimated 50,000 to 80,000 SWAT deployments per year, which amounts to at least 136 SWAT raids per day.

A recent ACLU report titled [*War Comes Home: The Excessive Militarization of American Policing*](#) found that 79% of the incidents reviewed involved the use of a SWAT team to search a person’s home, and more than 60% of the cases involved searches for drugs. We also found that more often in drug investigations, violent tactics and equipment, including armored personnel carriers (APCs), were used. The use of a SWAT team to execute a search warrant essentially amounts to the use of paramilitary tactics to conduct domestic criminal investigations in searches of people’s homes. This sentiment is shared by Dr. Peter Kraska, who has concluded that “[SWAT teams have] changed from being a periphery and strictly reactive component of police departments to a proactive force actively engaged in fighting the drug war.” Just as the War on Drugs has disproportionately impacted people and communities of color, we have found that the use of paramilitary weapons and tactics also primarily impacts people of color. Of the people impacted by SWAT deployments for warrants, at least 54% were minorities. We also found that, of the deployments that impacted minorities, 68% were for drug searches.

The militarization of American policing has occurred in part as a result of federal programs that use equipment transfers and funding to encourage aggressive enforcement of the War on Drugs by state and local police agencies, specifically:

- The Department of Defense 1033 program, which has resulted in the free transfer of over \$5 billion worth of military equipment to state and local law enforcement agencies;
- The Homeland Security Grant Program, which has provided billions of dollars to state and local law enforcement agencies for “terrorism prevention-related law enforcement activities,” though that phrase does not appear to be clearly defined;
- The Department of Justice’s Edward Byrne Memorial Justice Assistance Grant program, which state and local law enforcement agencies often use to fund lethal and less-lethal weapons, tactical vests, and body armor.

President Obama established a Law Enforcement Equipment Working Group to review these programs. His administration is in the process of evaluating the 1033 program and other federal programs and grants to determine whether they are being administered as intended and whether they are effective. A report from this interagency working group, which includes the Department of Defense, Department of Homeland Security, and Department of Justice, is expected mid-May.

The President also created a Task Force on 21st Century Policing in December 2014 and the Task Force gave some consideration to militarized policing, primarily in the context of Ferguson related events. A report from the Task Force issued last March made the following recommendation: “Law enforcement agencies should create policies and procedures for policing mass demonstrations that employ a continuum of managed tactical resources that are designed to minimize the appearance of a military operation and avoid using provocative tactics and equipment that undermine civilian trust.”

Police militarization increases the risk of the employment of methods that may constitute or result in civil and human rights violations, including the storming of civilian households and the infliction of unjustified injury or death. Furthermore, police militarization exacerbates already existing abuses within the law enforcement system, such as selective policing, racial profiling, excessive and disproportionate use of force.

Recommended Questions

1. What steps is President Obama taking to implement the Task Force recommendations that include recommendations around militarization? Has the Administration considered implementing a moratorium on the 1033 program while the interagency review is conducted and its subsequent recommendations are implemented? Will President Obama’s reforms be guided by U.S. human rights obligations and commitments?
2. Is there a legitimate role for the United States government to play in providing free military equipment to state and local law enforcement agencies, in light of the traditional distinction that has been drawn between the military and the police? If so, what is the scope of that role?
3. Beyond training, what steps will the United States government take to ensure that state and local law enforcement agencies are not making inappropriate use of weapons designed for combat and in violation of U.S. human rights obligations?

Suggested Recommendations

1. The United States Department of Defense should immediately stop providing automatic and semi-automatic rifles, APCs, and other military weapons and equipment not suitable for law enforcement purposes to state and local law enforcement agencies. The Secretary of Defense should submit to Congress an annual written certification that each agency participating in the 1033 Program has provided documentation accounting for all equipment transferred to the agency, and should prohibit additional transfers to any agency for which the Secretary cannot provide such certification.
2. The United States Department of Homeland Security should condition receipt of grant funding to state and local law enforcement agencies on an agreement not to use the funding to purchase automatic and semi-automatic rifles, APCs and other military weapons and equipment not suitable for law enforcement purposes and violate U.S. human rights obligations. The Department of Homeland Security should also require state and local law enforcement agencies that receive funding from the agency to certify that they have not used equipment purchased with such funding except in actual high-risk scenarios, to make a record of each equipment purchase made using such funding, and to make such records available to the public.

For more information, contact the Human Rights Program of the ACLU: humanrights@aclu.org

Last updated: April 17, 2015

The Death Penalty

Since 1976, when the modern death penalty era began in this country, 1,407 people have been executed. As of January 2015, there were 3,019 people awaiting execution across the country. The U.S. death penalty system in 32 states, the federal system, and the military violates international law and raises serious concerns regarding the United States' international commitments and legal obligations under the Universal Declaration of Human Rights and numerous human rights treaties.

There continue to be positive developments regarding the death penalty in the United States. The number of new death sentences continues to drop, and on May 2, 2013, Maryland became the sixth state in six years to repeal the death penalty. Despite these positive signs, the U.S. death penalty system remains fraught with problems.

Although the Supreme Court held in 2008 that one method of lethal injection used in the United States was constitutional, the landscape has since changed. Some of the drugs are no longer manufactured or the drug companies have refused to make the drugs available to states for execution. States have hurriedly switched to new, untested methods, with little information released or oversight allowed. As a result, many states—including South Dakota, Pennsylvania, Colorado, Georgia, Texas, Ohio, and Missouri—have begun purchasing lethal drugs from compounding pharmacies. These pharmacies produce derivative drugs that have not been approved by the Food and Drug Administration. Also, states have turned to novel and untested drug combinations. As a result, several condemned prisoners have suffered excruciating pain during executions. Moreover, the states of Alabama, Arkansas, Florida, Kentucky, Oklahoma, and Tennessee continue to authorize the electric chair as a method of execution under certain circumstances.

States are also increasingly adopting secrecy laws so that condemned people are unable to gain information about the drugs that will be used in their execution or the sources of those drugs, creating barriers to bringing legal challenges alleging that their executions will amount to torture or cruel, inhuman or degrading treatment.

Since 1973, 152 innocent people have been released from death row, many after spending decades on death row. Still many others have been released from death row after their guilt for the capital offense was put in doubt, though they have not been exonerated completely. Tragically, not all innocent people have escaped execution.

