

Full Transcript: US Third Periodic Report to UN Committee Against Torture. Nov. 12-13, 2014

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Day 1: November 12, 2014 – Geneva

Amb. Keith Harper, U.S. Rep. to the Human Rights Council

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Thank you, Mr. Vice-Chair. Mr. Vice-Chair, distinguished members of the Committee:

I am Ambassador Keith Harper, the United States Representative to the UN Human Rights Council.

As our President has said, “Torture violates United States and international law as well as human dignity.” It is “contrary to the founding documents of our country, and the fundamental values of our people.”

For that reason, the United States took a leading role in the negotiations of the Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment more than thirty years ago. Our country's leaders have long championed the Convention, across the political spectrum. When President Reagan signed the Convention and submitted it to the Senate of the United States in 1988 for advice and consent, his letter urged ratification to “clearly express United States opposition to torture, an abhorrent practice unfortunately still prevalent in the world today.” The United States ratified the treaty six years later, with

support from both major political parties. Opposition to torture is a fundamental American value. Accordingly, I was honored to participate in this week's events marking the 30th anniversary of this bedrock Convention.

We are proud of our country's history and record, and have made great progress since our last appearance before this Committee. At the same time, we recognize that no nation is perfect, ours included. But we have learned from the past, and have strengthened our implementation of the Convention.

We see our dialogue with the UN human rights treaty bodies as part of a valuable process to push all nations, including the United States, to do better. Indeed, we approach our engagement with the Committee as a dialogue. Our meeting[s] today and tomorrow are an opportunity for us to present our efforts to implement the Convention *to you* — but also an opportunity for us to learn *from you*. We have faith that both sides of the dialogue will be constructive.

The presence of civil society today in this room is particularly important to us. I came to government from civil society, as have many members of our delegation. So I have first-hand knowledge of the essential role of civil society in ensuring protection of human rights, including at home.

I am honored to appear before you today and present an experienced, senior-level delegation from the United States. The members of our delegation represent four federal government agencies, and two of our fifty states, Mississippi and Rhode Island.

Following me here, Tom Malinowski, Assistant Secretary of State for the Bureau of Democracy, Human Rights, and Labor, will present. Then Mary McLeod, Acting Legal Adviser at the State Department, followed by David Bitkower, Deputy Assistant Attorney General from the Department of Justice, will provide remarks.

With that, I am honored to turn it over to Assistant Secretary Tom Malinowski.

Asst. Sec. Tom Malinowski, Democracy, Human Rights, and Labor, U.S. Department of State

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Thank you very much Keith, Mr. Chairperson, members of the Committee. On behalf of the Department of State and the United States, I want to thank the Committee for the chance to discuss our 2013 Report. The United States takes very seriously our obligations under the Convention and our dialogue with this Committee. We will address today and tomorrow the progress we have made since our last presentation in 2006, and how we continue to try to implement the Convention in improved ways.

The United States was founded on the principle of respect for the dignity of the individual, and no crime offends human dignity more than torture. Prohibition of torture and cruel treatment is part of our Constitution, it binds our federal government and all 50 of our states. We believe that torture, and cruel, inhuman and degrading treatment and punishment are forbidden in all places, at all times, with no exceptions. The legal and moral argument against

torture would be dispositive under any circumstances. It would not matter to that argument if torture were effective; but our experience has also taught us that it is not. It not only devastates its victims, but harms people and countries that employ it. In many places, it is primarily used to coerce false confessions or simply to inflict suffering for its own sake. Much of the time, as George Orwell once wrote, “the object of torture is torture.”

For all these reasons, the United States actively works to combat torture around the world. When we see it, we condemn it. We urge other governments to cease its use. We make efforts to sanction those responsible. We support civil society organizations that campaign against torture, and that treat its victims.

It’s important to stress that we expect others to hold us to the same high standards to which we hold them. And we do not claim to be perfect. A little more than ten years ago, our government was employing interrogation methods that, as President Obama has said, any fair-minded person would believe were torture. At the same time, the test for any nation committed to this Convention and to the rule of law is not whether it ever makes mistakes, but whether and how it corrects them. When this issue arose in the United States during the last decade, our democratic institutions worked as designed. Our free press and civil society led a robust public debate. Our courts reaffirmed the protections against torture and other mistreatment. Our Congress strengthened these fundamental protections by an overwhelming, bipartisan vote. In 2008, Americans of our two major political parties chose presidential candidates who [were] resolutely opposed to torture. And President Obama further reinforced the ban in an Executive Order in his first days in office.

As a result, America’s national security agencies now have arguably more explicit safeguards against torture and cruelty than those of any other country on Earth. They can and should be a model for others.

Reporting this progress to civil society as we did yesterday and to this Committee is part of our obligation and another way we hope to lead by example. We look forward to answering your questions and to hearing your recommendations on how we can deepen that commitment.

To continue our presentation, I will now turn to my colleague, Acting Legal Adviser for the State Department Mary McLeod, for her opening remarks.

Acting Legal Adviser Mary McLeod, U.S. Department of State

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Thank you, Tom. Distinguished Chairperson, members of the Committee, on behalf of the United States, it is my honor and privilege to address the Committee Against Torture and to present the Third Periodic Report of the United States on implementation of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

The United States is proud of its record as a leader in respecting, promoting, and defending human rights and the rule of law, both at home and around the world. But in the wake of the 9/11 attacks, we regrettably did not always live up to our own values, including those

reflected in the Convention. As President Obama has acknowledged, we crossed the line and we take responsibility for that.

The United States has taken important steps to ensure adherence to its legal obligations. We have engaged in ongoing efforts to determine why lapses occurred, and we have taken concrete measures to prevent them from happening again. Specifically, we have established laws and procedures to strengthen the safeguards against torture and cruel treatment. For example, immediately upon taking office in 2009, President Obama issued Executive Order 13491 on ensuring lawful interrogations. This Executive Order was clear: consistent with the Convention Against Torture and Common Article 3 of the 1949 Geneva Conventions, as well as U.S. law, any individual detained in armed conflict by the United States or within a facility owned, operated, or controlled by the United States, in all circumstances, must be treated humanely and must not be tortured or subjected to cruel, inhuman, or degrading treatment or punishment. The Executive Order directed all U.S. officials to rely only on the U.S. Army Field Manual in conducting interrogations in armed conflict. And it revoked all previous executive directives that were inconsistent with the Order, including legal opinions regarding the definition of torture. Executive Order 13491 also created a Special Task Force on Interrogations and Transfer Policies Issues, which helped strengthen U.S. policies so that individuals transferred to other countries would not be subjected to torture.

In addition to these steps, the United States has sought to make its interrogation operations more transparent to the American public and to the world. We have made public a number of investigations of the treatment of detainees in the post-9/11 time period. We are expecting the public release of the findings and conclusions of a detailed congressional investigation into the former detention and interrogation program that was put in place in the immediate aftermath of 9/11. President Obama has made clear that this document should be released, with appropriate redactions to protect national security.

In an effort to ensure that we are doing the utmost to prevent torture and cruel treatment, the United States has carefully reviewed the extent to which certain obligations under the Convention apply beyond the sovereign territory of the United States and is prepared to clarify its views on these issues for the Committee.

In brief, we understand that where the text of the Convention provides that obligations apply to a State Party in “any territory under its jurisdiction,” such obligations, including the obligations in Articles 2 and 16 to prevent torture and cruel, inhuman or degrading treatment or punishment, extend to certain areas beyond the sovereign territory of the State Party, and more specifically to “all places that the State Party controls as a governmental authority.” We have concluded that the United States currently exercises such control at the U.S. Naval Station at Guantanamo Bay, Cuba, and with respect to U.S.-registered ships and aircraft. Although the law of armed conflict is the controlling body of law with respect to the conduct of hostilities and the protection of war victims, a time of war does not suspend operation of the Convention Against Torture, which continues to apply even when a State is engaged in armed conflict. The obligations to prevent torture and cruel, inhuman, and degrading treatment and punishment in the Convention remain applicable in times of armed conflict and are reinforced by complementary prohibitions in the law of armed conflict.

There should be no doubt: the United States affirms that torture and cruel, inhuman, and degrading treatment and punishment are prohibited at all times in all places, and we remain resolute in our adherence to these prohibitions.

In closing, we welcome the opportunity to engage with the Committee during this presentation and we look forward to answering your questions.

Deputy Asst. Att’y Gen. David Bitkower, Criminal Division, U.S. Department of Justice

Official version: [text here](#)

Thank you, Mary. Mr. Chairperson, distinguished members of the Committee, and representatives of civil society, it is an honor to appear before the Committee today. My name is David Bitkower and I serve as a Deputy Assistant Attorney General in the Criminal Division of the United States Department of Justice.

The Department of Justice plays a critical role in ensuring that our federal, state, and local government officers protect human rights and uphold our obligations under the Convention. We do so by undertaking investigations, initiating criminal prosecutions, and filing civil lawsuits. We are deeply committed to preventing violations of the prohibition against torture and cruel, inhuman and degrading treatment or punishment; to pursuing justice on behalf of victims; and to denying perpetrators safe haven in our country.

My colleagues from the State Department have discussed ways in which the United States has not always lived up to its values. The Department of Justice has been part of the broad, long-lasting, and comprehensive effort to examine those failures and ensure they do not happen again. The nation reaffirmed by statute that all detainees must be humanely treated, President Obama issued an Executive Order forbidding the use of torture, and the Department has withdrawn prior legal opinions that permitted mistreatment. The Department’s career prosecutors, acting under both the current Attorney General and his predecessors, also undertook several reviews and criminal investigations into specific allegations of detainee abuse.

We have reinforced our commitment to accountability in other contexts as well. We have brought criminal prosecutions against those who sought safe haven in the United States, such as: Chuckie Taylor, who committed torture and other crimes in Liberia; Sulejman Mujagic, who tortured a prisoner of war in the Bosnian conflict; and Guatemalan soldiers who participated in and concealed their roles in massacres before coming to the United States.

Topic: Accountability (prosecution of perpetrators)

We have prosecuted Americans, including a former United States soldier who was convicted of raping and killing a 14-year-old Iraqi girl and then killing her family, and a CIA contractor who was convicted of brutally beating an Afghan detainee. And just last month, the Department obtained convictions of four civilian government contractors for shooting to death 14 civilians and injuring 20 others in Nisour Square in Baghdad, Iraq, in 2007.

Since our last periodic report, we have also made great strides in promoting civil rights and [reforming] our criminal justice system. The vast majority of law enforcement officers in the

United States perform their jobs with integrity and respect for the communities they serve. But when systemic problems emerge and officers abuse their power, the Justice Department uses its authority to implement meaningful reform and hold officers accountable under the law.

In the civil context, the Department's Civil Rights Division has opened over 20 investigations into allegations of systemic police department violations over the past five years. During that time, we have reached 15 ground-breaking settlements to implement reform in these police departments. In the criminal realm, we have prosecuted over 330 police officers for misconduct over the past five years.

The Justice Department is also continuing its work to prevent, detect, and respond to abuse in American prisons. In 2013, for example, a Department investigation found that Pennsylvania's use of long-term and extreme forms of solitary confinement on prisoners with serious mental illness constitutes a violation of the prisoners' rights under the Eighth Amendment to the U.S. Constitution and under the Americans with Disabilities Act. And the Department has made great strides to prevent, detect, and respond to sexual abuse in confinement facilities through regulations to implement the Prison Rape Elimination Act. The Department also is protecting the rights of youth in juvenile detention and commitment systems. As a result of these and other efforts, our criminal justice system is not only more humane, but also stronger and more effective.

Thank you for the opportunity to speak with you today. I look forward to sharing more examples of the work we've been doing over the past five years to implement the Convention and to protect human rights.

[Remarks from the Chair]

Alessio Bruni, Country Rapporteur, Committee Against Torture

Thank you Chair, I wish to warmly welcome the [high-level] delegation of the United States of America appearing before our Committee to discuss for the third time implementation of the Convention Against Torture in the State Party.

I have noted the statement in the Report declaring that, and I quote, "the absolute prohibition of torture is of fundamental importance to the United States." This principle has been underlined by the Ambassador of the United States on many occasions in the celebration of the 13th anniversary of the adoption of the Convention and today in his introduction. Actually, this principle reflects the provisions of Article 2, Paragraph 2 of the Convention.

Now, it is my understanding, that an absolute prohibition has no geographic boundary, and I would appreciate it if the delegation would confirm that our Convention is applicable by the United States to its officials abroad without geographic limitations.

Today in the introduction, we heard about the extension of the applicability of the Convention to *some* territories, but I think and I repeat: an absolute prohibition has no boundary. If those geographic limitations exist, the United States cannot say that for them the prohibition of torture is absolute. It stops at its borders and torture is fully authorized in the rest of the world.

I have also taken note with [satisfaction] President Obama's findings and conclusions that torture is not only a horrible crime, but also a totally ineffective practice. And could the delegation elaborate also on the similar assessment made in the Army Field Manual, which actually sounds as a conclusion reached out of many years of experience. In other words, are there documents or reports in the United States making analysis of the practice of torture and demonstrating its ineffectiveness? In the positive, can they be shared with this Committee?

Now I'm referring to the statement of President Obama of 1st August this year, which was already quoted many times, and also today in the introduction, but it's good to repeat it because then I will develop a certain reasoning in this statement. "When we engage in some of these enhanced interrogation techniques – techniques that I believe, and I think any fair-minded person would believe, were torture – we crossed the line. We have to, as a country, take responsibility for that so that hopefully we don't do it again in the future."

I do appreciate the realistic approach of President Obama, but I would like to know what concrete measures have been taken to implement his clear position against the practice of torture since August 2014. I would like to know in particular what progress has been made towards the publication of the rendition, detention, and interrogation report prepared by the Senate Select Committee on Intelligence. There was a mention of it during the introductory statement this morning, but no dates were given. No planned dates were given. My latest information on this subject is that a further extension of time before the publication of the report was requested on 25 September 2014 by the government until 29 October 2014. And then what happened? I think the public opinion is expecting this document and [the public] deserves to [be] give[n] certain plans and dates.

As I mentioned before, President Obama considered that enhanced interrogation techniques are, in fact, a form of torture. Are those techniques subject not only to presidential disapproval, but also to new administrative and legal measures envisaging the prosecution for those who would be responsible for the so-called enhanced interrogation techniques, if they are still practiced?

Now, I would like to come to certain issues more relating to Articles 1 and 4 of the Convention. It is stated in the reply to Question 1, and I quote the report, "the Convention does not require State Party to enact a crime labeled torture per se." To explain its position, the Government gives examples of legal provisions, which according to it, show that every act within the meaning of the Convention is criminalized under federal and all state law. However, I noticed that there is a bill entitled "Law Enforcement Torture Prevention Act," which was presented to Congress. And it contains a definition of torture and it was submitted in 2010, the first submission. Then I know that debates are going on, but I would like to know what is the status of this bill today.

In reply to Question 2 of [the] Committee [] the report refers to the reservation made by the United States Government at the time of the ratification of the Convention, according to which, and I quote, "in order to constitute torture, an act must be specifically intended to inflict severe physical or mental pain or suffering and that mental pain or suffering refers to prolonged mental harm" My first question is: what is meant by "prolonged mental harm"? One day? One week? One month? I would appreciate it if the delegation could explain this expression, "prolonged mental harm," by giving the exact duration of a mental harm which is considered prolonged.

The statement in the reservation specifies four forms of this kind of prohibited practice. The first of them: “the intentional infliction or threatened infliction of severe physical pain or suffering.” In other words, this expression identifies what is considered precise torture for the United States. Could the delegation indicate whether, at present, enhanced interrogation techniques are or will be included in this category of actions provoking severe physical or mental pain or suffering now that they have been categorized as acts amounting to torture by the President of the United States?

Topic: Extraterritoriality

Furthermore, it is stated in paragraph 13 of the report that under United States law, officials from all government agencies are prohibited from engaging in torture at all times and in all places, not only in the territory under United States jurisdiction. This commitment was underlined also this morning in the introduction. And all this—I find this very laudable. But I would appreciate if the delegation could give examples of prosecution of public officials violating this legal provision, which is contained [in] § 1003 of the Detainee Treatment Act.

Topic: Rendition

However, nothing [has been] said, apparently, to now, or I didn’t find anything, about delegating the task of torturing to entities external to the United States’ administration and not involving United States officials—directly at least. I’m referring of course to the phenomenon well-known as extraordinary rendition, which during the war against terror allowed U.S. officials to apprehend and transfer, extrajudicially, persons suspected of terrorism from a country to another where the U.S. officials were aware that torture was practiced for the purpose of interrogation.

This phenomenon has been reported and documented by many sources. I will refer here only to one of them: the Council of Europe, which is an authority. In a report of June 2006, the Council of Europe estimated that 100 people had been kidnapped by the Central Intelligence Agency in the European territory and rendered to other countries, often after having transferred them through secret detention centers known as black sites. Another report issued by the European Parliament in February 2007 refers to 1245 flights organized by the CIA to transfer suspects to countries where they could face torture in violation of the Convention Against Torture. This is what the European Parliament said. Now I would appreciate the comments of the delegation on the practice of extraordinary rendition, and I would like to know if any measure has been taken in the United States to publicly condemn this practice.

Topic: Conditions of Confinement (registration of detainees)

Now I have some questions relating mostly to Article 2, but could be even [related to Article] 11, on the issue of registration for persons in detention. It is stated in Paragraph 15 of the report that according to the United States, the Convention has no provision requiring the registration of detainees. Let me underline that Article 2, Paragraph 1 of the Convention refers to the obligation of each State Party to take effective measures to prevent torture. This Committee considered that registration of a detainee is a first step to prevent torture since his or her identity and location are a sort of deterrent against any form of ill-treatment which needs secrecy to be carried out with total impunity.

I wonder why the United States considers that registration of detainees is not a requirement among the measures to prevent torture generally indicated by the Convention. Particularly because if registration is not to be considered as one of the basic requirements to prevent torture, I see some contradictions with the statement in Paragraph 26 of the report of the United States, which says the United States *does not* operate any secret detention facility. Let me observe in this regard that *any* place where a person is deprived of his or her liberty regardless [of] whether it is a legal or well-known place of detention becomes a secret place of detention if the person is arrested [or] is not properly registered there as [a] detainee. And in this connection, I would like to know which are the regulations concerning the detention facilit[ies] used by the CIA to hold people on a short-term or transitory basis. Are these detainees registered there?

The replies to Questions 6 and 7 of the Committee [] reaffirm the principle that U.S. officials are prohibited from engaging in torture at all times and [in] all places. Beyond that, the prepared guidance, which has of course been repeated this morning, on interrogation is given by the Army Field Manual or the Human Intelligence Collector Operations of September 2006, which according to Executive Order No. 13491 of President Obama in January 2009 is extended to any official acting for the U.S. Government, just to put the things clear, let's say.

Topic: Interrogation (Appendix M of Army Field Manual; separation; sleep deprivation)

Now this document includes permissible interrogation techniques. One of which, although [an] exception and subject to particular authorization, is the technique of "separation," applicable in the framework of the war on terrorism. The purpose of separation, and I'm quoting from Paragraph [M-]26 of the Manual, is "to deny the detainee the opportunity to communicate with other detainees in order to keep him from learning counter-resistance techniques or gathering new information to support a cover story, decreasing the detainee's resistance to interrogation."

Now, there are two types of separation: the physical separation and the field expedient separation. I will concentrate on the first method. I think that Mr. Modvig maybe will raise questions on the second method. Physical separation may last for an initial period of 30 days, but this period may be renewed upon appropriate authorization, and it must not preclude the detainee from getting four hours of continuous sleep.

Now two questions come to my mind in this connection. Is sleep limited to four hours a day for 30 days or more a form of ill-treatment? Ordinarily the amount of hours of sleep may vary [with the] individual; four hours are definitely insufficient for a majority of people and over a long period of time. So, I would like to know from the delegation, what is the purpose of this limited amount of sleeping hours allowed to a detainee? Because we learn from the Manual that the purpose of the separation technique is to deny the detainee the opportunity to communicate with other detainees, so why to prevent the detainee from sleeping a sufficient number of hours? I don't know. Would his prison guards be afraid that he communicates with others while he's sleeping? I would appreciate some clarification [from] the delegation on this point.

Topic: Interrogation (High Value Detainee Interrogation Group (HIG))

[Also] on the subject of techniques of interrogation, I note from the report that a High Value Detainee Interrogation Group has been established to interrogate the most dangerous terrorists. A very laconic sentence in Paragraph 124 of the report concludes that “interrogations conducted or supported by the High Value Detainee Interrogation Group are consistent with the provisions of the Convention Against Torture.” While it seems to me difficult for our Committee to agree to such an assessment without being informed in detail[] of the methods used by the Group in interrogations, if those methods cannot be disclosed, then the statement that they are consistent with the provisions of the Convention cannot be verified, and would be groundless. I would like to have the comments of the delegation also on this point.

Topic: Guantanamo (closing facility)

Now I come to the issue of closing [the] Guantanamo detention facility. The report informs us that there were 166 detainees in Guantanamo in 2013. If I understand correctly many reliable sources, there should be 149 at present. Now, I would like from the delegation to know exactly how many are they today, but in particular: [(a)] How many are waiting for their transfer to another country?; (b) How many are subject to prosecution in the United States?; (c) How many have been designated for continued law of war detention? (d) How many are still kept in detention because they are suspects, but they have never received a formal charge against them?

With regard in particular to those prisoners who have been charged before military commissions, I would like to know in particular whether they have the same legal guarantees as provided for in ordinary courts. That is to say, whether they have the same guarantees for a fair trial.

We all know that it was President Obama’s intention at the beginning of 2009 to close Guantanamo within one year, but for a series of reasons, this could not be done. In his State of the Union address of January 2014, President Obama underlined the urgency of closing the Guantanamo detention facility before a Joint Session of Congress. What is the situation of this issue today? Does the United States have a specific plan and timetable for the closure of Guantanamo? What is that plan and timetable?

Topic: Guantanamo; Forced Feeding

In this connection, I would like to refer again to § 1003 of the Detainee Treatment Act. It provides that, and I quote: “No individual in the custody or under physical control of the U.S. Government, regardless of nationality or physical location, shall be subject to cruel, inhuman, or degrading treatment or punishment.” Fine. But how [can] the U.S. Government reconcile this clear provision, for instance, with the practice of force feeding of Guantanamo prisoners who are on hunger strikes to protest against their living conditions in detention? I understand that a federal judge, Judge Gladys Kessler, blocked the practice of force feeding last May and ordered the Government to unseal 28 videotapes on that practice last October. What happened then? Is the Government going to disclose those videotapes or is the Government’s view that security considerations can be used to extinguish the right to complain about torture and ill-treatment and to obtain redress?

Finally on this point, I wish to refer to the several requests made by the Special Rapporteur of the Human Rights Council on Torture to visit Guantanamo Detention Facility. The U.S. authorities have put forward a major restriction to a possible visit: that the visit does not include private meeting[s] with the so-called “detained enemy forces.” This clause was found unacceptable by the Special Rapporteur. So I have just a simple question on this subject: what is the reason for the refusal of private meetings between the Special Rapporteur and the detainees at Guantanamo? Security reasons? I don’t see it. But I will wait for the explanation of the delegation.

Topic: Non-refoulement; Renditions (diplomatic assurances)

Now some issues related to Article 3 of our Convention. It is stated in the report that the United States’ policy is not to transfer any person to a country where it is more likely than not that the person will be tortured. As I mentioned before, the delegation’s violations of this statement and Article 3 of the Convention through the practice of extraordinary renditions are numerous. Nonetheless, could the delegation give examples of persons not transferred from the United States to another country because they were in danger of being tortured and how that decision was taken?

It is also stated in the report that the United States may secure diplomatic assurances from the country of proposed transfer, as well as post-transfer monitoring of the detainees. Now, it is the opinion of this Committee that diplomatic assurances can never replace the principle of non-refoulement. If those assurances are requested it means that there are serious suspicions that torture is practiced in the country where the detainee is to be deported. According to the United States authorities, diplomatic assurances which have been requested have never been violated, but what would be the incentive of the Government to acknowledge a breach of diplomatic assurances? Such an acknowledgement would not only amount to the admission that the Government has violated the absolute prohibition of torture by sending people to places where they were at risk of torture, but of course it would be likely to complicate its efforts to rely on assurances in the future.

But let me focus on one question. I understand from the report that the United States does not as a general matter publicly release the names of countries from which it has secured assurances. Fine. However, there is a list of 45 countries of destination for Guantanamo prisoners since 2002 in Paragraph 46 of your report. Have any of them been requested to give diplomatic assurances for the treatment of Guantanamo prisoners or [have they] been considered, all of them, safe countries, without distinction?

Finally on this issue of non-refoulement, there is the dramatic phenomenon of unaccompanied children entering the United States illegally. Apparently from October 2013 to September 2014, there were more than 68,000 apprehended at the border between the United States and Mexico, and coming mainly from El Salvador, Guatemala, Honduras, and Mexico to avoid all sorts of violence and abuses. In addition, also more than 68,000 family units coming from more or less the same countries and illegally crossing the U.S. border were apprehended. According to reliable sources, the majority of them have been placed in detention for extended – I would say unlimited – periods of time or immediately expelled without identification. Is the delegation in a position to give precise information in this regard?

There are some other important issues which concern Articles 2, 11, and 16. But, allow me to spend a few words on one of these big issues which is [the] death penalty, which in certain circumstances may amount to torture [or] at least inhuman and cruel punishment. We all know that in the United States prisoners sentenced to death spend often many years on death row before the sentence is executed and in some rare cases canceled. This is mostly due to the numerous [recourse] procedures available before the execution takes place. But isn't this incertitude about their fate for many years a kind of, and I quote, "prolonged mental harm caused by or resulting from the threat of imminent death," which is considered one of the four forms of torture included in the declaration and reservation made by the United States at the time of ratification of the Convention? I would appreciate it if the Delegation would be able to comment on this point.

Apparently this view has been recently supported by an American judicial authority. I'm referring to federal judge Cormac Carney of California, who in July 2014 ruled that California's death penalty system with its continued delays lasting for many years violated the Eighth Amendment of the U.S. Constitution prohibiting cruel and usual punishment. He therefore considered that California's death penalty system was unconstitutional. Does the delegation share Judge Carney's view? Does the delegation think that [the] time[] [is] mature to consider a moratorium—at least a moratorium—of [the] death penalty?

And of course here I will not here expand much on lethal injections. We all know about this problem, which cause[s] prolonged suffering, and even the execution of death penalty by electric chair, which was reintroduced as an alternative to lethal injections in Tennessee from May 2014. The question is clear: are these executions violating the Eighth Amendment of the Constitution or not?

Now, another big issue on which I would like you to elaborate is the living conditions in detention. In May 2012, President Obama issued a presidential memorandum stating that the Prison Rape Elimination Act of 2003 applies to all federal confinement facilities. [Please explain w]hat the consequences of this memorandum are in practice. Are there any tangible results towards decreas[e] and possibly the elimination of rape in prisons? Are there recent examples of prosecution for rape in confinement facilities?

And what about state prisons? Is the Prison Rape Elimination Act applicable there? Apparently 90% of the detainees are in state prisons, so they would be excluded from the protections of this Act if it is not applicable to state prisons. But I'm asking the question because [] information quoting the Department of Justice—and here, we have the representative of the Department of Justice—indicates that only two states, namely New Hampshire and New Jersey, have actually certified compliance with the Prison Rape Elimination Act standard. Forty-six states and territories have promised to work towards compliance, seven have not made any promise, and five (Arizona, Idaho, Indiana, Texas, and Utah) have simply refused to comply with the standard.

So my question is: as a State Party, although it is a federal State, [but is] the United States of America [] in a position to fulfill all its obligations vis-a-vis the Convention or not? Because apparently there are certain orders, certain laws, but they don't touch the states. Just the federal system. But vis-a-vis the Convention, there is only one State. And so I would like if the delegation could elaborate about its obligation as a monolithic obligation without any escape, but the states can do the contrary, or otherwise.

Now, another matter of concern, is the living conditions in the super-maximum security prisons, such as the penitentiary, Florence Administrative Maximum Facility in Colorado, or the Louisiana State Penitentiary, also known as Angola Prison. I'm aware that the worst-of-the-worst criminals are incarcerated in those types of prisons, but I would like to know the reason *why* inmates of the Florence Prison, for instance, are kept in full isolation for 23 hours a day for prolonged periods which may last for years.

It is reported also that in Louisiana State Penitentiary there are prisoners in solitary confinement for over 30 years. Today in the introductions, some measures were mentioned in this regard, but [...] I want to underline that apparently although there are not precise data, these measures of solitary confinement would concern at least 25,000 prisoners, which is an incredible amount. And I would appreciate comment on this information.

[Discussion of meeting procedure and remaining time]

I want to recall simply that the Special Rapporteur on Torture has made a deep study on solitary confinement, and [those in] solitary confinement develop symptoms of anxiety, depression, hallucinations, up to total insanity, and I wonder whether this is the purpose of the harsh regime imposing this in maximum security prisons.

I will skip some other... now, let me please elaborate on an issue which I think is important, the issue of living conditions in detentions brings me to the related issue of overcrowding of prisons. Now, actually, there are numerous reports on this issue in the United States, but I will focus just on one official document. I'm referring to the report prepared by the Congressional Research Service entitled *The Federal Prison Population Buildup*, which was addressed to members of a committee of Congress in April 2014. I will skip the analysis of the overcrowding – perhaps I can elaborate it later. But I will go to the question of recommendations made to solve the problem of overcrowding, which are: increasing the capacity of the federal prison system, investing in rehabilitative programs, modifying mandatory minimum penalties, expanding the use of residential reentry centers, placing more offenders on probation, reinstating of parole for federal inmates, expanding the amount of good time credit an inmate can earn, and repealing federal criminal statutes for some offenses. Have any of those suggestions been accepted by Congress and what [will] the government do[] about overcrowding?

[Discussion of whether Mr. Bruni would receive more time for his questions.]

Jens Modvig, Country Rapporteur, Committee Against Torture

Thank you very much, Chair.

I would like to warmly welcome the high-level delegation from the United States and I'm looking forward to a constructive dialogue about the obligations of the State Party which relates to Articles 10-16 in the Convention. These are: the obligations to train law enforcement and medical staff in the prohibition in torture; the obligation to investigate alleged cases of torture; the obligation to provide redress, including rehabilitation, to victims; the inadmissibility of evidence evoked by torture; and the obligation to prevent ill-treatment and others.

I appreciate the introductory remarks regarding applicability of the Convention. For reasons of clarity, I would appreciate an elaboration. The Committee is interested in learning whether, as a legal matter, the State Party considers the Convention to apply to territories over which the State has de jure or de facto control, as provided in the General Comment 2. While it's welcome that all U.S. personnel are prohibited from carrying out torture anywhere in the world and from engaging in ill-treatment of individuals under their physical or effective control, the Committee would like a clarification as to whether the U.S. considers *all* aspects of the Convention to be applicable to territories under the de jure or de facto control of the State.

Topic: Law of Armed Conflict

As for the applicability during armed conflict, does the U.S. position regarding the applicability of the CAT during times of armed conflict as set out in Paragraph 14 of the State report represent a shift in its position from that taken during its previous review by the Committee? Please clarify the status of the application of the Convention Against Torture to the detention facility at Guantanamo Bay, which is under the effective control of the United States. The State report refers to Guantanamo detainees as "law of war detainees," however, as stated in the State report, the protections provided by the Convention Against Torture are not suspended in a time of war. And therefore, law of war detainees should enjoy all the protections and safeguards that flow from the Convention, including the right to fair trial, to access an attorney of their choosing, to complain about acts of torture, to communicate freely with their legal counsel, to have access to evidence used against them so that they may mount a defense, and so on. Please explain why some detainees at Guantanamo are denied these rights in light of the application of the CAT during times of war.

As for the obligations to include the prohibition of torture in training and education, in the report Paragraphs 94-100, the State Party informs about the training and reporting obligations of Department of Defense interrogators, FBI agents, Bureau of Prison[s] employees, Customs and Border Protection, Immigration and Customs Enforcement special agents, and medical staff associated with agencies involved in detainees. We would appreciate information on the impact of the training conducted for law enforcement officials, prison staff, etc. and how effective the training programs have been in reducing incidents of torture, violence, and ill-treatment. We would also like to know to which degree the Istanbul Protocol is included in the training programs, as well as if any training was conducted for CIA agents in the prohibition of torture.