Racial bias continues to taint the capital punishment system in the United States, from jury selection through decisions about who faces execution. The death penalty is disproportionately imposed on people of color.

Condemned prisoners often wait decades in solitary confinement before execution, in violation of internationally-recognized prohibitions against cruel, inhuman or degrading treatment. This “death row phenomenon” may cause some prisoners, like Robert Gleason executed in Virginia in January 2013, to “volunteer” for execution rather than remain on death row.

Last year, the White House itself characterized the gruesome execution of Clayton Lockett as falling short of the requirement that the death penalty be carried out humanely. On May 2, 2014, President Obama tasked Attorney General Eric Holder with conducting a full policy review of capital punishment in the U.S., acknowledging both the cruelty of lethal injections and racial disparities in sentencing. It is unclear what type of investigation or review Attorney General Holder will conduct and no further information has been provided at this time.

On January 15, 2015, the state of Oklahoma executed Mr. Charles Warner, over the dissent of four justices of the United States Supreme Court, who would have stayed his execution so the courts could fully review Oklahoma's execution procedures, and specifically its use of the controversial drug midazolam. Just days after Mr. Warner's

execution, the United States Supreme Court decided to review Oklahoma's lethal injection protocol and subsequently halted the executions for the three remaining plaintiffs to the litigation – but of course the Court's decision was too late for Mr. Warner. The court is scheduled to hear the case on April 29, 2015. In the meantime, in March 2015 the Governor of Utah signed legislation reauthorizing firing squads as an acceptable form of execution in the event that drugs required for lethal injection are unavailable, as an effort to bypass controversial lethal injection standards.

In March 2014, the UN Human Rights Committee recommended, among other things, that the United States should take measures to ensure that the death penalty is not tainted by racial bias; to strengthen safeguards to protect against wrongful convictions and executions; to “ensure that lethal drugs used for executions originate from legal, regulated sources, and are approved by the United States Food and Drug Administration and that information on the origin and composition of such drugs is made available to individuals scheduled for execution”; and to consider a federal moratorium on the death penalty.

In August 2014 and November 2014, respectively, the UN Committee on the Elimination of Racial Discrimination and the Committee Against Torture also issued recommendations to the U.S. to encourage “a moratorium on the death penalty with a view to abolishing the death penalty” at the federal level, especially when considering racial biases that have led to the disproportionate arrest, incarceration, life imprisonment, and death penalty sentencing of racial and ethnic minorities in the United States.

In its February 2015 report to the UPR, the U.S. government addressed Recommendations 95, 118, 134, and 135 on capital punishment. Though it acknowledged that President Obama ordered the Department of Justice to conduct a review on the application of the death penalty, it failed to provide further information on the scope of the review, which, a year later, has yet to be released.

Recommended Questions

1. What measures will the United States take to ensure that it will not subject persons under sentence of death to cruel, inhuman, and degrading treatment?
2. What is the scope of the Department of Justice review, which was announced in May 2014 and has the U.S. government made any progress in studying racial disparities of the death penalty?

Suggested Recommendations

1. The United States should immediately cease all federal death penalty prosecutions and impose a moratorium on executions. It should encourage state governments to do the same.
2. The United States should fulfill its commitment in the 2010 UPR process to study the racial disparities of the death penalty in the United States.
3. The federal government, through the Food and Drug Administration, should ensure that state Departments of Correction do not acquire drugs to use in lethal injection procedures illegally.
4. The federal government should encourage states to disclose the combination of drugs that are being used in lethal injection procedures before the execution is scheduled.

For more information, contact the Human Rights Program at the ACLU: humanrights@aclu.org

Last updated: April 17, 2015



Accountability for Torture

Under the George W. Bush administration, many hundreds of people were tortured and abused by the CIA and Department of Defense, primarily in Afghanistan, Guantánamo, and Iraq, but also in other countries, after unlawful rendition. Yet, to date, there has been little accountability for abuses including torture, arbitrary detention, and enforced disappearances.

In January 2009, shortly after entering office, President Obama took important steps to dismantle the torture program. Through executive orders, President Obama ordered the CIA to close its secret prisons, banned the CIA from all but short-term transitory detention, and put the CIA under the same interrogation rules that apply to the military. But in the following years—as the ACLU and other NGOs have documented—the Obama administration undermined that early promise by thwarting accountability for torture and other abuses:

- i. No survivor of the U.S. torture program has had their day in court. On behalf of torture victims, the ACLU and other human rights organizations challenged the mistreatment in a number of lawsuits. The government succeeded in preventing those lawsuits from being adjudicated on their merits based on procedural arguments.
 - a. For example, the Obama administration embraced Bush administration arguments that “state secrets,” not only restrict discovery, but can also quash an entire lawsuit.
 - b. The executive branch has also successfully invoked the doctrine of qualified immunity to dismiss civil suits alleging torture, cruel, inhuman, or degrading treatment, forced disappearance, and arbitrary detention without those claims being considered on the merits.
- iv. There has been no criminal accountability for the high-level architects of the previous administration’s torture program; only lower-ranking military service members and a single civilian government contractor have been prosecuted.
- v. The U.S. government has fought to keep secret many records that would allow the public to understand the full extent of the previous administration’s torture and extraordinary rendition program.
- vi. With domestic avenues for relief closed, a number of victims of U.S. torture and abuse have filed petitions against the United States with the Inter-American Commission on Human Rights. The U.S. government has yet to respond to any of the petitions, including one filed nearly seven years ago on behalf of Mr. Khaled El Masri.

The United States has a critical opportunity to demonstrate its commitment to the rule of law and provide long-overdue accountability for the Bush administration’s illegal torture program.

The recently-released summary of the Senate Select Committee on Intelligence Study of the CIA’s Detention and Interrogation Program (“Senate torture report”) includes significant new information relating to the commission of serious federal crimes, including torture, homicide, and sexual assault. The

[ACLU and Human Rights Watch](#) have called for the appointment of a special prosecutor to conduct a comprehensive criminal investigation of the conduct described in the report, including all acts authorizing or ordering torture and other abuses.