As for the reporting obligations mentioned – that is, reports of torture and ill-treatment submitted by DOD intelligence officers, reports by FBI agents on mistreatment and abuse, reports by Bureau of Prisons employees on inmate injuries, reports by Immigration and Customs Enforcement special agencies, and reports by medical personnel in agencies involved with detainees on signs of abuse and neglect – which has been a part of the training, please inform about the number and outcome of these reports with respect to investigations, prosecutions, and punishments which resulted thereof within the reporting period.

In Paragraph 104, the State Party explains that also misconduct in Department of Justice Bureau of Prisons facilities must be reported to internal investigative staff. Please provide information about the number of such reports during the reporting period and their outcome.

Topic: Guantanamo; Forced Feeding

In Paragraph 105, the State Party explains that the principles of medical ethics relevant to the role of health personnel is complied with. Medical ethics is relevant for, *inter alia*, the hunger strikes that have been experienced in Guantanamo as a sign of desperate objection to their treatment. How many detainees [are] currently hunger striking in Guantanamo? And which considerations have been given to the demands of the hunger strikers?

The guidelines for medical management of detainees on hunger strike have been made public and clearly describe the procedures for initiating involuntary medical treatment. This includes shackling of the detainee, and placement of [a] mask to prevent spitting and biting, placement in a so-called “chair restraint system,” as well as forced insertion of a feeding tube, if required, while a guard from behind holds the head of the detainee. I would appreciate if the State Party would comment on the medical ethics of this practice, which raises concerns about practice of ill-treatment or even torture.

In this connection, I understand that detainees in the U.S. in general do not have the right to be examined by an independent doctor. Rather, medical services to detainees and prisoners are provided by doctors and other health staff employed by the authorities in question only. This raises the important issue of so-called “dual loyalties,” which is [a] medical dilemma well described in the Istanbul Protocol. What counts the most: the expectations of the employer of the doctor or the concern to address the needs of your patients? Security or health?

It’s concerning that this basic right to see a doctor of the detainee’s own choice is deprived [for] all detainees and prisoners in the U.S., if correct. It makes it difficult for the detainee or prisoner to know, if there is access to a doctor, if it’s doctor’s advice or doctor’s orders based on medical science or rather emerged from security concerns. It raises concerns about medical integrity and also of medical confidentiality; in other words, concerns about most, if not all, aspects of the basic principles of medical ethics.

This is important in relation to the Convention because we need medical doctors in detention settings to be able to freely document and report cases of torture and ill-treatment, and not worry about negative reactions from their employer. I would appreciate the State Party’s comments to the concerns made about medical ethics regarding the practices of the State Party.

Topic: Interrogation (Appendix M of Army Field Manual; separation; sleep deprivation)

According to the Army Field Manual, the separation technique includes field expedient separation, which aims to prolong the shock of capture by utilizing goggles or blindfolds and earmuffs to generate a perception of separation. The duration of this treatment is 12 hours, not including time where goggles or blindfolds and earmuffs are used for security purposes during transit and evacuation. Extensions past the 12 hours of initial duration must be reviewed by the servicing Staff Judge Advocate.

Considering that recent research has demonstrated that deprivation of visual and auditory stimuli creates psychotic symptoms with most people after as little as 25 minutes deprivation,

the described procedure for field expedient separation for many hours raises concerns whether this practice is in accordance with the Convention. Please comment on this and provide information about the number of times the field expedient separation were used during the reporting period, and how many of these cases represented an extension of the 12 hour maximum. Do any of the procedures include a medical assessment? If so, please inform about the results of these.

Continuing questions regarding the Army Field Manual[], is the CIA authorized to interrogate detainees at short-term or transitory facilities? If so, is the CIA restricted to the interrogation techniques and approaches set out in the Army Field Manual? Please also clarify if Army Field Manual includes all of the procedural obligations that flow from the Convention, including the right to undergo an independent medical examination and access to a lawyer from [] outside of detention.

Topic: Militarization of police

Moving to accountability of the police, what steps has the State Party taken – by both federal and state governments – to review the police practices following the recent events in Ferguson? Please also provide information about what steps, if any, have been taken to review the distribution of military equipment to local police forces and to review police practices regarding the use of such equipment. Which mechanisms of independent oversight and accountability apply in general to ensure the prevention of excessive use of force by the police? We understand that the police review boards are elected by city governments and thus are not properly independent. More specifically, how is oversight and accountability implemented, for instance, as to the use of firearms and taser guns by the police?

In Paragraph 129, the State Party mentions that more than 100 service members of the armed forces have been put before court martial for mistreatment of detainees. The period within which this took place is, however, not provided. Could the State Party please inform about the number of such cases processed during the reporting period, the charges presented, and their outcomes in terms of convictions and disciplinary sanctions, as well as reparations?

In Paragraphs 141 and 142, the State Party gives an account of the conviction of Commander Jon Burge, who himself had tortured several persons and under whose leadership police officers administered electric shock to genitals of victims and used other forms of torture. Please provide an update of the case against other CPD police officers, as well as the redress provided to victims.

Topic: Habeas Corpus; Extraterritoriality

In Paragraph 144, the Committee is informed about [how] the habeas corpus jurisdiction has been extended. Which persons under effective U.S. detention – citizens or not, kept inside or outside the U.S. territory – have not been extended the opportunity of habeas corpus review? And what is the reason for that? Do the extensions imply the right to assistance of a counsel of their choice? And does it imply access to free legal assistance if they require it?

Moving now to the obligation to investigate. According to the Convention, each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has a right to complain to, and to have his case promptly and impartially

examined by, its competent authorities. Will the State Party consider meeting this obligation by investigating all credible allegations of torture during U.S. custody?

In Paragraph 155, the State Party addresses the possibility [that] Guantanamo detainees have to raise complaints either via ICRC or directly with the U.S. military at Guantanamo. Please provide information about the number, the nature, and the outcome of the complaints in terms of investigation, prosecutions, and punishments, raised through either of these mechanisms during the period of review.

Topic: Rendition; Accountability; Guantanamo

In connection with the Durham Preliminary Review, please clarify the number of cases that were examined in the preliminary investigations and the bases for determining that further investigations into these cases, with the exception of two, was unwarranted. Please also provide information on the total number of investigations into cases of torture and ill-treatment by any U.S. officials [that] were initiated during the period under review – both on the basis of complaints as well as ex officio – and the number that led to prosecutions, and with which outcomes, if any.

Why did the investigation not include victims of torture, for instance, former Guantanamo detainees? This could have contributed greatly to enlightening the torture committed. Moreover, please explain the measures taken by the State Party to ensure investigation and prosecution of those responsible for CIA interrogations of suspected terrorists, including senior officials and those who provided legal cover for cases of torture or ill-treatment of detainees in U.S. custody outside its territory and for the use of brutal interrogation techniques.

Please also comment on reports that indicate that the State Party continues to invoke claims of immunity for Government officials and state secrecy laws to evade liability, and that any information relating to the detainees' time in secret detention apart from the date and place of their capture remains classified. Please provide updated information on the investigation and related prosecutions for the destruction of evidence, such as videotapes documenting torture, by CIA personnel.

Moving to Article 14, the right to reparation, here in a storm of questions I would like to commend the State Party for its commitment to support rehabilitation of torture survivors via, *inter alia*, support for rehabilitation centers within the U.S.A. Indications are that rehabilitation of victims of torture – apart from the compassionate aspects – is a good public health investment, which prevents later health care needs and contributes to a future productive life. Still, the capacity within the U.S. does not match the needs, based on estimates of torture victims currently residing in the U.S. and the existence of long waiting lists with almost all centers. In light of this, will the State Party consider increasing domestic availability and access to rehabilitation services and entering into a collaboration with the existing services to develop standards of care and monitoring and evaluation of the rehabilitation activities?

Topic: Remedies; Guantanamo; Accountability

As for victims of torture at the hands of the U.S., the picture is much different. The State Party informs that various avenues exist for obtaining redress, including rehabilitation for acts of torture. However, lawsuits brought by persons alleging torture while in U.S. custody are hindered by claims of immunity for government officials or state secrecy laws. Could the State Party please inform how many victims of torture have legally pursued and successfully obtained effective remedy for torture during U.S. custody within and outside U.S. territory, respectively, within the reporting period. How many victims of torture formerly detained in Guantanamo ha[ve] received judicial remedy for their treatment?

As for the Protective Order 1, high value detainees who are victims of torture are prevented from seeking remedy because of classification of the information surrounding their treatment. Could the State Party please explain why victims of torture are silenced this way, prevented from seeking remedy with reference to state security, even including remedies abroad?

Topic: Remedies (Abu Ghraib)

In Paragraph 147, the State Party provides a table of 33 persons who filed claims against the Department of Defense. Please inform if this list contains all cases and forms of redress that has been and will be provided by the State Party to the victims of torture in Abu Ghraib. Have victims, for instance, been informed about the possibility to obtain redress? If so, how and when did this happen? And please provide an update of the status of these cases, now eight years later. Does the State Party intend to launch more efforts to ensure that the victims of torture in Abu Ghraib receive redress? How many individuals have been provided *non-judicial* remedies for torture by the State Party?

Moving to the Prison Litigation Reform Act, in Paragraphs 149-151, the State Party informs the Committee about the provisions in § 1997e(e) of the 1995 Prison Litigation Reform Act. Could the State Party please provide an explanation to the Committee as to why a mental injury during confinement without a physical injury or sexual act does not justify monetary compensation? Does damage of the mind not mean as much as damage to the body?

Referring to the requirement of exhausting the internal grievance system before a prisoner may file a lawsuit, I would appreciate information about how many lawsuits alleging torture or ill-treatment have been dismissed because this requirement was not complied with.

Topic: Trials and Criminal Procedure (inadmissibility of coerced evidence)

As for inadmissibility of coerced confessions, please provide the Committee with information about the specific measures adopted to ensure that the principle of inadmissibility of evidence obtained through torture is observed in practice, including detailed information regarding the procedures through which an allegation that evidence was obtained through torture is addressed by the courts. Please provide examples of cases that have been dismissed by courts because evidence or testimony obtained through torture or ill-treatment was submitted. Please provide information about measures taken that coerced evidence is not admitted as evidence in military commissions trials at Guantanamo.

Regarding Article 16 on ill-treatment, in general when a State Party fails to establish effective mechanisms of transparency and accountability in law enforcement agencies to prevent torture and ill-treatment, there's a great risk of impunity for perpetrators of such

actions. In order to establish effective prevention of torture and ill-treatment, will the State Party consider allowing civil society organizations to monitor places of detention (i.e., jails, prisons, immigration detention facilities, and psychiatric wards)? And will the State Party extend an invitation to the UN Special Rapporteur on Torture to visit your country with full access to information?

As for sexual victimization of inmates, in Annex 1 to the Periodic Report, the State Party provides data about the prevalence of sexual victimization of inmates. According to this information, more than 40,000 adult inmates reported at least one case per year of staff sexual misconduct, whereas [1319 or 1390—indistinct] juveniles reported such misconduct. Please inform how many cases of alleged sexual misconduct among correctional staff were actually reported, investigated, prosecuted, and punished during the reporting period. And also, please inform about intended measures to prevent sexual abuse of detainees everywhere in the U.S., thus preventing detainees and prisoners from having an extrajudicial, additional sexual abuse punishment.

There are concerns as to notable gaps in the protection of juveniles in the State Party's criminal justice system. Please inform the Committee about the number of minors who are detained or imprisoned in adult jails and prisons, and also about the number of minors subjected to physical and sexual violence in the reporting period.

As for the LGBTI area, in the area of LGBTI persons, which protective measures are in place in terms of preventing ill-treatment in the criminal justice system and also in the healthcare system—for instance, via so-called “conversion therapy,” which is allegedly still in use.

As for sexual violence in the military, what are the measures that the State Party intends to take in order to ensure investigation, prosecution, and punishment, as well as prevention, of sexual violence in the U.S. military? Can victims bring civil rights or personal injury claims against the military or military officials into civilian federal courts? Please comment on reports about difficulties faced by veterans who are survivors from sexual assault in getting disability benefits relating to sexual trauma.

The very serious sentence of life sentence without parole is allegedly applied to more than 3000 people for non-violent offenses, and in some cases also to minors. Which steps will the State Party take to avoid [] this practice [being] applied in cases of non-violent offenses or minors?

As for the use of solitary confinement, please explain the rules and regulations that apply to the use of solitary confinement. That is, 22-24 hours a day in the same room alone, a practice that is well known to have a negative impact on the mental health of detainees, particularly when applied indefinitely. What are the legal safeguards, including appeals, that apply to detainees and prisoners subjected to solitary confinement? Which time limits exist, which measures of socially meaningful activities are obligatory, and what are the rules for confining minors and persons with mental health disorders?

[Exchange with moderator]

I would also appreciate if the State Party would provide the number of suicides, attempted suicides, and other self harms during the reporting period among detainees and prisoners held in solitary confinement.

We have information about at least 12 heat-related deaths recorded since 2007 in nine different Texas prisons. Could the State Party please provide information about the number of deaths in custody during the reporting period, including the causes of death, the procedure for independent investigation of death in custody, and the outcome of investigations in terms of sanctions and prosecutions and preventive measures arising from the investigations?

Thank you very much, Chair.

Various Committee Members, Committee Against Torture

George Tugushi, Chairperson: *[Polling to see which Committee members would like to take the floor and explaining that each of the six members who requested time would be allowed three minutes]*

Kening Zhang, Committee Member: Thank you, Mr. Vice-Chair, I would like to join my colleagues in welcoming the distinguished delegation from the United States and to thank them for providing us with a comprehensive report.

And I would also like to welcome the positive development in the legal and policy framework around immigration detention and the ongoing cooperation and facilitation of the UNHCR detention monitoring mission by the United States.

Topic: Data

I have just a couple of comments regarding the information provided under Article 10, Article 11, and Article 15. And, I noticed in Paragraph 97 of the report, they indicated the specific FBI policies on interrogation covered by the Treaty, which is described above. And then they also indicated in the last paragraph of this Paragraph 97 [that there is] a reporting system if there is an incident like this [that] occurred—the interrogation through illegal means. So, I wonder whether the delegation can provide data, information for th[ese] kind of incidents.

Topic: Interrogation (Army Field Manual)

And similarly, I noticed under Article 11, in Paragraphs 108, 109, and 110, when they provide information on the actions prohibited by the Army Field Manual with respect to the intelligence interrogations, which is a very good law and I found it very encouraging. My questions are, first, whether the delegation can provide a copy of the Manual and secondly can the CAT be provided with the information on cases on implementation of the Manual.

And then regarding Article 15, I noticed that it is indicated in Paragraph 154, in both the Constitution and the other relevant laws, that this principle of exclusion of evidence obtained through illegal means are tackled. So, I wonder whether you can provide further information on more cases in addition to those two provided in Paragraph 157. And most importantly, how are the victims of torture compensated, actual[] victims who were convicted due to the

evidence obtained through illegal means, and how they are compensated—which is my question.

Essadia Belmir, Vice-Chairperson: *[Questioning conducted in French.]*

Satyabhoosun Gupt Domah, Rapporteur: Thank you, Chair.

The U.S.'s story seems to be: there was a laudable beginning, and then we strayed for a little while, we are getting back on track now. However the fact remains that a number of breaches have occurred in between. In one form or another, for one reason or another, under one name or another, some overt and some covert.

We are agreed now between the State and the Convention that the prohibition of torture is universal, non-delegable under any circumstances, and there is no statute of limitation that can prevent any remedy for it, any inquiry, or any prosecution. But the dark days of democracy of [the] U.S. shows that democratic institutions join forces to frustrate democratic principles. This happened through court decisions, through legislative acts, questionable legal advice given, and further administrative and other measures, all designed to kill the Convention and democratic principles.

If any lesson is to be learned from what happened, for democracies elsewhere, [it] is that the principle of democracy, the principle of constitutionality, should not go out of the window in interpreting constitutions. Nor should the principle of legality go out of the window in interpreting laws.