The U.S. UPR submission mentions the Durham investigation, which was concluded in 2012 without any prosecutions against any high-level officials who authorized, or CIA agents who were involved in, the CIA torture program. The U.S. submission fails to provide detailed information on the precise scope of Mr. Durham's mandate which seems to have focused on instances in which interrogators overstepped limits set by senior officials, rather than on the culpability of senior officials themselves. It does not appear that Mr. Durham or his investigators interviewed any prisoner who was subjected to the CIA torture program. During the review in November 2014 of the United States before the United Nations Committee against Torture in Geneva, the committee raised concerns, based on letters and accounts from torture victims or their attorneys, over whether Mr. Durham had interviewed any detainee. The United States stated it had interviewed 96 persons as part of the investigation, but it did not indicate whether any of the prisoners who were subjected to abuse and torture were among those interviewed.

The failure to conduct a comprehensive criminal investigation contributes to the notion that torture remains a permissible policy option for future administrations. It also undermines the ability of the United States to advocate for human rights abroad, and compromises Americans' faith in the rule of law at home.

Suggested Recommendations

1. Ensure that all cases of unlawful killing, torture or other ill-treatment, unlawful detention, or enforced disappearance are effectively, independently, and impartially investigated through the **appointment of a special prosecutor to conduct a comprehensive criminal investigation** including all acts authorizing or ordering unlawful conduct.
2. Release documents relating to the mistreatment of detainees, including:
 - a. Declassification of the full Senate torture report.
 - b. The memorandum issued by President Bush on September 17, 2001 authorizing the CIA to establish secret overseas interrogation facilities.
 - c. Hundreds of CIA cables describing the use of waterboarding and other harsh interrogation techniques.
 - d. Over 2,000 photographs of abuse at detention facilities throughout Iraq and Afghanistan.
3. Appoint an independent body to provide compensation and rehabilitation services to those who suffered torture or other cruel, inhuman, or degrading treatment. President Obama should publicly acknowledge and apologize to the victims of U.S. torture policies.

For more information, contact the Human Rights Program of the ACLU: humanrights@aclu.org

Last updated: April 17, 2015

The United States Uses Classification to Block Investigation of Torture and Redress for Victims

Committee Against Torture: The U.S. has “a draconian system of secrecy surrounding high-value detainees that keeps their torture claims out of the public domain [and] prevents access to an effective remedy.”

Despite the recent declassification of selected facts in the U.S. Senate Torture Report, the United States continues to consider the following information on about CIA detainees classified at the highest level:

- Details of capture other than location and date;
- Countries involved in secret detention;
- Persons involved in capture, rendition, detention, or interrogation;
- Descriptions, duration, frequency, and sequencing of “enhanced” interrogation techniques; and
- Conditions of confinement in secret detention.

The classification of CIA detainees’ experience of abuse interferes with investigation of and remedies for the United States’ admitted torture:

Investigation: Guantanamo prisoners and their attorneys cannot provide information about their ill-treatment for criminal investigations in the United States or elsewhere, or even to the Senate Select Committee on Intelligence

Complaint: Guantanamo prisoners and their attorneys cannot state facts about their ill-treatment that would entitle them to relief in international human rights bodies

Redress: Guantanamo prisoners cannot seek rehabilitation or other redress for their ill-treatment

Truth: Guantanamo prisoners cannot explain what the CIA did to them, forcing them to accept the United States’ curated narrative of their abuse

#DeclassifyTorture



For more information, contact James Connell, attorney for Ammar al Baluchi:
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The United States Universal Periodic Review 2015

Suggested Questions & Recommendations – Security & Human Rights

Accountability for Torture and Enforced Disappearances

More than four months after publication of the Senate Select Committee on Intelligence summary report on the secret detention programme operated by the Central Intelligence Agency (CIA), the US administration has done nothing to end impunity for the torture and enforced disappearances committed in the program. Indeed, it has failed to meaningfully respond to the report in any way whatsoever.

Major US agencies implicated in the Senate report summary, including the Departments of Justice and State, have even kept the full report in sealed envelopes, and locked away. The Obama administration is attempting to sweep the report – and the crimes committed in the programme – under the carpet. Instead of scrutinizing the report, examining the failures that led to the systematic abuse of detainees, and holding perpetrators accountable, the Obama administration is continuing on a course charted by its predecessors in the Bush administration and engaging in a de facto amnesty for the crimes under international law of torture and enforced disappearance.

Suggested Question:

- Will the US commit to reopening and expanding its investigation into CIA secret detention, rendition, and interrogation programs and practices, ensuring that its scope and conduct meet international law and standards, and bringing to justice in fair trials all the persons, regardless of their level of office or former level of office, suspected of being involved in the commission of crimes under international law, such as torture and enforced disappearance?

Suggested Recommendation:

- **Without further delay, reopen and expand the U.S. Department of Justice's investigations into CIA secret detention**, rendition and interrogation programmes and practices, ensure that its scope and conduct meet international law and standards, and bring to justice in fair trials all the persons, regardless of their level of office or former level of office, suspected of being involved in the commission of crimes under international law, such as torture and enforced disappearance.
- In accordance with its obligations under international human rights law and taking into consideration the Global Principles on National Security and the Right to Information (Tshwane Principles), ensure that all information of which there is an overriding public interest in disclosure is disclosed without further delay, including the names, locations, and precise dates of operation of all secret detention sites operated by the CIA between 2001 and 2009, and disclose which detainees were held, where and when, in such sites and at the behest of the USA during this period in secret detention by other governments.

Accountability for Potentially Unlawful Killings from U.S. Drone Strikes

Amnesty International has documented potentially unlawful deaths from US drone strikes, including in our October 2013 report, *'Will I Be Next?' US Drone Strikes In Pakistan*. Since we published the report, the Obama administration has neither publicly committed to investigating the cases of potentially unlawful killings that we documented, nor provided its own account of what occurred.

This contravenes US legal obligations to investigate alleged violations of the right to life and to provide victims with adequate, effective and prompt reparation for the harm suffered. Obligations to investigate arise from both international human rights law and—in the narrow and exceptional circumstances of armed conflict— international humanitarian law (the laws of war).