A number of verbal gymnastics I can find in the report. Anyway, I have no time to go through all that. However, how does [the] U.S. intend to live up to its international expectations now, especially correcting the historical and recent injustices? By providing a system of complaints, inquiry, and remedy, as well as deinstitutionalizing so that everything goes back on track?

Two things I would wish to mention. [First,] is there any recommendation, is there any measure that [the] U.S. can take with respect to the abuses by clergy? About 1000 victims in the U.S. [Second,] there is conversion therapy used to alter LGBTs. Has this been tested before the courts to see its compliance? Does the United States have an extremist list? How does one find one's name in this black list? And how does one get out his name from this black list?

Sapana Pradhan-Malla, Committee Member: Thank you, Chair, for the time. And before I start my questions, first I would like to welcome the delegates and commend your leadership in adopting a global and national framework against torture.

But we also want to see your commitment and values translated in the national and global govern[ence]. This Committee had raised concerns on the Prison Litigation Reform Act that provides [that] no federal civil action may be brought by a prisoner for mental or emotional injuries suffered while in custody without showing [a] prior physical injury. We would like to know your assessment of the Prison Litigation Reform Act and if you have any update with the reform process you have initiated.

Although the federal government of [the] U.S.A. has recognized that criminalization of [the] homeless is a poor public policy of local government, but we would like to know from your delegation if you have taken any measures to improve the treatment of the homeless people and if you have any alternate policies to deal with homeless people.

We have many injured and survivors with us today. LGBTI detainees have been placed in administrative segregation in the name of their own safety, causing psychological and emotional harm. Conversion therapy, which includes forceful electric shock to change the sexual orientation or gender identity has a life-long impact, including suicide. The police harass many transgender women. Intersex people also suffer from harm as a result of genital normalization surgery and forced sterilization. We would like to know from the delegation [about] any measures to ensure safety of these groups.

Widespread and systematic sexual violence against children and vulnerable adults by Catholic clergy is now incontestable. Many facts and figures were submitted to the Committee during the 52nd Session [in] the review process of the Holy See. While the Committee has clearly recommended that Church officials take effective measures to ensure that allegations are communicated to the proper civil authorities so [as] to facilitate their investigation and prosecute any perpetrator. While some have found justice by the American courts, [inaudible], but they are small in number. The vast majority of them are also barred [for] many reasons, including with the statute of limitations in case of rape, depending on the state legislation. We would like to know what measures are taking place for addressing the impeding factors for justice, including the amendment of laws, and we would also like to know how [you are] going to repair the mental and physical suffering of those who are still unable to access justice because of the statute of limitation.

Any initiative of the government to ensure access to remedies [for] sexual violence by the military under the U.S. federal system. It is not a service-related crime. It is a sexual violence and it is a crime against the state.

My final comment is on [the] condition of immigrant workers in detention. We see numerous NGOs report of violation of sexual and reproductive rights in detention facilities, ranging from sexual abuse to shackling of pregnant detainees to denial of necessary reproductive health care. We applaud [the] Government's adoption of the performance-based national detention standard in 2011. That made significant improvements in access to reproductive health and medical care. But can the Government provide information about how many detention centers are currently implementing these standards—[and] how is the Government ensuring these standards are enforced in detention facilities managed by [] private corporations?

Thank you.

Abdoulaye Gaye, Committee Member: *[Questioning conducted in French.]*

George Tugushi, Chairperson: Thank you very much, Mr. Gaye. I guess we have exhausted the list of the members and I am the last one remaining, so I'll try to abide by the time allocated and then I had requests from the Rapporteurs. If some time is remaining, I will give them maybe two or three minutes each.

[Tugushi asked questions on solitary confinement in federal and state systems, the Prison Litigation Act, and long-term immigration detention.]

Alessio Bruni, Special Rapporteur: *[Given time to ask more questions related to prison conditions in Louisiana, Texas, and Alabama.]*

Jens Modvig, Special Rapporteur: *[Given time to ask more questions related to how U.S. deals with asylum-seekers who are victims of torture, immigrants in detention facilities.]*

George Tugushi, Chairperson: Thank you, Mr. Modvig. I have [a] couple of remaining questions and then we can close the session. If I may ask the delegation, can you provide us a bit more information about the so-called Durham Investigation into the allegations of torture? We received, somehow, the information that the victims were not interrogated in the course of investigation. And, actually, the investigation process looked into 101 cases and decided not to prosecute anyone. So maybe you can provide us more information on that. And last but not the least, let me ask, what steps has the United States taken to make good on its commitments, expressed most recently during Universal Periodic Review, to significantly strengthen protections against racial and ethnic profiling in the context of immigration and border enforcement, and how can these efforts be reconciled with the U.S. government's broad claims of authority to conduct warrantless searches on the 100 miles of U.S. borders?

[Final exchange of thanks with Mr. Harper].

Day 2: November 13, 2014 – Geneva

Ambassador Harper

Thank you, Mr. Chair. Members of the Committee, on behalf of the U.S. delegation we thank you all for your important and thought-provoking questions. Particular thanks goes to Rapporteurs Mr. Bruni and Mr. Medvig. We look forward to having a useful dialogue and value your input on how we can make further progress. I note at the outset that a number of members of the Committee have asked for extensive and detailed data. Our team has done its best overnight so that we can provide you with as much as we can. Other information was not readily available. To help the Committee understand how we are structuring this response, I wanted to provide a bit of a roadmap. In order to address as many of your questions as possible in our allotted time, we have largely organized our presentation by agency. Following me my Department of State colleagues will begin our response. General Gross will then speak on behalf of the Department of Defense, and I will follow General Gross. After that, colleagues from the Department of Justice, Department of Homeland Security, and the states of Rhode Island and Mississippi, will answer additional questions. Assistant Secretary Tom Malinowski will then conclude this portion of our response. Please do not take the brevity of our responses as minimizing the importance of these issues. With that, I will turn it over to Acting Legal Adviser Mary McLeod to start our responses. Thank you.

Acting Legal Adviser Mary McLeod, U.S Department of State

Topic: Non-Refoulement; Rendition (diplomatic assurances)

Thank you, Mr. Ambassador. Mr Bruni and Mr Gaye, you raised questions about non-refoulement and the use of diplomatic assurances.

First, as a matter of fundamental policy and practice, the United States does not transfer any individual, whether located in U.S. territory or not, to a foreign country, if it is more likely than not that the person would be tortured.

This principle is woven thoroughly into U.S. policy and practice in a number of ways, including: Section 1242 of the Foreign Affairs Policy and Restructuring Act, where it is specifically stated, and in Executive Order 13491, which required the formation of a special task force on transfer policy to study and evaluate the practices of transferring individuals to other nations in order to ensure consistency with all applicable laws and U.S. policies pertaining to treatment.

The Task Force made a number of policy recommendations to ensure that persons are not transferred to face torture when the United States moves or facilitates the movement of a person from one country to another, or from U.S. custody to the custody of another country. The President accepted the report.

If the United States determines, after taking into account all available information, that it is more likely than not that a person will be tortured, the United States will not make the transfer. The United States considers a range of factors in determining if it is more likely than not that a person will be tortured and the issuance of diplomatic assurances and the reliability of those assurances is only one such factor.

Other factors considered include: any allegations by the person of prior or potential mistreatment by the receiving government; the receiving country's human rights record and whether similarly situated persons have been tortured. There have been cases where the United States has declined to return individuals because the United States was not satisfied that, even with assurances, the transfer would be consistent with its non-refoulement obligations, policies or practices. For example, the United States has long maintained its position that it would not repatriate Uighurs to China from Guantanamo due to our humane treatment policies.

In some cases we seek assurances as a prudential matter, not because they are necessary for the transfer to be consistent with the non-refoulement principle, but rather to reduce further any meaningful risk of mistreatment. Likewise, in the context of armed conflict, the U.S. practice has been to seek humane treatment assurances.

To answer your specific question, Mr. Bruni, we have received humane treatment assurances from every country to which we have transferred a detainee from Guantanamo during this Administration.

Mr. Gaye, you asked what corrective measures we would be able to apply if a country did not abide by its diplomatic assurances in view of the fact that the transferred person would be in the hands of the receiving State. With respect to law of war detainees, and in other contexts involving continued detention where appropriate, the United States requires assurances of private access, on minimal notice, for post-transfer monitoring by credible independent organizations or U.S. Government officials. If that monitoring reveals mistreatment, or other

credible information of mistreatment comes to our attention, we may suspend future transfers.

Topic: Reservations, Understandings and Declarations

I'll now turn to your question, Mr Bruni, pertaining to the United States' understanding that mental pain or suffering refers to prolonged mental harm. When the United States was considering becoming a State Party to the Convention, there was some concern that the Convention's definition could not satisfy the constitutional requirement of precision in defining criminal offenses with respect to mental pain and suffering. We conditioned a ratification upon an understanding that mental pain or suffering refers to prolonged mental harm to provide the requisite clarity and specificity for purposes of domestic law.

Topic: Accountability (International Criminal Court)

With regard to your question, Ms. Belmere, related to the International Criminal Court, the United States has signed agreements with more than 100 States that apply to United States persons. In general, States concluding the agreements agree to surrender or transfer such persons to the International Criminal Court only with the consent of the State concerned. To date there have not been any requests for such consent under these agreements.

For its part, the United States is fully committed to investigating and prosecuting, where appropriate, acts that amount to war crimes, crimes against humanity, and genocide, alleged to have been committed by its officials, employees, military personnel, or other nationals. The agreements contain language specifically underscoring this intention and reaffirming the importance of bringing to justice those who commit such crimes, and this would include any such crimes that are covered by the Convention.

Topic: Interrogation

At this point, I'll turn to questions related to enhanced interrogation techniques. As ordered by President Obama, the former detention and interrogation program is over, and will not be reinitiated. This is reflected in our laws. The Detainee Treatment Act of 2005 prohibits cruel, inhuman or degrading treatment or punishment at all times and in all places and CIA Director John Brennan has made clear that no agency, officer or contractor will participate in any interrogation activity inconsistent with the Detainee Treatment Act or the Army Field Manual. My colleague Brigadier General Gross will speak more about the Army Field Manual shortly. President Obama's Executive Order 13491 also required the CIA to close as expeditiously as possible any detention facilities that had operated and prohibited it from operating any such detention facility in the future. The CIA is in full compliance with the requirements of that executive order and does not maintain detention facilities. At this point, I would like to turn this over to my colleague from the State Department, Catherine Amirfar.

Catherine Amirfar, State Department, Legal Adviser's Office

Topic: Extraterritoriality

Good afternoon. My name is Catherine Amirfar. I'm the Counselor on International Law in the Legal Adviser's office at the Department of State. It is a privilege to be here on behalf of

the United States today, and I thank the Committee for its thoughtful comments and questions.

Misters Bruni and Modvig, I will address the questions you posed with respect to the geographic scope of the application of the Convention.

So let me start by saying that torture is absolutely prohibited at all times, in all places, no matter what the circumstances. Likewise cruel, inhuman or degrading treatment or punishment is absolutely prohibited at all times, and in all places, and these are legal prohibitions based on U.S. domestic law, treaties and customary international law.

For example, the prohibition against torture is customary international law binding on all nations everywhere at all times. Articles 2 and 16 of this Convention require prevention of both torture and cruel, inhuman or degrading treatment or punishment in territory under U.S. jurisdiction.

[T]he Detainee Treatment Act of 2005 takes it even further. No individual in the custody or under the physical control of the U.S. government, regardless of nationality or physical location, shall be subject to cruel, inhuman or degrading treatment or punishment. Under the DTA, the prohibitions apply at all times and in all places—not just to territory under U.S. jurisdiction.

In the context of armed conflict, the Geneva Conventions prohibit torture and cruel treatment as well. President Obama issued Executive Order 13491 to ensure humane treatment and compliance with the treaty obligations of the United States, including this convention and the Geneva Conventions.

Any individual detained in any armed conflict, who is in the custody or under the effective control of the United States, or detained within a facility owned, operated or controlled by the United States, in all circumstances, must be treated humanely and must not be tortured or subjected to cruel, inhuman or degrading treatment or punishment.

Taken together, these make clear that these prohibitions are categorical and unequivocal. They bind the United States and its officials at all times everywhere.

There exists the separate question under the Convention of the geographic reach of the articles specifically referring to territory under a State's jurisdiction. Since its last presentation, the United States has carefully reviewed the extent to which such obligations under the Convention apply beyond the sovereign territory of the States Parties.

The United States understands that where the text of the convention provides that obligations apply to a State Party "in any territory under its jurisdiction," such obligations extend to all places that the State Party controls as a government authority.

We believe this is the proper interpretation of the Convention and it is consistent with the position taken by both the U.S. executive branch during the ratification of the Convention and by the U.S. Senate in considering whether to provide advice and consent to ratify the Convention.

This language clearly covers the sovereign territory of the United States. In addition, we believe that it covers other places the United States controls as a governmental authority. We have concluded the United States currently exercises such control at the U.S. naval station at Guantanamo Bay, Cuba, and over all proceedings conducted there, and with respect to U.S.-registered ships and aircraft.

I should note that with respect to the obligation in Article 16 to prevent cruel, inhuman or degrading treatment or punishment, that provision also explicitly extends to territory under a State's jurisdiction. As this Committee is aware, the United States submitted a reservation with respect to that provision to ensure that existing U.S. constitutional standards would satisfy U.S. obligations under that article.

Let me be clear that this reservation to Article 16 does not introduce any limitation on the geographic applicability of that article. The obligations in Article 16 apply beyond the sovereign territory of the United States to any territory under its jurisdiction, in line with the interpretation I have just outlined.

Topic: Guantanamo

Now, with respect to the application of the Convention at Guantanamo, in our last presentation to the Committee, the United States stated that Article 15 of the Convention is a treaty obligation and that the United States had to abide by that obligation in the Combatant Status Review Tribunals (also known as the CSRTs) and the Administrative Review Boards (also known as ARBs), which were administrative procedures established to review the status of law of war detainees at Guantanamo Bay.

CSRTs and ARBs are no longer conducted, but the United States reaffirms its obligation to abide by Article 15 in the Periodic Review Board Processes, which is a current, discretionary, administrative process for the review of law of war detainees at Guantanamo as well as in the military commissions.

In that regard the Military Commissions Act of 2009 mandates, and I quote, "no statement obtained by the use of torture or cruel, inhuman or degrading treatment, shall be admissible in a military commission, except against a person accused of torture or such treatment, as evidence that the statement was made." Implementing this exclusionary rule in the context of reviewing or prosecuting individuals detained in armed conflict complements and reinforces the prohibition on torture and the fair trial guarantees mandated by the law of armed conflict.

With that, let me turn back to my colleague, Ms. McLeod, to address one further point.

Acting Legal Adviser Mary McCleod, US Department of State

Mr. Modvig, I now turn to your question about the applicability of the Convention during armed conflict.

Topic: Law of Armed Conflict

In terms of our international law obligations during situations of armed conflict, the law of armed conflict is the *lex specialis* and as such is the controlling body of law with regard to the conduct of hostilities and the protection of war victims.

Moreover, as the United States has already recognized, a time of war does not suspend the operation of the Convention against Torture, which continues to apply, even when a State is engaged in armed conflict.

Article 2(2) of the Convention specifically provides that neither a state of war, nor a threat of war, may be invoked as a justification for torture. In addition, the law of armed conflict and the Convention contain many provisions that complement one another and are in many respects mutually reinforcing.

For example, the obligations to prevent torture and cruel, inhuman or degrading treatment or punishment in the Convention remain applicable in times of armed conflict and are reinforced by complementary prohibitions in the law of armed conflict. Whether you are looking at human rights law or the law of armed conflict, the prohibition against torture and cruel treatment is categorical. There are no gaps.

Topic: Remedies; Law of Armed Conflict

Although Article 14 of the Convention contemplates an enforceable right to fair and adequate compensation for victims of torture, it would be anomalous under the law of war to provide individuals detained as enemy belligerents with a judicially enforceable individual right to a claim for monetary compensation against the detaining power for alleged unlawful conduct. The Geneva Conventions contemplate that claims related to the treatment of POWs and protected persons are to be resolved on a State-to-State level, and war reparations claims have traditionally been, and as a matter of customary international law are, the subject of government-to-government negotiations, as opposed to private lawsuits.