Administration officials responded to our report by suggesting that the US has a count of “civilian” casualties that diverges widely from non-governmental reports. However, these officials have not provided the count or said whether it includes the cases we documented. In effect, the Obama administration’s position is that it knows whom it is killing in drone strikes, but it will not confirm whether the individuals whose deaths we documented, including a grandmother and 14-year-old boy, are among them. The administration’s secrecy makes its assurances of legality impossible to test, rendering them meaningless and detrimental to the goal of accountability.

As UN expert Christof Heyns emphasized in a September 2013 report to the General Assembly: “Drone victims, just as any other human rights victims, and society at large have a right to have access to information relating to allegations of human rights violations and their investigation...Likewise, during an armed conflict, relatives of persons killed or missing have the right to know the fate of their relatives.”

Suggested Question:

- Will the U.S. disclose information about the facts, legal basis and any investigations into the cases Amnesty International documented in its October 2013 report, including the killing of Mamana Bibi on October 24, 2012 and the killing of 18 laborers on July 6, 2012?

Suggested Recommendation:

- **Adopt policies and mechanisms to ensure independent and impartial investigations** into all cases where there are reasonable grounds to believe that drone strikes resulted in unlawful killings, including the cases documented by Amnesty International in its October 2013 report “Will I Be Next?”
- **Disclose information about the facts, legal basis and any investigations into the cases Amnesty International documented** in our October 2013 report, including the killing of Mamana Bibi on October 24, 2012 and the killing of 18 laborers on July 6, 2012.
- **Ensure that the victims of unlawful drone strikes, including family members of victims of unlawful killings, have effective access to remedies**, including in the form of restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. Ensure compensation is available to families of civilians killed or injured

even when investigations suggest that, in a particular killing of civilians, casualties did not result from violations of international law.

Please contact Naureen Shah, director of Amnesty International USA's Security and Human Rights Program, for further information: nshah@aiusa.org.



**The Human Rights Policy
Seminar at UNC School of
Law**

**THE UNIVERSAL PERIODIC REVIEW OF THE UNITED STATES OF AMERICA, SECOND CYCLE,
TWENTY-SECOND SESSION OF THE UPR HUMAN RIGHTS COUNCIL**

TOPIC: US UPR Submission, Progress and Challenges, A. Domestic Mechanisms for Human Rights Implementation, ¶5, National Security- ¶¶ 91-93, 96, Conclusion, ¶119 and Annex IV: First Cycle UPR Recommendations, 4. NATIONAL SECURITY Recommendation 148.

ISSUE 1: Failure to engage states and local governments on human rights violations; duty to investigate and provide reparations to victims harmed at the state and local level. The US is a federalist system; national laws are often implemented most meaningfully at the local level. When the Senate ratified the ICCPR and CAT, it included this advisory language: *That the United States understands that this Covenant shall be implemented by the Federal Government to the extent that it exercises legislative and judicial jurisdiction over the matters covered therein, and otherwise by the state and local governments; to the extent that state and local governments exercise jurisdiction over such matters.* Yet neither the states nor the federal government have investigated or responded to concerns of human rights treaty violations when they occur on the state or local level. For example, in Johnston County, N.C. County, illegal extraordinary rendition flights (Aero Contractors for the CIA) operated out of county airport facilities and were regularly used to kidnap individuals and render them to sites for interrogation by torture as set forth in the Senate Intelligence Committee's report on torture, and as established by various UN bodies and reports by the Council of Europe. Citizens across North Carolina (and other parts of the country) have asked the federal government to engage the state and its political subdivisions to account to torture victims and repair the damage that they have suffered as a result of the rendition flights, thus far to no avail.

ISSUE 2: Failure to Investigate and Offer Reparations to Victims of Extraordinary Rendition and Torture, Including Those Delivered to Sites outside US Jurisdiction. The United States as engaged in torture and cruel, inhuman or degrading treatment or punishment as evidenced by the Senate Report on the CIA's Use of Torture, as well as other international and civil society investigations. Contrary to paragraph 91 in its UPR submission, the US has transferred individuals to foreign countries notwithstanding the likelihood, if not certainty, that they would be tortured. (See, e.g., case of Abou Elkassim Britel, rendered by the CIA to Témara, a notorious torture prison in Morocco.) Despite the assertions in paragraph 96, there has been little or no transparency, investigation, or formal disclosure regarding the torture they suffered. Nor have there been offers of reparations for any of the torture victims as a necessary means to ensure that the government never resorts to the use of those techniques again.

RELEVANT HISTORY: The Human Rights Committee has expressed concerns regarding implementation of the ICCPR by State and local authorities as well as the federal government's commitment to prohibit and punish torture; the Committee on Torture recommended that the US conduct full investigations of all allegations of torture and provide increased transparency; prosecute perpetrators of torture, extrajudicial executions and other serious violations of human rights; take measures to eradicate all forms of torture and ill treatment of detainees anywhere; halt all transfer of detainees to third countries unless there are adequate safeguards to ensure that they will be treated in accordance with international law requirements; undertake all necessary measures to provide redress to those whose rights were violated, including payment of necessary

compensation; and more. (2014 and 2006-Committee on Torture, 2011-Human Rights Council, and 2013, 2014-Human Rights Committee)

ACTION TAKEN OR NOT TAKEN ON RELEVANT HISTORY:

The US has failed to sufficiently engage with and ensure that states and localities abide by treaty obligations with regard to torture and cruel, inhuman, and degrading treatment. It has turned a blind eye to the use of state and local resources in the State of North Carolina to operate an illegal program of extraordinary rendition and torture. The US has failed to fully investigate and disclose facts related to extraordinary rendition and torture or provide any reparations to victims despite victims' requests made before domestic courts and international human rights bodies.

REQUESTED RECOMMENDATIONS:

State and Local Investigations. The US should properly engage states and localities about their treaty obligations. Human rights treaties were written with the expectation that they would be implemented regionally and locally. If states fail to implement treaty provisions, the US cannot, as a practical matter, achieve compliance with the treaty provisions. The US must meet with civil society/rights advocates to implement US human rights treaty obligations at the state and local level. The US must investigate Johnston County Airport and other locations in North Carolina used for the unlawful purposes of extraordinary rendition and torture.