In closing, there can be no question that the clear position of the United States is that torture and cruel, inhuman and degrading treatment or punishment are legally prohibited everywhere and at all times. There can also be no question that these prohibitions continue to apply even when the United States is engaged in armed conflict. These prohibitions exist under domestic and international law, including human rights law and the law of armed conflict.

The United States remains dedicated to enforcing these prohibitions to ensure that there are no gaps, that there are no loopholes, in order to fulfill a primary purpose of the Convention: to recognize the inherent dignity of persons and right to be free from torture and cruel, inhuman and degrading treatment or punishment. And now, let me give the floor to Brigadier General Richard Gross.

Brigadier Gen Rich Gross, Legal Counsel to the Chairman of the Joint Chiefs of Staff, Department of Defense

Thank you. Mr. Chairperson, distinguished members of the Committee, I am Brigadier General Rich Gross, and I am here on behalf of the Department of Defense. I am honored to address the Committee today regarding U.S. military operations and policy.

At the outset, I would like to reaffirm the Department of Defense's commitment to the United States' clear position that torture and cruel, inhuman or degrading treatment or punishment are categorically prohibited under domestic and international law everywhere at all times.

Let me start by addressing the questions from Special Rapporteur Bruni about President Obama's commitment to close the detention facility at Guantanamo Bay and the current population there. As you noted, sir, President Obama has repeatedly reaffirmed his commitment to close the detention facility and in his May 2013 speech at the National Defense University, he outlined a series of steps to reach that goal.

Since then, 18 detainees have been transferred from Guantanamo. The vast majority of these transfers were [the] result of internal administrative review procedures established to ensure that we detain only those who continue to represent a significant threat to the United States. The United States is currently holding 148 individuals at Guantanamo under law of war authority. Of those, 79 detainees are currently designated for transfer subject to appropriate security and humane treatment measures. 33 detainees have been designated for potential prosecution either in federal court or by military commission, and 36 detainees are designated for continued law of war detention and will be periodically reviewed.

Now Ms. Belmere, you ask about the periodic review of detainees. The Periodic Review Board (or PRB) process mandated by President Obama began in October of 2013. This process is a discretionary, administrative, interagency process intended to assist the Executive Branch in making informed decisions as to whether detainees held at Guantanamo Bay should remain in detention under the law of war.

On November 5th, the United States completed the first repatriation of a detainee designated for transfer by the PRB. Now Ms. Belmere, to address your questions regarding the legal status of detainees at Guantanamo, I would like to note that these detainees continue to be detained lawfully both as a matter of international law and U.S. domestic policy. As a matter of international law, the United States is engaged in an armed conflict with al-Qaeda, the Taliban, and associated forces.

Topic: Law of Armed Conflict

As part of this conflict, the United States has captured and detained enemy belligerents and is permitted under the law of war to hold them until the end of hostilities. All U.S. military detention operations conducted in connection with armed conflict, including at Guantanamo Bay, are carried out in accordance with international humanitarian law, including Common Article 3 of the Geneva Conventions and all applicable international and domestic laws, including the Convention against Torture.

Topic: Trials and Criminal Procedures

Now, Special Rapporteurs Bruni and Modvig, you ask about specific fair trial guarantees to Gitmo [sic] detainees, and, in particular, Article 15 protections within the military commissions. All current military commission proceedings at Guantanamo incorporate fundamental procedural guarantees that meet or exceed the fair trial safeguards required by Common Article 3 to the Geneva Conventions and other applicable law. These fundamental procedural guarantees include: the presumption of innocence; the right to counsel, including specially trained counsel in capital cases; the right to discovery of evidence; and the right to appeal conviction, ultimately to the U.S. federal courts.

In compliance with Article 15, the Military Commissions Act expressly forbids the introduction of a statement obtained by the use of torture or by cruel, inhuman or degrading treatment, except against a person accused of torture or such treatment as evidence that the statement was made.

Now Mr Modvig, regarding your question about the classification of certain information in military commissions. We must balance the need to comply with U.S. law and regulations regarding the protection of classified national security information with the United States' strong interest [in] ensuring the detainees meaningful access to counsel, including the ability of detainee counsel to access relevant classified information. The United States respects the critical role of detainee counsel in these proceedings and will continue to make every reasonable effort to ensure that counsel can communicate effectively and meaningfully with their clients.

Topic: Interrogation (Appendix M of Army Field Manual)

Now many of you ask about the U.S. Army Field manual on interrogations, and Mr. Zhang, sir, you asked for a copy of that manual. The manual is publicly available in its entirety online and we have provided you with the link at your chairs.

The interrogation techniques are [*Editors' note: this may have been "our"*] Guidelines in the Army Field Manual are consistent with U.S. domestic and international legal obligations and the techniques are binding on the U.S. military as well as all federal government agencies including intelligence agencies and the High Value Interrogation Group, or HIG.

This applies to all individuals in U.S. custody or under U.S. effective control in any armed conflict. The manual explicitly prohibits threats, coercions, and physical abuse. Nothing in the Army Field Manual, to include Appendix M, authorizes or condones the use of sleep manipulation or sensory deprivation.

For example, Mr Bruni, you mention the language in Appendix M that states that the use of separation must not preclude the detainee from getting four hours of continuous sleep every 24 hours and questioned whether that would be adequate over a 30-day period. First, this standard must, of course, be applied consistently with all applicable legal, regulatory and policy principles and guidelines which provide that all prisoners and detainees, regardless of status, will be treated humanely. The four-hour standard is not a daily limit but rather a minimum standard. It is certainly not intended to mandate, for example, 30-days of separation with only 4 hours of sleep per day. Nor would it allow 40 continuous hours of interrogation with only four hours of sleep on either end. As the Manual states, in attempting to determine if a contemplated technique or approach should be considered prohibited, consider whether if the proposed technique were used by the enemy against one of your fellow soldiers, you would believe your soldier had been abused. And I personally use that particular phrase with folks in determining whether the technique they want to use is lawful.

Topic: Conditions of Confinement (registration of detainees)

Now Mr Bruni, you ask about the registration of detainees. In every armed conflict the United States has taken seriously its obligations under domestic and international law to ensure humane treatment of detainees. Under standard U.S. military procedures, each

individual detained by U.S. forces, for more than a temporary period, is assigned an internment serial number or ISN, which begins a formal process of oversight and record keeping. Every ISN is reported to the International Committee of the Red Cross, or ICRC, and the ICRC is given access to these individuals as well as to all internment locations. Every person who is released from detention is afforded an exit interview with the ICRC wherein he or she is given the opportunity to raise any concerns or allegations of mistreatment. In addition, by Executive Order, all departments and agencies must provide the ICRC access to detainees in a manner consistent with Department of Defense regulations and practice.

Topic: Guantanamo (independent medical examinations); Forced Feeding

Mr Modvig, you also ask about independent medical examinations and issues of medical ethics with regard to detainees. Detainees at Guantanamo are provided with high quality medical care comparable to that which our own service personnel receive while serving there. U.S. practice is consistent with principle no. 2 of the non-binding principles of medical ethics. DoD physicians and healthcare personnel charged with providing care to detainees take that responsibility very seriously. [M]ilitary physicians, psychologists and other healthcare personnel are held to the highest standards of ethical care and at no time have been released of their ethical obligations. Permitting non-military medical examinations of detainees would undermine the effectiveness of healthcare delivery; in addition the availability of outside medical examinations could encourage detainees to refuse the care of the Guantanamo medical staff in an attempt to obtain such examinations and to get alternate treatment plans. Nevertheless the Department of Defense has allowed independent non-military medical examinations of Guantanamo detainees on a limited case-by-case basis where circumstances warrant such an exception.

Now Mr. Bruni and Mr. Modvig, you ask about the enteral feeding of detainees at Guantanamo. Enteral feeding is used as a last resort, where necessary, to address significant health issues caused by malnutrition and/or dehydration. It is the policy of the United States to support the preservation of life, by appropriate clinical means, in a humane manner, and in accordance with all applicable laws. The Department of Defense has established clinically appropriate procedures to address the medical care and treatment of individual detainees experiencing the adverse health effects of clinically significant weight loss. These procedures are administered in accordance with all applicable domestic and international law pertaining to humane treatment. My colleague from the Department of Justice will address Mr. Bruni's specific question about the ongoing litigation over these procedures.

Topic: Accountability

Now Mr. Modvig, you ask for additional information regarding investigations and prosecutions for the alleged mistreatment of detainees. The U.S. military is and always has been required to investigate every credible allegation of mistreatment by U.S. forces in order to determine the facts, including identifying those responsible for any violation of law, policy or procedures, no matter how senior that individual may be. The U.S. military has a robust judicial system and other administrative mechanisms designed to ensure that personnel adhere to the law and policy associated with military operations and detention. Pursuant to these mechanisms the Department has conducted thousands of investigations since 2001 and prosecuted or disciplined hundreds of servicemembers for mistreatment of detainees and other misconduct. For example, more than 70 investigations in Afghanistan resulted in full

courts martial. Close to 200 resulted in either non-judicial punishment or adverse administrative action, and many more were investigated and resulted in action at a lower level.

Topic: Sexual violence and assault in the military

Now Mr. Modvig and Ms. Pradhan-Malla, you ask about measures to prevent sexual violence and assault in the military. Eliminating sexual assault from the military is one of our absolute top priorities. Through continuous assessment and improvement, we seek to improve our response and prevention programs, and it is one of the Secretary's highest priorities. Within the past couple of years, the Department has implemented monumental reform efforts in this area. The Secretary of Defense has directed a range of initiatives designed to strengthen new and existing programs addressing areas including commander accountability, oversight, investigative quality, pre-trial investigations, command climate, victim advocacy, and victim support and safety. In addition to physical and mental health care for survivors who remain on active duty, survivors who transition out of military service are offered physical and mental health care through the Department of Veterans' Affairs (the VA), the Veterans Health Administration mental health services, veterans centers, and other resources. The VA provides free, confidential treatment for mental and physical health conditions related to sexual trauma regardless of service-connected disability ratings.

At this time I will now return the floor to my colleague, the Ambassador.

Ambassador Harper

Potential visit to the U.S by Special Rapporteur Juan Mendez

Thank you General. Members of the Committee, I will address questions raised by Mr. Bruni and Mr. Modvig regarding the potential visit to the United States by Special Rapporteur on Torture and Other Cruel, Inhuman, and Degrading Treatment or Punishment Juan Mendez.

As a starting point, we want to be clear that the United States fully supports Special Rapporteur Mendez and his mandate. We appreciate his diligence in examining situations involving torture and cruel, inhuman or degrading treatment or punishment around the world.

Accordingly, we are open to a country visit to the United States by Special Rapporteur Mendez. So [to] the question regarding a visit to detention facilities in the United States, we hereby confirm our willingness to facilitate such a visit. We have communicated the same to Mr. Mendez.

To the question regarding Guantanamo specifically, as we have made clear to Mr. Mendez, we would welcome his visit under the terms previously conveyed to him. Security concerns dictate limitations on detainees' ability to communicate with others during wartime. Therefore, Mr. Mendez would have the same access as is granted to members of our own Congress and civil society.

Private access to detainees is only granted, however, first to the International Committee on the Red Cross, as contemplated by the Geneva Conventions, and two, to detainee counsel.

Both detainee counsel and [the] ICRC have special roles and responsibilities both, furthermore, are bound by duties of confidentiality.

I also wanted to thank Mr. Bruni for mentioning the UN Voluntary Fund for Victims of Torture. As many of you know, the United States has had a longstanding commitment to the Fund and to its mission. It is a mission which has important links to the goals and purposes of this Committee.

And now, I will turn it over to Robin Jacobson, Associate Deputy Attorney General for the Department of Justice.

Robin Jacobson, Associate Deputy Attorney General, US Department of Justice

Thank you, Ambassador. Distinguished members of the Committee, my name is Robin Jacobson, and I am an Associate Deputy Attorney General at the U.S. Department of Justice. I am honored to appear here today on the subject of such importance to the Department of Justice, and to have the opportunity to respond to your questions about individual redress under Article 14, the availability of habeas corpus to persons detained by the United States, certain medical issues pertaining to detainees, registration of detainees, watchlists, and rehabilitation of torture victims.

Topic: Remedies; Law of Armed Conflict

To begin with Article 14, outside the context of the law of armed conflict, U.S. law provides a wide range of civil remedies for seeking redress in cases of torture. These include injunctions, compensatory damages, punitive damages, and declaratory relief. In addition, the U.S. Congress has authorized the federal government to bring civil actions to enjoin acts or patterns of conduct that violate constitutional rights, including those that would amount to torture. At the federal level, the principal avenues of individual redress are administrative tort claims and civil litigation. Common law tort actions for assault, battery, wrongful death, civil actions for violations of federally protected civil rights, suits based on federal constitutional rights. On the state level, all of our states provide for civil tort suits to be brought against state officials and many permit damages for violations of state constitutional rights.

With respect to prisoners, in particular, Mr. Modvig, Ms. Pradhan-Mallah, and Mr. Chairperson, you all expressed concern about the Prison Litigation Reform Act and, in particular, the requirement that there be an underlying physical injury in order to qualify for compensation for emotional distress. The Act was broadened in 2013 to allow a showing of the commission of a sexual act as an alternative to physical injury to establish eligibility for compensation for emotional distress. The Act does, as you noted, require inmates to pursue and exhaust administrative remedies before bringing suit in federal court. That requirement provides correctional agencies both an opportunity and an encouragement to resolve the issues themselves. If and when a case must go to court, it then ensures that there will be a full record available on which to evaluate those claims. Importantly, the Act does not preclude incarcerated persons from seeking other legally available relief, apart from compensatory damages, for mental and emotional injury from unconstitutional conditions of confinement. Now apart from the limitations imposed by that Act, prisoners in federal or state prisons claiming that they have been tortured may seek redress against state and local officials in a civil suit for violations of fundamental rights pursuant to 42 U.S.C. § 1983, a federal statute.

They may obtain monetary damages and may seek injunctions to require prison officials to correct conditions that violate the Constitution.

Topic: Habeas Corpus

Mr. Modvig, you asked questions about the reach of the right to habeas corpus for persons detained by the United States. Under the U.S. Constitution, and absent exceptional circumstances, all persons in the United States have the right to seek habeas corpus review challenging the lawfulness of their detention. With respect to the reach of the constitutional right to habeas corpus outside the sovereign territory of the United States, our Supreme Court has identified factors to be considered, including the citizenship and status of the detainee, the adequacy of the process through which that status determination was made, the nature of the sites of apprehension as well as the detention, and the practical obstacles that are inherent in resolving a habeas claim in those circumstances. The right to bring habeas proceedings has been held by the courts to reach extraterritorially to the detainees held by the military at Guantanamo, as well as to U.S. citizens detained by U.S. military authorities overseas in Iraq. The U.S. respects the fundamental importance of the role of detainees' counsel in all such proceedings and makes efforts to ensure that counsel can represent detainees in an effective and meaningful manner. For habeas cases challenging military detention at Guantanamo, detainees can request a court appointed lawyer to serve free of charge. And in addition, hundreds of private attorneys have volunteered their experience and their time to provide that legal representation.

Topic: Forced Feeding

Mr. Bruni, General Gross has already addressed many of the questions you asked about enteral feeding, but you also asked for an update on the status of litigation involving Guantanamo detainees, and I'm happy to provide that. As you noted, in early October, a federal district judge in Washington, D.C. conducted an evidentiary hearing addressing a legal challenge brought by a detainee, Abu Dhiab, to the enteral feeding policies at Guantanamo. That followed a lengthy evidentiary discovery period and it included expert testimony submitted by the detainee's counsel. Just last week, the court rejected the detainee's challenge and denied his motion to enjoin the enteral feeding protocols. The Court held that the record established that Joint Task Force Guantanamo had provided that detainee, and the detainees subject to these protocols, with appropriate medical care, was not deliberately indifferent to his medical needs, and had not deliberately caused him pain and suffering. The detainee has formally indicated that he will appeal that ruling. In accordance with the judge's order in that case, classified video tapes that relate to those feedings have been produced to Mr. Dhiab's attorneys, and submitted to the court under seal. On October 3rd, the Court ordered also that the videos be publicly disclosed with certain information redacted. Last week, the court granted the government's request to stay that order until December 2nd, pending a decision by the United States whether to appeal. And just yesterday, a different federal judge denied another request by a different detainee to enjoin the Guantanamo enteral feeding policy as to him, finding no deliberate indifference to the detainee's medical needs and citing the reasoning by the federal judge in the Dhiab case which we just talked about.

Mr. Modvig, you also asked about independent medical examinations and General Gross has addressed that issue with respect to Guantanamo detainees, and he explained the rationale for

the limitations in that policy. The Federal Bureau of Prisons is charged by statute with...
[...discussion of medical treatment of inmates in federal prisons].

Mr. Bruni, you asked about registration for detainees and General Gross has addressed that issue with respect to detainees held by the military. [...discussion of records and registration of non-military prisoners].

Topic: Redress; No-Fly List

Mr. Domah, you asked about watch-listing, which we understood to be a reference to the U.S. no-fly list. The U.S. government is actively reviewing and revising the existing redress procedures regarding the no-fly list. In so doing, we are attempting to increase transparency for certain individuals denied boarding who believe they are on the no-fly list and have submitted inquiries to the Department of Homeland Security. And we are doing so consistent with the protection of national and transportation security and classified and other sensitive information.

Finally, Mr. Modvig, we appreciate your recognition of the efforts of the United States to date to help rehabilitate victims of torture. The Torture Victims Relief Act, originally enacted in 1998, authorizes funding for a number of programs that provide rehabilitation services, including funding for the Department of Health and Human Services and U.S. Agency for International Development to support treatment centers and programs in and outside the U.S., respectively... [discussion of further torture measures in this area].

Now my colleague, Mr. Bitkower, will address some of your additional questions. Thank you.

Deputy Asst. Att’y Gen. David Bitkower, Criminal Division, U.S. Department of Justice

Good afternoon. Once again, my name is David Bitkower, and I am a Deputy Assistant Attorney General from the Justice Department’s Criminal Division.

Topic: Interrogation (methods and oversight)

Mr. Modvig and M. Zhang, you both asked about training in lawful interrogation methods and internal reporting requirements, and internal reporting mechanisms, as well.

We believe that the training described in our periodic report has been successful in preventing mistreatment during interrogation. The FBI continually trains its personnel on adherence to the Constitution and laws of the United States, including the prohibition against torture and to promote the humane treatment of any detainee with whom it is involved. This is the case whether the detainee is in FBI custody, or the custody of another agency or country.

With regard to internal reporting mechanisms, the FBI has in place a range of internal controls and oversight mechanisms that are intended to prevent, detect, and address any violations of law or policy. I can also offer the following additional information from the Bureau of Prisons... [discussion regarding U.S. prisons]

Topic: Interrogation (High Value Detainee Interrogation Group (HIG))

Mr. Bruni, you asked about interrogation techniques employed by the High Value Detainee Interrogation Group, or HIG. The HIG was established to improve our ability to interrogate the most dangerous terrorists by bringing together personnel from the FBI, the CIA, and the Department of Defense.

HIG personnel are bound to comply with the legal and policy limitations of the HIG itself, as well as of their home agencies. Thus interrogations conducted or supported by the HIG, like all interrogations conducted by personnel from its constituent agencies, are conducted consistent with the provisions of Executive Order 13491 and with the United States domestic and international law, including the Convention against Torture.

Mr. Bruni, you also asked what measures existed to respond to the use of enhanced interrogation techniques if they are still practiced. Enhanced interrogation techniques are no longer practiced and any United States personnel who employ torture or cruel, inhuman or degrading treatment or punishment concerning a detainee will be violating the law.

You also asked about the status of the Law Enforcement Torture Prevention Act. As we have previously noted, the Convention does not require State Parties to enact a crime specifically labeled torture but rather to ensure that the underlying conduct encompassing torture is criminalized.

Under United States law, that conduct is prohibited by various statutes. For example, torture may be encompassed by statutes prohibiting torture under that term, as in the prosecution of Chuckie Taylor, which we described yesterday. Or it may be encompassed by statutes prohibiting, for example, the violation of civil rights. As one example, in 2006, four correctional officers at the Federal Bureau of Prisons participated in the abuse of an inmate who was thrown to the floor and restrained...*[discussion of U.S. prisons]* Because we believe the relevant conduct is already covered, the Administration is not actively considering adopting new federal legislation prohibiting torture within the United States.

Topic: Extraterritoriality; Accountability

Mr. Bruni, you also asked whether, although U.S. law prohibits the commission of torture by United States nationals everywhere in the world, an American official could escape liability by effectively delegating the commission of torture to officials of a foreign government. The answer to that question is no. Just as federal law prohibits actions taken by United States officials personally, so would it apply to actions directed or willfully caused by those officials, even if those actions were actually carried out by others.

You also requested examples of public officials prosecuted for offenses that would constitute cruel, inhuman or degrading treatment or punishment as prohibited in the Detainee Treatment Act of 2005. Following are two examples from the civilian justice system of prosecutions under federal criminal law, and my colleague General Gross has already discussed actions taken by the military justice system. In June 2003, David Passaro, a CIA contractor stationed at a United States army base in Afghanistan, participated in taking an Afghan man named Abdul Wali into custody and detaining him at the base.

Passaro then interrogated Wali in connection with rocket attacks on the base and brutally beat him, after which Wali died. The CIA Inspector General referred the case for prosecution.

Passaro was then indicted by the Department of Justice for committing assault. In August 2006, he was convicted following a jury trial.

In November 2008, Don Ayala, a Department of Defense contractor in Afghanistan, participated in capturing and detaining an Afghan civilian named Abdul Salam. Salam had doused another American contractor, Ms. Paula Lloyd, with a flammable liquid, and set her on fire, causing her death. After learning what happened to Ms. Lloyd, Ayala approached Salam, who was still being detained, and shot him to death. In February 2009, Ayala was convicted in federal court of manslaughter.

Both Mr. Modvig and the Chairperson asked for further information regarding Mr. Durham's review regarding detainees alleged to have been mistreated while in U.S. custody subsequent to the September 11th attacks. Mr. Durham and his team reviewed the treatment of 101 such detainee cases. In so doing he drew upon information provided by the CIA Inspector General, a report from the International Committee of the Red Cross regarding the treatment of high-value detainees formerly in CIA custody, the Department of Justice's report on legal guidance related to enhanced interrogation techniques, and other sources. After reviewing a substantial volume of information, Mr. Durham recommended the opening of two full criminal investigations and Attorney General Holder accepted that recommendation. After investigation, the Department ultimately determined not to initiate prosecution of those cases. That decision was made based on the same principles that federal prosecutors apply in all determinations of whether to initiate a prosecution. Specifically, Mr. Durham's review concluded that the admissible evidence would not be sufficient to obtain and sustain convictions beyond a reasonable doubt. Because the cases did not result in prosecutions, I cannot publicly describe with specificity the investigative methods employed by Mr. Durham, or the identities of any witnesses his team may have interviewed. Overall, however, the investigations involved interviews of approximately 96 witnesses and the examination of physical and documentary evidence. In short, Mr. Durham had access to and reviewed a broad array of information relating to allegations of mistreatment. In addition, prior to Mr. Durham's review, career prosecutors at the Department of Justice reviewed certain cases involving alleged detainee abuse. These reviews led to charges in several cases, including the two cases I previously discussed. The Department determined not to initiate federal prosecution in other cases for reasons consistent with the same principles of federal prosecution that I discussed before.

With respect to individuals who provided legal advice regarding the permissibility of enhanced interrogation techniques, a 2010 Review conducted by a senior career Department of Justice official concluded that two senior Justice Department lawyers who gave advice in 2002 and 2003 regarding the application of the torture statute and the use of specific interrogation techniques had made errors and had exercised poor judgment, but they had not intentionally or recklessly provided incorrect advice or acted in bad faith.

Mr. Modvig, you also requested an update into the investigation by Mr. Durham of the destruction by CIA personnel of videotapes of detainee interrogations. In November 2010, the Department announced that after an exhaustive investigation into the matter, Mr. Durham had concluded that he would not pursue criminal charges.

The Committee asked a number of questions regarding conditions of confinement in prison, including the use of restricted housing. [*discussion of U.S. prisons*].

Mr. Bruni, you asked whether it could constitute mental torture for prisoners suspended a period of years between being sentenced to death and having that sentence carried out due to their pursuit of appeals or other procedural mechanisms to challenge their convictions or sentences.

Although we cannot comment on any particular pending litigation, we do not believe, as a general matter, that delays that result from a convicted prisoner's decision to take advantage of the heightened procedural safeguards mandated by the Constitution and laws of the United States constitute a form of mental torture.

Mr. Chairperson, in response to your question, the President has directed the Department of Justice to conduct a review of how the death penalty is applied in the United States. The Department is taking a look at this; we have no additional update at this time.

Finally, Mr Bruni, you asked about efforts to reduce the federal prison population. These efforts have been a priority for the Attorney General and have taken a number of different forms many of which are reflective of the recommendations in the congressional report that you cited. For example, as part of the Smart on Crime initiative announced last year, the Department has modified its charging policies to ensure that mandatory minimum sentences are reserved for the most serious criminals. In 2014, with the support of the Department, the United States Sentencing Commission adopted amendments to lower guideline penalties for all drug offenders. In addition, the Department is pursuing alternatives to incarceration for low level non-violent crimes, including the use of diversion programs that do not require incarceration. Just two weeks ago, in fact, the Attorney General visited one such program at the federal courthouse in Brooklyn, New York. *[Further discussion of federal prison population]*.

[The transcript here omits remarks from an acting senior counsel in the Justice Department Civil Rights Division. These remarks may be found beginning at 55:00 of Video 3 on [this page](#). Discussion involved Ferguson, Missouri; the Chicago Police Department; the use of tasers in law enforcement; prison conditions; youth and juvenile detention; a request for statistics; life sentences for youth and juvenile offenders; solitary confinement; and sexual violence in detention.]

[The transcript here omits remarks from the Director of the Department of Corrections for the State of Rhode Island. These remarks may be found beginning at 1:04:00 of Video 3 on [this page](#). Discussion involved solitary confinement; the Prison Rape Elimination Act; sexual assault and LGBTI issues involving prisons; overcrowding of prisons; and the treatment of pregnant women.]

[The transcript here omits remarks from the Attorney General for the State of Mississippi. These remarks may be found beginning at 1:10:00 of Video 3 on [this page](#). Discussion involved training for and use of force by law enforcement; training in the use of tasers in law enforcement; Chicago's use of tasers in law enforcement; and interrogation and reporting of abuses.]

[The transcript here omits remarks from the Associate General Counsel for Immigration in the Department of Homeland Security. These remarks may be found beginning at 1:14:50 of Video 3 on [this page](#). Discussion involved the United States immigration detention system;

prosecutorial discretion by DHS personnel; identifying asylum seekers, and training of officers evaluating asylum claims; conditions in detention, including health care; enforcement of standards in private detention facilities; the Prison Rape Elimination Act; addressing complaints of abuse in immigration detention; whereabouts or locations of DHS facilities; racial profiling at the United States border; access to counsel during immigration proceedings; and unaccompanied children and families.]

Tom Malinowski, Assistant Secretary for Democracy, Human Rights, and Labor, U.S Department of State

Thank you so very much, Mr. Chairperson, members of the Committee.

Let me begin with Mr. Bruni's question about the Optional Protocol to the Convention. And let me say here that our hesitation with respect to the Convention is not that we already have a strong domestic system of oversight over our detention facilities, although we believe that we do. It's that we also see a handful of practical and legal obstacles.

We have had concerns, for example, about some provisions that we feel may be problematic under our Constitution with respect to legal standards for search and seizure. And the regime established by the Draft would, we feel, be somewhat difficult to implement given our federal system. Because the Optional Protocol prohibits reservations, we can't address these concerns in that way. We would, instead, need comprehensive implementing legislation to compel our states and local governments to provide information to permit visits and private access, which would, in fact, be a fairly daunting challenge.

Topic: Interrogation (effectiveness of torture)

Now Mr. Bruni, you also asked us to elaborate on our view that torture is not an effective means of interrogation. And let me start here by stressing again what I said yesterday that torture is and must remain absolutely prohibited under all circumstances. The United States government would oppose torture on moral grounds, on legal grounds, even if we somehow believed that it elicited useful information. Period. At the same time, our experience and that of many countries shows that torture is also counter-productive. Many experts on interrogation, many survivors of torture, have noted that when prisoners are subjected to pain and suffering, they often say exactly what they think their questioner wants to hear, to stop the pain, whether it is true or not. In the fight against terrorism, the use of torture also makes it harder to win the trust of communities whose support we need. It fuels recruitment for our enemies and it erodes the very rules that we rely on to protect our own military personnel if they are captured. So many of our senior military, law-enforcement, intelligence officials have said over the last many years that abusive interrogation techniques were more harmful than helpful in the fight against terrorism, and that any useful information that may have been obtained this way could have been uncovered by lawful means. We expect that the Senate Intelligence Committee Report on the CIA's former program and other related reports and commentaries will provide a fuller assessment of this question.

You also asked about the report - when it's likely to be released. And I can tell you, the Executive Branch is working very closely with our Senate Committee to produce a declassified version with minimal redactions for public release, at which point it will be up to

our Senate to choose a date, so it's up to them, but we anticipate that this will happen very shortly.

In their comments, both Mr. Bruni and Mr. Domah asked the fundamental question of whether we have indeed gotten back on track and how we ensure that we stay on track. And in that same spirit, many members of the Committee asked important questions about accountability for past actions as a means of ensuring that we do not return to them. And I know that our answers to that question may not yet fully satisfy everyone. But I do believe that our actions since those issues arose have been quite powerful. We have not just replaced the problematic policies. We have definitively repudiated them through the judgment of our courts, our Congress, our President, and our people. Most important, we have had an honest public accounting. Our government has been open and truthful even when releasing information has been painful and uncomfortable. Soon when the Senate report is released, with the very strong support of President Obama, our people and the world will know even more details.

So our goal is to move forward, but we know that to avoid falling backward, we must be willing to look backward, and to come to terms with what happened in the past. Moreover, rather than weakening our standards against torture and cruelty, the result of this episode in our history has actually been to strengthen them, precisely because we experienced these problems. As I mentioned yesterday, we now arguably have more detailed and specific regulations barring abusive interrogations than any other country on Earth. Some are so specific that they inevitably spark more questions, like minimum sleep requirements for detainees, or rules governing how prisoners can be separated from each other on the battlefield—all of which we have been happy to try to answer today.

Topic: Interrogation (Army Field Manual)

And then, there is the U.S. Army Field Manual, about which many members of the Committee have asked, and we have discussed today. What's most important, I think, about the Field Manual is not just that it prohibits certain unlawful techniques, it's that it provides a complete list of all the techniques that professional, experienced interrogators operating in armed conflict need to use to get truthful information, and those interrogators are forbidden from using any technique that is not listed on the positive list. I know of no other country that requires its national security and intelligence agencies to limit themselves to a specific set of interrogation methods that are publicly listed on a website. We truly believe that this is a good model. In fact, we hope the Committee will promote its use elsewhere. So this process of improvement, which begins with a willingness to confront problems directly and honestly, is what distinguishes democratic countries committed to the rule of law, and it will continue in the United States, whether it's our effort to abide by the law as we defend our country, or to protect the rights of the most vulnerable people within our society, or to respect always, here and everywhere, the right to dissent. That is the most important fact we wish to report to this Committee. That is what enables us to champion the eradication of torture everywhere in the world. Mr. Chairperson, we've now finished our initial responses. And we look forward to the follow-up questions of the Committee.

[Remarks from the Chairperson].

Alessio Bruni, Country Rapporteur, Committee Against Torture

Thank you, Chair. I must just make a short introduction, since I have fifteen minutes, I have to choose some selected items because it is not sufficient to cover all the replies and further questions that I could have, or comments. But I will start immediately with concrete questions.

Topic: Reservations, Understandings and Declarations

Now, the first one is about prolonged mental harm. We knew that this was a condition for the official understanding, but it was meant to provide [the] requisite clarity, but I don't find any clarity, I am sorry to answer so straight. Because, I mean, in law, [y]ou have to define certain concepts, and prolonged, to me, does not mean much. Prolonged [...] could be one day, one month, one year, ten years. So, this has to be clarified. It is not clear at all what is "prolonged mental harm." If it is possible to clarify, thanks. But I must somehow reiterate my impression that there is no clarity.