Provide Remedy for Extraordinary Rendition and Torture. International law, including the UDHR, ICCPR, and CAT, is unanimous in calling for States to provide an effective remedy for those whose fundamental rights are violated. Reparation for the injury caused by the internationally wrongful act can take the form of restitution, compensation and satisfaction, either singly or in combination. One measure of complying with these treaty obligations is to issue victims an appropriate official and individualized apology. It is indispensable for the United States to recognize that the very legitimacy of international laws banning the use of torture is compromised if it does not acknowledge its violations and injustices towards specific individuals with meaningful reparations including an apology. Although the US cannot undo its previous human rights violations, it can nonetheless serve the goals of the treaties it has signed pertaining to basic human dignity it claims to uphold through meaningful acts of reparations.

QUESTION:

Will the United States oblige the states and localities to comply with human rights treaties offer an official and individualized apology to those individuals who suffered as a result of the extraordinary rendition and interrogation by torture program (specifically, North Carolina for its role in extraordinary rendition)? Will the United States provide reparations to these individuals?

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**Universal Periodic Review Consultation
University of the District of Columbia Clarke School of Law
April 15, 2015**

Written Statement of the Charity & Security Network

On Sept. 15, 2014 the Charity & Security Network and 11 other civil society organizations submitted comments to the UN Human Rights Commission for the upcoming Universal Periodic Review. The submission noted that the U.S. has failed to address restrictions in domestic counterterrorism legislation that are inconsistent with human rights standards or to conduct a review of such restrictions, per Recommendations 58 and 65. Specifically, it noted that:

- The criminal prohibition on material support of terrorism has been applied to speech and communication with designated foreign terrorist organizations even for the purpose of preventing or alleviating the suffering of a civilian population, including speech or communications to reduce or eliminate the frequency and severity of violent conflict and reducing its impact on the civilian population. Such speech is considered prohibited “technical advice and assistance” under the law. This has erected a significant barrier to the ability of peacebuilding organizations to engage armed actors in peace processes.
- The material support statute and economic sanctions programs effectively impair or block access to civilians in need of humanitarian relief because incidental, minimal transactions necessary to access civilians are prohibited in the same manner as deliberate distribution of lethal assistance to terrorist groups. The narrow exemption for the material support prohibition is insufficient to make the law consistent with the requirements of international humanitarian law.
- The Treasury Department’s licensing process can be used to permit otherwise prohibited transactions, but it has proved to be an ineffective means of allowing humanitarian organizations access to civilians.

These broad, categorical prohibitions on humanitarian, peacebuilding and other civil society organizations found in U.S. counterterrorism law do not meet human rights or humanitarian standards that permit derogation of rights only in specific and limited circumstances. Instead, both the letter and application of U.S. law described above do the reverse, imposing general prohibitions with limited and ineffective remedies for civil society.

As noted in our submission, “UN Special Rapporteurs have spelled out the specifics of acceptable limits on human rights and humanitarian assistance. In 2006 Martin Shenin, the Special Rapporteur on the promotion and protection of human rights while countering terrorism, submitted a report to the General Assembly that noted, “The onus is on the

Government to prove that a threat to one of the grounds for limitation exists and that the measures are taken to deal with the threat.”¹⁴ Schienen noted that **limits on protected rights must be exceptional and temporary measures**. Even then “[T]he **principles of proportionality and of necessity must be respected** concerning the duration and geographical and material scope of the state of emergency as well as all the measures of derogation resorted to because of the state of emergency. Furthermore, a State party to ICCPR must fully respect its other international obligations whenever it derogates from the Covenant.... Before resorting to derogations, **States must make a careful analysis of the situation, examine if and which derogating measures are necessary, and choose from among the different options the one that will be the least restrictive for the protection of the rights in question.**”¹⁵

In his 2013 report to the General Assembly the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, notes that on **limitations** on association and assembly must “not only pursue a legitimate interest but also be **“necessary in a democratic society.”**¹⁶ Kiai explains further that “In order to meet the proportionality and necessity test, **restrictive measures must be the *least intrusive means* to achieve the desired objective** and be limited to the associations falling within the clearly identified aspects characterizing terrorism only. They must not target all civil society associations...”¹⁷ (emphasis added)

Conclusion

We were disappointed that the U.S. did not address these issues in its submission to the Human Rights Commission. We ask states to raise these issues during the review

¹⁴ Report to the UN General Assembly by Special Rapporteur on the promotion and protection of human rights while countering terrorism, Martin Scheinin, 16 August 2006 See A/61/267 para. 20.

¹⁵ Ibid, Paragraph 12 and 13

¹⁶ UN General Assembly, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai April 2013 A/HRC/23/39 para 23

¹⁷ Kiai report, Paragraph 23

Physicians for
Human Rights



UN Universal Periodic Review of United States of America April 2015

Statement on Force-feeding and Rectal Feeding of National Security Detainees

Physicians for Human Rights (PHR) is deeply concerned about the continued force-feeding of hunger striking detainees at Guantánamo Bay detention facility, an abusive practice omitted from the U.S. report to the Universal Periodic Review. The World Medical

Association's Declaration of Malta explicitly prohibits the force-feeding of mentally competent persons as a form of inhuman and degrading treatment. The United States should immediately end this policy and practice and remedy the legitimate grievances of detainees by ending indefinite detention and ensuring humane conditions of confinement.

The United States should also take immediate steps to ensure that no health professionals are compelled to participate in force-feeding or are punished for refusing to do so. The Defense Health Board, a federal advisory committee to the U.S. Secretary of Defense, recommended in March 2015 that military medical personnel should be excused from duties that violate professional ethics. PHR urges the Department of Defense (DOD) to dismiss charges against a Navy nurse who refused to force-feed Guantánamo detainees and faces potential discharge. PHR further urges the DOD to adopt the Board's recommendations and to establish policies and mechanisms to empower military health professionals to reject unethical or inhumane practices, without fear of reprisal.

In addition, the December 2014 executive summary of the U.S. Senate Select Committee on Intelligence's (SSCI) report on the CIA's torture program documents the disturbing use of rectal feeding or hydration on five CIA detainees. The medical profession's consensus is that there is no clinical foundation or justification for rectal feeding. The summary indicates that this procedure was conducted "without medical necessity," meaning oral and/or intravenous access was possible in these individuals, and that it was used to control and/or punish the detainees. Nevertheless, the CIA continues to defend it as a "medical procedure." PHR is deeply concerned that the Obama administration's official position is that rectal feeding is legitimate medical treatment, when in fact it constitutes a form of sexual assault.