Topic: Extraterritoriality

Now, as regarding geographic applicability of the Convention, now, I was pleased to note that—I hope I understood correctly—so, the applicability is to any place in the world under the jurisdiction of the government, for its officials, and the Guantanamo Bay and the aircrafts and ships are sort of [an] example of that somehow global applicability of the Convention, or the applicability is limited to those places? I would like to have a clarification, I understood the first notion, but I would like to have a confirmation of this.

Topic: Guantanamo

Now, about Guantanamo, I thank the delegation for the very comprehensive information given. Perhaps, I have made too many question, so this is what I have in return. But now, on the 148 individuals of Guantanamo under law of war authority. Now, there are different categories, and there is the third category of 36 detainees designated for continued law of war detention and will be periodically reviewed. Do I understand correctly that these are suspects without formal charge, and if this is the case, I mean, why are these [persons] still kept in prison without charge after so many years?

Topic: Interrogation (Appendix M of Army Field Manual)

Then, I continue, choosing some important issues that are a bit at random. Now, there was a question of the four hours sleep. Now, four hours sleep is indicated, by, I knew—it is a minimum standard. Okay. But a minimum standard means that it can be applied. It is legal to have four hours of sleep for a person under interrogation. It is permissible, so it can be done, for thirty days, and more, because this [restriction] can be removed. So the question remains the same. Four hours of sleep equal[s] deprivation of sleep, so my suggestion is that this Annex M of the Military Interrogation Manual [sic] be simply deleted from the Manual. This is my suggestion. So when we heard later that this Manual is sort of a good model for other countries—perhaps, I don't know, I leave it to the specialists. But provided that this Annex M is deleted, then, we can discuss about it.

Topic: Forced Feeding

Then, enteral feeding—I like the expression, I knew the expression force feeding, but enteral feeding? Sometimes, you know, there are terms, nice terms, to indicate somehow embarrassing practices. Now, it is said that there was no harm to the prisoners, it was for their health. Okay, I am not going to prolong this debate. But why not disclose as evidence that it was some sort of humanitarian intervention? Why not to disclose the evidence, why not to disclose the video—there is nothing to hide! I don't see why. Otherwise, one gets suspicious: if you don't disclose the videos, you say “uh-oh, maybe something was wrong there.” But anyway.

I thank the Ambassador of the United States for mentioning the visit of the Special Rapporteurs. But actually, we know that the Special Rapporteur can operate in an efficient way only by interviewing a person. So I wonder where the security problem is; but I am not going to elaborate more on that.

Topic: Conditions of Confinement (registration of detainees)

Now, the question of registration of detainees. We were guaranteed that the registration is done in times of war and times of peace. Registration is done. But my point was about the wording of your Report. That is to say, your Report states clearly that registration is not a requirement of the Convention. And my position, but I am not the only one, my colleagues' position, I hope, is that registration is the first step to prevent torture, and it is contained in Article 2 of the Convention, so this was the point that makes me raise certain questions.

Topic: Interrogations (High Value Detainee Interrogation Group (HIG))

The High Value Detainee Interrogation Group. I appreciate the information received, but which does not go very far. Because again, there is a statement: you name this group, you say it has special interrogation techniques—I know, this was in the Report, this is in many documents—and finally you say that it is perfectly in conformity with the Convention, with the humanitarian law. Yes. But, there is a blank. What are these methods that are in conformity? You give me statements. Not explanations, not evidence, nothing.

On the question of the applicability of the Prison Rape Elimination Act. Here, I must say, I am satisfied with the information, because I understand, and I am correct, that this act applies to federal, state, and local prison establishments. We were informed about the country that it is not applicable to state prisons, but [y]ou state it clear[ly] that it *is* applicable to state prisons, so I hope that this corresponds to reality.

[Discussion of prison overcrowding]

Now, the question of solitary confinement. If I understood correctly, there are only 400 persons in solitary confinement in the maximum security prisons. But, I don't know about the particular, one could get different information, but I'm talking—my worry is about the quality. Because a person which is kept in the same cell for at least 22 hours a day in the long run becomes insane. And if you have persons in solitary confinement for over 30 days, means that you are directing them towards insanity, and this is a fact, so there, again, I have my doubts on this practice.

[Discussion of unaccompanied children and their families in immigration context].

Now, about the Optional Protocol and Article 22 of the Convention. I thank [you] for the explanation, at least it was elaborated, this explanation. I can understand the legal difficulties that may occur. But I quoted your report, and the report stated, “no, we do not have the intention to accept the Protocol or Article 22 because we have a system of reports at [a] national level which is 100% good. But this is [now], maybe, a good explanation, I understand better the explanations given today.

But, still, at least, at the political level, I think the question should remain whether that might be a sort of good challenge to accept certain international mechanisms which allow, on the one hand, the Optional Protocol, the visit to places of detention, to have a sort of checking, as I was saying before, of your courts procedure of your prison system. And then also, especially for individual communications procedure[s], because you allow the individuals, your citizens, to appeal to an international order, which does not establish—it’s not a sort of super-judgment—but it’s simply establishing whether [a] certain treaty has been respected, or not, which gives our view on that. Now I’ll stop here, time is limited, sorry—I have many other comments to make, but we’ll see if we have time later.

Jens Modvig, Country Rapporteur, Committee Against Torture

Thank you very much, Chair. And thank you very much to the delegation for its very comprehensive replies and all the work that has obviously been put into answering the questions of the Committee. The Committee would like to appreciate the recognition that you made in your opening statements that torture has been committed, and also the position that reparation must now be implemented. And we appreciate the spirit of collaborating with the Committee about implementing this project.

Harold Koh, former U.S. Legal Adviser to the State Department, recently wrote an open letter to President Obama. He addressed the issue of applicability of the Convention Against Torture. He wrote, *inter alia*, that the Committee here is going to put a question to the delegation, namely: “Will the United States abide by the universal treaty ban on torture and cruel treatment, in armed conflict or beyond United States borders, including Bagram and Guantanamo?” I would like to make Mr. Koh’s question mine, and ask this question to the delegation, and hope that you will be able to present a clear and unconditional yes to this question.

In this connection, I would like to ask if the State Party would consider withdrawing its reservations to Article 16 of the Convention.

Topic: Remedies; Law of Armed Conflict

Regarding the applicability of the Convention under times of war. I understand the answer, anomalous, to [be to] provide detainees with the right to claim for monetary compensation for alleged unlawful conduct, as if it’s the position of the State Party that Article 14 of the Convention is not applicable because the laws of war supersedes the Convention when it comes to the right to rehabilitation, that is, we consider them as enemies, not as victims.

As to the transfer of Guantanamo detainees, no Yemeni detainee has yet been released since 2010. Does the State Party intend to ensure repatriation of the 58 Yemeni detainees that have been cleared for release in the near future?

Topic: Interrogation (Army Field Manual)

As to the questions about the Field Manual, Mr. Bruni's question was replied to but not mine. My question related to the field expedient separation, which involves a deprivation of sensory inputs that have scientifically been demonstrated to provoke psychotic conditions, so I did not get any response to the considerations of whether this might involve ill-treatment.

I didn't either get an answer to my question about whether CIA agents were included in the training mentioned for law enforcement, and whether also the CIA are limited to the interrogation methods in the Field Manual. I would appreciate a clarification here.

As for the Durham preliminary investigation, in most cases, it found that there was not sufficient evidence. Well, you might think that you don't find what you are not looking for because there were between 100-130 detainees in CIA custody as part of the RDI program. That's not that many. Was any of them interviewed?

As for the force-feeding, my question was relating to an assessment of the ethical aspects, not the legal aspects of it. The reply I got was that "this is not illegal." My question was "but is it ethical." Another question that was not answered was my question of whether cases of sexual abuse by military could be brought to civil courts. I would appreciate a reply to that.

As for the isolation or solitary confinement questions, one of my questions was if you please provide the number of suicides, attempted suicides, and other self-harm during the reporting period among detainees and prisoners held in solitary confinement [so] as to evaluate the impact of this confinement.

Concerning the Prison Litigation Reform Act, the concern is that the procedural requirements for the internal grievance mechanisms are so complicated that it seriously discourage[s] or even prevents prisoners from filing lawsuits. So my question was, what were the number of prisoners who filed claims in civil courts for redress for acts of torture or ill treatment that have been dismissed for lack of compliance with the procedural requirements?

As for the militarization of the police, there are disturbing patterns of excessive force on [the] part of police officers, especially towards African-Americans and other persons of color, which seem to demonstrate that the current mechanisms of accountability are insufficient. We have information that many federal investigations against police officers for unlawful and excessive use of force were closed without criminal charges because they did not present sufficient evidence of willful misconduct to give rise to a federal criminal prosecution for the police officers involved. So, the question is: how is the federal government going to ensure effective accountability and hold officers accountable for, for instance, fatal police shootings, like in the case of Mike Brown, whose parents are present here, consistent with the obligations under the Convention? What steps will the State Party take to ensure that there is appropriate oversight over the 1033 program, the Homeland Security Grant program, and the Edward Byrne Memorial Justice Assistance Grant program in order to ensure that the militarization of state and local law enforcement ceases. In continuation of this question, I would appreciate to hear how State Party ensures accountability for police sexual abuse.

As for the question of medical services and access to medical care in the prisons, the principle of equivalence of care, of course, applies, and I appreciate the replies here that the

quality of the medical service in prisons match the quality of the medical service outside, however, there is also the question of access. Independence of the medical profession is not applicable for medical doctors employed by the law enforcement and this means that prisoners here are, in fact, deprived of the right to a doctor of their own choice and, as I mentioned, they risk a mixture between security and health concerns.

As for the questions on asylum and the procedure, I appreciate the extensive replies, however, I think it was a little bit beyond the point of my question. My question was: how are victims of torture identified among asylum seekers. And I didn't hear a specific reply to this, and I would like, in this connection, if you could please provide the Committee with the training material and the procedures that apply on exactly this point, namely, how are victims of torture among asylum seekers identified. I would appreciate if the submission of the training material and procedures would also include how protection of one of the groups like minors and people with mental health disorders are complied with. These were my questions in this round—thank you.

[The transcript here omits remarks from Satyabhoosun Gupt Domah, Rapporteur, remarks from Kening Zhang, Committee Member, remarks from Sapana Pradhan-Malla, Committee Member, and some procedural remarks from the Chairperson. These remarks may be found beginning at 2:02:00 of Video 3 on [this page](#). Discussion from Domah primarily concerned reparations efforts for several abuses. Discussion from Zhang primarily concerned the impact on families of detainees as a result of detention at Guantanamo; the Chicago Police Department; and the abuse of children by priests. Discussion from Pradhan-Malla primarily concerned issues of gender violence; and issues of sexual violence, including reparations for mental and physical suffering.]

[The transcript here omits remarks from Essadia Belmir, Vice-Chairperson and Committee Member; and Abdoulaye Gaye, Committee Member; both of which were in French. These remarks may be found beginning at 2:11:45 of Video 3 on [this page](#).]

G. Tugushi, Chair and Committee Member

Thank you, M. Gaye. Now, I will take the floor, I guess I'm the last one, on the list of the speakers. So, I have [a] couple of more questions, again related to the matter raised yesterday, mainly to the issues related to immigration. One of the questions refers again to the principle of non-refoulement, which lies at the heart of our Convention.

And [it was] stated by the delegation [that] the United States generally actually implements the practice, that the border officials take [the] non-refoulement principle seriously, and [that] they refer asylum seekers to asylum officers who assess their protection claims. However, I doubt that there is any effective monitoring or accountability tool to ensure that border agents actually ask about the fear of persecution, torture, and [then] refer individuals to help. So, let me ask the question if the U.S. government plans to adopt oversight and accountability measures. For example: video recording; interviewing between border patrol officers and non-citizens to ensure asylum seekers are properly identified and not returned to danger.

My second question refers, again, to the policy, which actually refers to expanded immigration detention as part of [an] aggressive deterrence strategy. And those measures, as I understand, include interception by neighboring countries like Mexico, and since summer

[the] U.S. government has implemented a no-bond, no-release policy for refugee families, claiming that release on bond would encourage illegal mass migration. And I guess that there has been also some concerns raised from the U.S. Congress, as I have seen on the news. So, I wonder, how does [the] U.S. government reconcile its policy on deterrent detention with its positive obligation to provide individualized review of detention decisions?

Topic: Accountability

Last, but not the least, let me refer also to one of the questions asked yesterday. Somehow, I appreciate the answer provided but, as Mr. Modvig has already raised, we are not fully satisfied with the answer because one refers to the Durham investigation. Actually, I would just refer to standards of the Committee, that in our view any investigation into possible ill treatment by public officials must comply with the criterion of thoroughness. And actually, to be considered credible, it must be capable of leading to: a determination of whether force or other methods used were or were not justified under the circumstances; and to the identification, if appropriate, to the punishment of those concerned. Sure, this is not an obligation of result, but of means. It requires that all reasonable steps be taken to secure evidence concerning the incident including, *inter alia*, to identify and interview the alleged victims, suspects, and eyewitnesses, [and] also to seize instruments which might have been used in ill treatment and also to gather forensic evidence. So it is rather unfortunate that we cannot get a full answer on our question whether the witnesses have been involved in the process and have been interrogated, as required by the best standards of investigation.

[Discussion of sentences of life without parole—“real life sentences”—and contrasting with European practices].

[Procedural remarks of the Chair omitted].

Ambassador Harper

Thank you, Mr. Chair. Mr. Chair, before we continue, I would want to note that earlier today we saw a number of young people engage in a silent, peaceful protest here. For the record, the State Party, the United States, has no objection to this protest whatsoever. With that, I'm going to turn it over to our first person to start answering the questions, General Gross.

Brigadier General Richard Gross, Legal Counsel to the Chairman of the Joint Chiefs of Staff, Department of Defense

Thank you, Mr. Chairperson, members of the Committee. I'll try to go through the questions that I've been asked to answer in the order they were asked.

Topic: Guantanamo

So first of all, Mr. Bruni, you ask about the individuals held at Guantanamo Bay without a formal charge. And, again, we take the position that they are held under the law of armed conflict, that the law of armed conflict doesn't require formal charges, and that they can be held until the end of hostilities. In some cases, certainly, formal charges are brought either through the federal court system or military commission, but there is no requirement under the law of armed conflict.

Topic: Interrogation (Army Field Manual; sleep deprivation)

You ask about the sleep deprivation, so I want to go over that again. As I stated before, you cannot read the four-hour standard in isolation. It's a minimum standard, it's not a maximum that they can get on any given day, and you have to apply it consistently with the remainder of the Field Manual's legal, regulatory, and policy guidance. It's a several hundred-page Manual and we've given you the link to that Manual. So all of that regulatory and legal guidance, in addition to all of our other international and domestic legal requirements. So it is simply not just a four hour standard but that taken in context. And we monitor detainees very carefully: medical monitoring, psychological monitoring, to ensure that their mental and physical health is good. And legal advisers monitor their treatment constantly as well, to ensure that it is humane, legal, and so forth.

Topic: Forced feeding

Sir, you also ask about enteral feeding, which is a medical term. Enteral feeding—you ask specifically about the ethics of it. And we see it as ethical, in that we are preserving life. A detainee experiencing clinically significant weight loss is only approved for enteral feeding once the detainee's refusal to consume food or nutrients voluntarily reaches the point where the medical staff at Guantanamo determines that the detainee's life or health might be threatened. Even then, prior to every feeding, the detainee is offered the opportunity to eat a standard meal, or consume a liquid nutritional supplement orally, instead of being enterally fed. If enteral feeding is necessary, it is administered in a humane matter through a nasogastric tube, and only when medically necessary to preserve the detainee's health or life. The process is never undertaken in a fashion intentionally designed to inflict pain or harm on the detainee. To the contrary, the detainee's comfort and safety is a priority for the medical staff.