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THE UNIVERSAL PERIODIC REVIEW OF THE UNITED STATES OF AMERICA

I. TOPIC: The United States is Obligated to Compensate Victims of Torture

II. ISSUE:

In May 2015 the United States will appear for its second Universal Periodic Review. Principal among the questions raised by States will be whether the United States has provided effective reparation to victims of torture under the CIA's Rendition, Detention and Interrogation (RDI) program. In order to comply with its obligations under international human rights and humanitarian law to remedy victims, to serve as a model for other countries grappling with acts torture, and to reassert its global leadership in human rights, the United States must compensate victims of the RDI program.

Despite universal condemnation of torture, the U.S. subjected those it suspected of ties to high-level terrorist cells to secret detention and other forms of torture and cruel, inhuman or degrading treatment between 2001 and 2007. This official program—involving “enhanced interrogation techniques” (“EITs”), extraordinary rendition, and “black site” prisons—was officially ended by President Barack Obama by executive order in January 2009.

Of the 119 acknowledged CIA detainees—a category that is under-inclusive in light of individuals rendered to third countries—the U.S. Senate found that at least 26 were wrongfully held and did not meet the program’s legal standard for detention. President Obama has acknowledged that the United States committed acts of torture,¹ and the United States government has affirmed that it failed to “live up to” the values reflected in the CAT.² However, despite its assertion that U.S. law provides a “wide range of civil remedies,”³ not a single victim of the CIA’s extraordinary rendition program—including those who were “wrongfully detained”—has received compensation. Instead, U.S. courts have thrown out compensation claims on national security grounds.

The United States routinely provides compensation to victims of U.S. conduct in situations of armed conflict, regardless of legal culpability. The United States also compensates victims of negligent acts by its armed forces outside of armed conflict, and reportedly has provided compensation for victims of drone strikes.

The ongoing failure of the United States to compensate victims of official torture gravely impairs the moral authority of the United States as “a leader in respecting, promoting, and defending human rights and the rule of law.”⁴ This is especially true for those it admits it never lawfully detained.

The United States should seize the moral high ground and provide leadership for other nations that seek to reckon with their use of torture. If the U.S. retains any hope of honoring its commitment to “end torture around the world and to address the needs of torture victims,”⁵ it must establish a viable system to compensate victims.

⁵ Press Conference by the President, Aug. 1, 2014.

⁶ Opening Statement, M. E. McLeod, Acting Legal Adviser, U.S. Dept. of State, CAT, November 12-13, 2014, Geneva.

⁷ Periodic Report of the USA (2014), UN Committee Against Torture, CAT, paragraph 147, p.53.

⁸ *Id.*

⁹ Statement by President Barack Obama on the International Day in Support of Victims of Torture, June 24, 2011.

III. RELEVANT HISTORY:

In 2014, as in 2006, the Committee Against Torture called on the United States to ensure that “effective reparation, including adequate compensation, is granted to every victim” of U.S. torture. The Human Rights Council made similar findings in 2011. In 2014, the Human Rights Committee found that the United States had created barriers to accountability and redress for victims, and should provide effective remedies.⁶ Such reparations are required under international law.

Article 14 of the Convention Against Torture requires that a State Party “ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation.” As the Committee Against Torture and the Human Rights Committee have made clear, States must provide full reparation to victims of torture, including compensation.

The U.S. has taken the position that the CAT Article 14 obligation to provide an enforceable right to compensation for individual victims of torture does not apply in situations of armed conflict. However, the United States simultaneously acknowledged that international humanitarian law requires state-to-state remedies to compensate victims of torture in armed conflict.

The U.S. is incorrect regarding its human rights obligations. A State must provide compensation to all individuals it has tortured, even when the mistreatment occurred during armed conflict. Extensive State practice also demonstrates that States have an obligation to compensate victims of torture in situations of armed conflict. Indeed, Canada, Macedonia, Poland, the United Kingdom, and Sweden have all compensated, or been ordered to compensate, victims for their collusion in acts of torture under the CIA program.

International law requires full reparation for an internationally wrongful act. Torture is a non-derogable violation of the ICCPR, a criminal violation under the CAT, a grave breach under IHL, and customary international law *jus cogens* prohibition. It is universally recognized as an internationally wrongful act.

IV. ACTION TAKEN OR NOT TAKEN ON RELEVANT HISTORY:

The U.S. has failed to implement the recommendations of the Human Rights Council, the Human Rights Committee, and the CAT Committee by failing to establish a viable compensation system for victims of torture.

V. REQUESTED RECOMMENDATION(S):

The U.S. must provide remedies in the form of compensation to victims of torture.

VI. QUESTION:

Given that no individual has been compensated for acknowledged acts of torture under the CIA program, has the U.S. established a viable system of compensation for victims of torture?

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Access to Justice for Guantánamo Detainees

Thirteen years after opening, the prison at Guantánamo Bay still holds 122 foreign prisoners (76 of whom are from Yemen). Fifty-five of these men have been cleared for release—the vast majority were cleared by a U.S. government interagency task force in 2010—yet all remain detained. Another 34 men have been designated for indefinite detention without charge or trial, and 7 men face charges in the flawed military commission system. Torture and ill-treatment, including forced-feeding, at Guantánamo have been well-documented, yet not a single senior government official has been held accountable.

Due to delays by the executive branch as well as Congressional restrictions, the transfer of the detainees who have been cleared for release has been infrequent. These individuals languish in detention without knowing when, if ever, they will be released. There is some recent progress, however. Between September 2014 and January 2015, 27 detainees were released and resettled in third countries. But the pace of transfers and the process established to clear additional detainees for release remain exceedingly slow.

The Periodic Review Boards, which began about a year ago after more than two years of delay, are meant to provide an opportunity for indefinitely imprisoned detainees to challenge their continued detention through an administrative hearing. In their first year, however, the hearings have largely only aggravated the practice of indefinite detention. They have proven to be painfully slow and still lack important due process safeguards. In their first year, the boards held hearings for only nine detainees out of an eligible 71. At that rate, the last detainee will not receive his first review board hearing until April 2026. Further, the admissibility of secret evidence means that detainees and their representatives may be unable to meaningfully contest the government's assertion that a detainee presents a continued threat, or the reliability of the government's information.