Topic: Law of Armed Conflict

Sir, you ask about registration of detainees and, again, in every conflict, we do that in accordance with the law of armed conflict, which has more specific requirements. Under our standard practices, we assign individuals an internment serial number. That starts a very formal process of oversight and record keeping. Those numbers are given to the ICRC, and they are given access to individuals as well as all internment locations.

You ask about whether the Central Intelligence Agency (CIA) follows that as well. When President Obama issued his executive order on January 22nd 2009, it required the CIA to close, as expeditiously as possible, any detention facilities it currently oper-I'm sorry. It required the CIA to close their detention facilities, prohibited it from operating any such [facility] in the future, and told them to comply fully with the other parts of the order, which includes those registration requirements.

Topic: Guantanamo (Yemeni detainees)

Mr. Modvig, you ask about Yemeni detainees. First of all, the President has lifted the moratorium on detainee transfers to Yemen in favor of a case-by-case analysis for each Yemeni detainee designated for transfer. As you've pointed out, the majority of detainees at Guantanamo are Yemeni nationals and the United States recognizes the need to identify

solutions for that population as part of our broader efforts to close the facility. Of course, U.S. law requires the Secretary of Defense to review each transfer and determine that the actions have been or will be taken that will substantially mitigate the risk of that detainee engaging in hostile activity that threaten[s] the United States, and that the transfer is in the national security interest of the United States. So, while the Secretary of Defense very much supports the President's goal to close Guantanamo, he also takes his responsibilities under the law to review each transfer very seriously.

Topic: Law of Armed Conflict; Interrogation (separation)

Sir, you ask about the field expedient separation. And my apologies for not answering that earlier. With regard to that, this is a very tactical decision made at the point of capture, typically at an objective. We don't aggregate or track that particular statistic. It's done under the constant supervision of the chain of command. It's done—certainly there are legal advisers at all levels of command that constantly advise and train on humane requirements of the law of armed conflict and our other domestic and international legal obligations. And, so, that technique—much like, as I told Mr. Bruni, for sleep, for example, you would have to take that in context of our entire body of law—domestic and international law—and policy.

Topic: Interrogation (CIA and Army Field Manual)

You also ask whether the CIA agents had to follow the requirements of the Army Field Manual and whether they are included in the same training as law enforcement agents. Under the Executive Order 13419, President Obama mandated that all interrogations be conducted in accordance with the requirements of the Army Field Manual, including those done by the CIA. And the CIA itself ensures itself that its officers are aware of these requirements. So thank you for that.

Ms. Pradahn-Mallah, you ask about sexual assault in the military. Others ask about it—about both remedies within criminal courts and remedies within civilian courts. Obviously, eliminating sexual assault, as I said earlier, is a top priority for us. We are continually assessing both the programs available to survivors as well as our military justice system and remedies available through the Veteran's Administration and other similar forms. And we continue to do that and it continues to be a top priority of the Department. The Secretary of Defense has ordered a significant review of the military justice system, as well as, Congress has empowered two panels to review the military justice system specifically with respect to sexual assault and we're waiting to see those results as well.

We got a question from Ms. Belmere, you asked specifically about the transfer of equipment from the Department of Defense to civilian law enforcement agencies. That's called the 1033 program. It's a law that's been in place for a number of years. I would stress, first of all, it's not a push program, it's not the Department of Defense pushing that equipment, but it's rather states requesting equipment. It is a lawful program, it's currently under review, and leadership in the Department of Defense have stressed that it is at the request of civilian law enforcement that do that. And then, you know, one thing that's critical, when we give our soldiers, sailors, airmen, and marines, that type of equipment, we train them on how to use it. And so training on the equipment, and how to properly use it, has to be done, consistent with domestic law, in the case of law enforcement, as well as international and domestic law for all of us. So that would be an important part of that, as well.

I believe I'm done, I'll pass it to Mr. Bitkower from the Department of Justice.

Deputy Asst. Att'y Gen. David Bitkower, Criminal Division, U.S. Department of Justice

Members of the Committee, I will do my best to respond as quickly as I can to these questions, and I apologize for any informality in my response. I will attempt to present as much information [as] I can in this time period without accidentally saying anything that might be misleading.

Topic: Interrogations (High Value Detainee Interrogation Group (HIG))

I first want to begin with the question about the High Value Detainee Interrogation Group and, in particular, I want to clear up any misunderstanding from my prior comments or from our periodic review report. The High Value Detainee Interrogation Group, or the HIG, is not authorized, and its members are not authorized, to use any techniques that they would not otherwise be authorized to use under the rules of their component agencies. So the group is made up of members of the FBI, Department of Defense, and the CIA. Each of those agencies have rules governing their authorized interrogation techniques that we have already discussed in other contexts here. So, for example, the FBI is bound to follow its own non-coercive law enforcement techniques. The CIA and the Department of Defense in the law of war context are bound to follow the techniques in the Army Field Manual.

Their participation in the HIG does not authorize them to go beyond those techniques that are already authorized. In fact, one of the mandates of the HIG is to examine the techniques that are otherwise authorized and to determine which of those authorized techniques are the most effective at getting information in a lawful way, and the HIG is not intending to do that in a secretive manner. To the contrary, one of their mandates is also to disseminate information to the public and to other practitioners about the best lawful techniques for obtaining information. In fact, just recently, the HIG conducted a symposium, in public, where, before academics and other practitioners, they presented some of their findings thus far. We expect that to continue in the future, in an effort at advancing the goal that we all share of using the most lawful techniques to get the best information possible.

Topic: Accountability

With respect to the questions about the Durham investigation. Again, I can only say that I appreciate the frustration the Committee must feel at the limited information that we can provide in the context of investigations that did not lead to public charges or prosecutions. And I also want to address up front the premise of some of the questions, which is, that if we did not interview certain people or conduct certain investigative steps, we must not have been looking to find the truth. And I have to vigorously disagree with that premise. Number one, we have not acknowledged one way or the other who it is that the Durham investigation team interviewed or did not interview, and I am not in a position to do that today.

What I can unequivocally state is that the mandate that Mr. Durham was given by the Attorney General was to determine whether charges could be brought and proved beyond a reasonable doubt, consistent with all of the safeguards that every defendant gets in federal court in the United States. He was given a mandate to do that, he was given the tools to do that, and he was given the opportunity, if he thought necessary, to seek an expansion of that

mandate. In the course of doing so, he, as I noted previously, interviewed approximately 96 different witnesses. Again, without saying who any one of those witnesses may be, he used the same standards and same techniques that any federal law enforcement officer would use in the United States to investigate any allegation of serious crime. And, after doing so, and assuring himself that he had the information necessary to make the determinations he could make, [he] made the determination then not to initiate prosecutions. I would note that there is actually an additional safeguard in that many of the cases that Mr. Durham's team reviewed had previously been reviewed, as noted before, by other career federal prosecutors, again, applying the same standard. So that is, not only was there not an attempt to not find the truth, there was an attempt to reevaluate previous decisions that were made to make sure we had gotten it right this time.

There was a question posed by Ms. Belmore about a recent conviction of Rasmia Odeh, in Detroit. And I believe that's the case that the committee member was referring to. Ms. Odeh was just convicted of having lied to immigration authorities when entering the United States. She immigrated to the United States in 1995 and became a naturalized citizen of this country in 2004. The charges that were brought in the last case that just concluded were not that she had committed crimes of terrorism here, they were not that she committed crimes of terrorism abroad. The crime she was charged with was, when she filled out her immigration paperwork, she was specifically asked had she been arrested, convicted, or imprisoned for any other crime. On those documents she concealed the fact that she had, in fact, been arrested, convicted, and imprisoned in Israel for the bombing of a supermarket, and the British Consulate, which killed two people. Again, the point of the American trial was not to re-litigate the substance of those allegations, but in fact to determine if she had committed a crime and whether she had been honest when coming to the United States. These were the same statutes, I'll point out, and the case was tried under the same standards, as when we charge other people who have committed human rights violations abroad, and come here seeking safe haven, and conceal their past practices. She received the same due process rights, and a jury concluded after the trial that she had, in fact, lied, and she could be sentenced to up to ten years in prison. I'll just emphasize, she has not yet been sentenced, her sentence will be determined by a federal judge, according to the standard procedures that apply in all of these cases, and the judge is free to give any sentence in that statutory range of zero years up to ten years.

[Discussion of solitary confinement, clarifying that no attempt was made in any previous answer to account for the total number of inmates within the United States in solitary confinement, across federal and local prison systems].

Catherine Amirfar, State Department, Legal Adviser's Office

I will address just two questions briefly.

Mr. Bruni asked about the enteral feeding litigation and why we have not disclosed the classified video tapes if there was nothing improper that they reflect.

I would indicate first that the detainee and the court have seen those videotapes and so they have been evaluated in a judicial forum in the United States, but as the public declarations in that case explain, they contain classified information and they are being protected because there is sensitive information about such things as the procedures for removing detainees and

relocating them in the facility, aspects of the facility's design that are sensitive national security information, and the risk that it would encourage behavior that would actually increase the frequency of the need for forcible movement of those detainees, in addition to the desire to protect the detainees against becoming the objects of curiosity.

[Discussion of data relating to the Prison Litigation Reform Act exhaustion requirements].

[The transcript here omits remarks from an acting senior counsel in the Justice Department Civil Rights Division, the Director of the Department of Corrections for the State of Rhode Island, and the Associate General Counsel for Immigration in the Department of Homeland Security. These remarks may be found beginning at 2:54:30 of Video 3 on [this page](#), and last a combined total of roughly nine minutes. Discussion involved the Prison Rape Elimination Act; domestic violence; and asylum and immigration.]

Tom Malinowski, Assistant Secretary for Democracy, Human Rights, and Labor, U.S. Department of State

Topic: Reservations, Understandings, and Declarations

Thank you. I am just going to address your question, Mr. Bruni, about the meaning of the term "prolonged mental harm," which you suggested is not absolutely precise. And I would respond, and I am sure you would agree, that many of the terms that bind our conduct in this area are not absolutely precise, and that's one reason why there has been struggle and debate and controversy over the years.

So, the underlying question really is, how serious must mental harm be to constitute torture and cruel treatment. And here I think, and I trust that you would also agree, that the answer to that question can't simply be to put a precise time limit, and I'm sure you weren't suggesting that. To say it's an hour, or a day, or a week, because every person is different and we are all affected differently by mistreatment. So if you say it's an hour, what about somebody who has experienced it for 59 minutes?

So it's a very difficult question and, perhaps there isn't a single good answer, but I will tell you how our Congress dealt with the question at a very important moment in our debate on detainee treatment in 2005 and 2006. And this arose because our Supreme Court made a decision—a very correct decision—that Common Article 3 of the Geneva Conventions bound us as a country everywhere in the world in the conduct of interrogations related to the fight against terrorism. And in the United States we have a War Crimes Act, which makes grave breaches of Common Article 3 a crime that is prosecutable in our courts. So our Congress struggled with, what does this mean, what are the definitions. And where they ultimately came out was to say that, whereas prolonged mental pain or suffering is required for conduct to constitute torture, it is not required, in other words, the mental pain and suffering need not be prolonged, in order to constitute cruel or inhuman treatment, which is, again, a prosecutable crime. So that's where they came out. And I would finally say that because of the inherent imprecision of some of these terms, and the need for precision at moments when the stakes are high and the pressure is on and soldiers, interrogators need to know, what can they do, what can't they do.

That's why we ultimately ended up with the Field Manual approach that we've described. Something that simply says, here is what you can do, precisely, here is what you cannot do, precisely. And in combination, these standards and approaches and that regulation give us, I think, a pretty strong safeguard. Thank you. And now I'll turn to Catherine to continue.

Catherine Amirfar, State Department, Legal Adviser's Office

Topic: Extraterritoriality; Reservations, Understandings, and Declarations

Thank you. I will address just two questions regarding scope of application.

Mr. Bruni, you asked for a clarification with respect to the reference to Guantanamo and ships and aircraft. These are our current examples, we will, of course, continue to look at the facts and circumstances in light of the interpretative approach that I identified, which is that the phrase "any territory under a State's jurisdiction," in our view, extends to all places that the U.S. controls as a governmental authority.

With respect, Mr. Modvig, to your question on Article 16, I would just point out that, as I mentioned, the reservation was really intended to ensure that the existing U.S. constitutional standards as to cruel, unusual, and inhumane treatment would satisfy the U.S. obligations under Article 16. It is very difficult in our constitutional system, and would be unusual in U.S. treaty practice to actually withdraw a reservation, but the intent of that reservation was to make sure that our constitutional scheme would be in compliance with Article 16. And, in addition, as I mentioned, I would only reiterate that it is not our position that that reservation imposes a geographic limitation on the application of Article 16, which would go back to the interpretative approach that I spoke about earlier. Thank you. And let me turn it over to Ms. McLeod.

Acting Legal Adviser Mary McLeod, U.S. Department of State

Topic: Extraterritoriality; Law of Armed Conflict

Mr. Chairperson, members of the Committee, I will deliver the final answer, and it will be brief. The answer to the question "whether the United States will abide by the universal ban on torture and cruel treatment in armed conflict or beyond United States borders, including Bagram and Guantanamo?", is unequivocally yes. For the reasons we discussed, these prohibitions are categorical. They bind the United States and its officials at all times everywhere. Thank you very much, and I will now turn to Ambassador Harper to deliver our final remarks.

Ambassador Harper

First, a brief comment in answer to Ms. Pradhan-Mallah's question regarding violence against women. We recognize that violence against women is a worldwide scourge. And the challenge is certainly one that we face in the United States. And unfortunately, there is no silver bullet, we know that too. But we have taken important and significant steps in the right direction [...] in the move towards eradicating violence against women. Among the steps are [our recent] reauthorization of the Violence Against Women Act last year. And let me give you a couple examples of what the Act provides. We saw a particularly high level of violence

against Native American women. And so there are specific provisions which grant jurisdiction to tribal courts, to exercise jurisdiction over defendants, whether they're Indian or non-Indian, meaning members of the tribe or not. That's an important recognition of that authority. And there's also provisions that are applicable for LGBT persons. So these are the kinds of actions that we're taking in the right direction, recognizing that it's an ongoing challenge.

And with that, we're going to end our answers. I do have a closing statement, but I think, after the Chair.

Chair Tugushi

Thank you, and let me once again express appreciation on behalf of the Committee for the work of the team of the U.S. delegation, and for the answers provided. And thanks for engaging with us, with this extensive dialogue, for two days. Let me also refer back to the words from yesterday from Mr. Malinowski, who said that the best test for any nation committed to this Convention and to the rule of law is not whether it ever makes mistakes, but rather how it corrects them. So, with these words, I want to actually pass the floor for the final words to the Ambassador to the Human Rights Council of [the] United States, and later we can close the session. The floor is yours, Ambassador.

Ambassador Harper

Thank you, Mr. Chair. On behalf of the United States, and the senior-level and wide-ranging delegation, let me thank you and the other distinguished members of the Committee for your thoughtful, comprehensive, comments and questions. What this process over the last couple of days has made absolutely clear is that the United States and this Committee share common ground and share common values. We are steadfast in our commitment to eradicate torture. Period. Full-stop. As part of that steadfast commitment, we are committed to the idea, grounded in American values, that torture, and cruel and inhuman and degrading treatment and punishment, are legally forbidden in all places, at all times, with no exceptions. With respect to this constructive dialogue, we listened carefully and thoughtfully to this Committee. We have taken note of your criticism as well as your praise, and we responded fully in the time permitted. We reiterate the application for the opportunity for such an open exchange. This exchange with UN human rights treaty bodies is part of a very important process that the United States greatly values. I would also like to pay tribute to the members of civil society who are here today, especially those who have traveled so far from the United States. We have listened to you as well, and taken your comments, criticisms, and praise to heart. We support and appreciate your robust participation, even on those occasions where we disagree. On a personal note, I must say that during our interaction and our consultations with civil society, and I think I speak for our entire delegation, we heard many stories, a number of them painful, that we will long remember, and will be part of our ongoing considerations. This valuable dialogue will continue, including when we undergo the Human Rights Council's Universal Periodic Review in six months' time. We look forward to that engagement as well. We value these processes because, at bottom, these exchanges enable us to continue our pursuit, in the words of our Constitution, "to perfect our Union." We appreciate your great service to this pursuit. Thank you, Mr. Chairman.

[Final remarks of the Chair omitted].