The Periodic Review Board system is not meant to replace detainees' right to petition for the writ of habeas corpus, but even that right has been seriously constrained by court decisions adopted at the urging of the executive branch, which give excessive deference to the government's overbroad detention standard and evidentiary claims. The Obama administration has also opposed in court the release of detainees against whom the government has no evidence of wrongdoing, such as ACLU client Mohamedou Ould Slahi (a Mauritanian national). For its part, Congress continues to keep in place provisions banning or otherwise restricting the transfer of detainees.

There are also troubling reports that the Obama administration supports closing the Guantánamo prison by moving detainees to a Department of Defense detention facility in the United States. Indefinite detention in the United States is as unlawful and unacceptable as it is at Guantánamo. Attempts at establishing such a regime could result in efforts by this and future administration to bypass the constitutional and human rights protections of the criminal justice system in favor of indefinite military detention.

Recommendations

- I. Take all necessary measures to transfer and resettle without delay all detainees cleared for release in a manner consistent with international law obligations, and to ensure a timely and meaningful Periodic Review Board process for all detainees held indefinitely.
- II. Take all necessary measures to immediately end the practice of indefinite detention, and oppose any efforts to broaden unlawful indefinite detention beyond Guantánamo Bay.
- III. End the unfair trials and military commission system at Guantánamo. Where there is credible and untainted evidence of wrongdoing, bring charges against detainees in federal courts.

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Last updated: April 17, 2015

THE UNIVERSAL PERIODIC REVIEW OF THE UNITED STATES OF AMERICA

The United States Targeted Killings Program

I. ISSUE

In May 2015, the United States will appear for its second Universal Periodic Review. An important aspect of this review should assess the legality of the U.S. targeted killings program.

Since 2002, the United States has carried out targeted killings using remotely piloted aircraft (drones) and other weapons to kill individuals outside of conventional armed conflict. Although the United States does not normally publicize information about these strikes, independent journalists have tracked more than 500 strikes in Pakistan, Somalia, and Yemen, resulting in the alleged deaths of between 481–1055 civilians. The United States has largely refused to acknowledge the strikes, clarify their legal justification, adequately investigate allegations of civilian death, or compensate civilian victims.

The U.S. refusal to acknowledge the strikes and civilian harm violates the rule of law, denies victims the possibility of justice, and compounds anger in impacted communities. Greater disclosure of U.S. targeted killing legal and policy standards and the implementation of clear mechanisms to track, disclose, and respond to cases of civilian harm are essential first steps towards ensuring accountability and redress, as well as prerequisites to informed public assessment and debate about a deeply controversial lethal force program. Oversight and judicial review are essential for accountability, yet the United States has refused to disclose even basic information about targeted killings in response to transparency requests and prevented cases alleging violations from being heard on their merits.

The United States has only minimally disclosed the legal analysis, standards, and criteria to be used in carrying out targeted killings in accordance with international law. In May 2013, President Obama released a short factsheet on policies and procedures for carrying out targeted killings.¹⁸ While it set a standard of “near certainty that non-combatants will not be injured or killed,” NGO investigations since have credibly alleged that the United States is not consistently adhering to its stated policy.¹⁹

As the United States increasingly relies on aerial strikes in counter-terrorism efforts and clears the way for the export of lethal drones to other nations, its failure to disclose standards and practices, adequately investigate strikes, and compensate civilian victims undermines core international human rights protections and sets a troubling precedent.

¹⁸ https://www.whitehouse.gov/sites/default/files/uploads/2013.05.23_fact_sheet_on_ppg.pdf.

¹⁹ <http://www.amnestyusa.org/research/reports/will-i-be-next-us-drone-strikes-in-pakistan>;
<http://www.hrw.org/reports/2013/10/22/between-drone-and-al-qaeda>.

II. U.N. ENGAGEMENT ON TARGETED KILLINGS

The U.N. Human Rights Council in its 25th session called on all states to comply with their obligations under international law with regard to the use of armed drones and transparency, and to carry out prompt, independent, and impartial investigations of international law violations.²⁰ In September 2014, the 27th session of the Human Rights Council held an expert panel on the use of armed drones, in which speakers rejected impunity for drone strikes and emphasized the importance of transparency, investigations, and the availability of remedies.²¹ Three separate UN Special Rapporteur mandate holders have criticized the lack of transparency in carrying out drone strikes, and have called on states to disclose the numbers of those killed and investigate credible allegations of unlawful death and injury.²² These concerns have also been raised in numerous reports by civil society.

III. REQUESTED RECOMMENDATIONS:

1. The United States should publicly disclose the legal and policy criteria governing its lethal targeting operations and the factual basis for those strikes, identify the number and identity of those killed, specify the safeguards in place to ensure compliance with international law, conduct prompt, independent, and impartial investigations, and provide compensation to civilian victims.
2. The United States should provide information in response to open-records requests and lawsuits, and not prevent meaningful oversight and judicial review of targeted killings. The United States should fully cooperate with domestic and international mechanisms investigating and seeking to provide accountability for targeted killings.

IV. QUESTIONS

1. What steps is the United States taking to fulfill its repeated yet still-unrealized promises of providing greater transparency about its targeted killing program?
2. What steps is the United States taking or planning to take to effectively investigate alleged civilian harm and meaningfully review the U.S. targeted killings program?
3. What steps is the United States taking or planning to take to compensate civilian victims of targeted killings and to do so in a transparent and equitable manner?

V. CONTACT

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Last updated: April 17, 2015

²⁰ <http://daccess-dds-ny.un.org/doc/UNDOC/LTD/G14/123/87/PDF/G1412387.pdf>.

²¹ http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session28/Documents/A_HRC_28_38_ENG.doc.

²² http://www.un.org/en/ga/search/view_doc.asp?symbol=A/68/382;

http://www.un.org/en/ga/search/view_doc.asp?symbol=A/68/389;

<http://www2.ohchr.org/english/bodies/hrcouncil/docs/14session/A.HRC.14.24.Add6.pdf>.



Proposed Recommendations to the U.S. on Human Rights and National Security Surveillance

U.S. intelligence agencies have been secretly acquiring and monitoring vast amounts of personal and sensitive communications and data around the world. Many of these surveillance operations violate the right to privacy, the freedom of expression and other human rights. Access, the American Civil Liberties Union, the Brennan Center for Justice, Human Rights Watch and PEN American Center urge your delegation to propose the following recommendations during the upcoming Universal Periodic Review of the U.S.'s human rights record.

The U.S. should:

PRIORITY RECOMMENDATIONS

40. Recognize a legal duty to respect and ensure the right to privacy and other human rights of persons outside its territory when it acquires, processes, uses, stores or shares their digital communications and data.
41. Recognize that, under international law, any interference with the right to privacy (including any surveillance activity) must be a necessary and proportionate means of pursuing a legitimate governmental aim, and minimally intrusive of protected interests.
42. Recognize that any interference with the right to privacy (for example, selection of targets for surveillance) must be consistent with the prohibition against discrimination on protected grounds (such as those listed in Article 2(1) of the ICCPR).

OTHER RECOMMENDATIONS

3. Recognize that mass, bulk or indiscriminate surveillance is an unlawful, and practically always disproportionate, interference with the right to privacy.
4. Disclose information sufficiently comprehensive and precise to enable persons to foresee the circumstances in which the U.S. may monitor their digital communications and data, including any significant legal interpretations of laws, orders and procedures for the use, storage and sharing of any data acquired.
5. Disclose all surveillance activities, procedures and relevant legal interpretations to oversight bodies, and take all other steps necessary to ensure sufficient and robust oversight conducted by all three branches of government.
6. Establish adequate and effective guarantees against arbitrary and unlawful acquisition, processing, use, storage and sharing of digital communications and data.
7. Provide access to effective judicial and other remedies for persons who have a reasonable basis for believing that U.S. surveillance activities have violated their rights, including by ensuring that U.S. law on notice and standing permits such access.

THE UNITED STATES OF AMERICA

Universal Periodic Review

The United States of America has never accounted for all of the individuals who disappeared or were killed by racist individuals or organizations, including police organizations, during the civil rights era from the 1940s to the present date.

HUMAN RIGHTS BASED ON RACE

SUMMARY: The United States of America has never come to terms with accountability for the devastating loss of life during a time of domestic terrorism that continued in many forms after the legal end to slavery <http://www.eji.org/lynchinginamerica>. In the most modern era, from the 1940s to the present, thousands have died at the hands of racist individuals and organizations, often with the active cooperation or silence of local, enforcement agencies. <http://www.msnbc.com/msnbc/the-ghosts-the-civil-rights-era-it-never-too-late-justice> Despite the promise to families and society evidenced by the Emmett Till Unsolved Civil Rights Crime Act of 2007, H.R. 923 (110th Congress 2007-2009) <https://www.govtrack.us/congress/bills/110/hr923/text> the government has failed to ensure thorough procedures to identify all of these individuals or fully investigate all of the deaths involved.



Emmett Till, age 14, in 1955 after his torture and drowning by two white men who accused him of whistling at a white woman. His mother, Mamie Till Mobley insisted that his coffin stay open for the whole world to see what these racists had done to him. The two men were tried and acquitted by an all-white male jury in about 20 minutes and others were never prosecuted.



March remembering victims of domestic terrorism in Meridian, Mississippi USA 2013

ISSUE ONE: Although the Emmett Till Act requires the federal government to identify unsolved civil rights killings from the period prior to 1969, the U.S. Department of Justice and FBI have failed to implement methods to identify the full range of victims of domestic racist terrorism from that era. Only a handful of names have been added to the partial list that existed when the law was passed. The Syracuse University Cold Case Justice Initiative has already discovered over 300 suspicious killings not on any FBI list.

QUESTIONS:

- What strategies were used pursuant to the Emmett Till Act to identify those killed by racist terrorism prior to 1969?
- Why did the list of victims remain virtually the same as the individuals identified before the Act was passed?
- What criteria were used to decide who was a victim of the civil rights domestic terrorism under the Emmett Till Act?

RECOMMENDATIONS:

- Prioritize full time task forces and records searches to identify those who disappeared or were killed based on race during this era.
- Include people who disappeared or died as a result of suspicious police killings.

ISSUE TWO: Even with the passage of The Emmett Till Act the U.S. Department of Justice failed to “expeditiously” conduct “thorough investigations” as required by U.S. law of those unsolved civil rights homicides already included on the Federal Bureau of Investigation list of victims. As of their last report to the U.S. Congress in 2014, the DOJ has closed all but 11 of the 126 investigations on their list, often without interviewing all new potential witnesses or remaining family members.

QUESTIONS:

- How many DOJ attorneys, if any, are assigned full time to the investigations and prosecutions of possible cases under the Emmett Till Act?
- Why are there no specialized civil rights cold case federal agents or regional task forces dedicated to this problem as in child abduction or drug cases?
- What efforts have been made to identify and prosecute KKK leaders who are suspected of ordering the killings?

RECOMMENDATIONS:

- Appointment of a special prosecutor to coordinate the full accounting, investigation and prosecution of cases under the Act.
- Extend and expand the Act to continue indefinitely without a sunset date and to investigate racist killings since 1969.
- Establish task forces, including civil rights groups, to assist with the

ISSUE THREE: The silence and efforts to conceal the involvement of local law enforcement and state officials is a continuing problem in the U.S.A. from the prior civil rights era to today as demonstrated by the ongoing people’s movement in response to the deaths of Michael Brown, Eric Garner and thousands of others. There are potentially thousands of “suspicious racist killings” at the hands of local police yet the federal and local governments refuse to investigate many of these deaths.

QUESTIONS:

- Civil rights groups have identified suspicious killings by police to the government. Why are none of these victims added to the FBI’s list of unsolved civil rights killings for further investigation or no efforts made to find past killings by police?
- What effort is the U.S. government making to ensure that local police records are not destroyed?
- What rights are given to the families of these possible victims of police violence?

RECOMMENDATIONS:

- Appointment of a special prosecutor to coordinate the full accounting, investigation and possible prosecution of suspicious police killings.
- Full implementation of the required reporting of all police homicides as proposed in recent legislation and appoint civil rights attorneys as local special prosecutors in all suspicious police killings.
- Establish task forces, including civil rights groups to conduct thorough investigations of the scope of this problem during the civil rights era to the present day.