

## **COMMITTEE AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT.**

36<sup>th</sup> session, 1-19 May 2006, Geneva

United States of America (second periodic report)

### *Information submitted to the Committee*

The United States of America (the USA) submitted its second periodic report (due in 1999) along with the written replies to the list of issues presented by the Committee against Torture (the Committee). The report is composed of 3 main parts and two annexes.

The information provided by the USA mainly focused on legal issues, particularly on how the Government complies with the provisions of the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (the Convention). The report lacked comprehensive and useful statistical data though it provided some sporadic data on cases of prosecution at the state and federal levels. The annexes concentrated on the background, legal status, and situation of the detainees in the military facility at Guantánamo Bay, Afghanistan, and Iraq. The annexes provide general information on the conditions under which the detainees are living, allegations of abuse of detainees, and actions taken to ensure accountability. While refusing to recognise any overall responsibility for actions taken by individuals in the armed forces, the annexes do contain information on lessons learned and measures taken to prevent acts of abuse from happening again. In general, the report does not seem very comprehensive considering the allegations of grave violations of torture and cruel, inhuman and degrading treatment or punishment reported by NGOs. The USA also failed to recognise and address the existence of problems beyond the acts of certain “rogue individuals”.

More than 13 NGOs<sup>1</sup> submitted information to the Committee. In addition to parallel reports, NGOs also submitted general reports and press releases. The majority of the information submitted by NGOs focused on the abuse of detainees in facilities located outside the USA, an area that was focused on during the discussion. Other issues include involuntary human scientific experimentation; human rights violations surrounding Hurricane Katrina and relief efforts; police abuses against lesbian, gay, bisexual and transgender people; impunity for torture by the Chicago police department; the conditions in ‘supermax’ prisons<sup>2</sup>; women in the prison system, particularly addressing inadequate medical treatment; coercive psychiatric interventions; and the death penalty, particularly the use of lethal injections.

### *Themes and Issues*

The meeting was moved to a large room to accommodate the size of both the delegation, and the number of NGOs and other State observers. The USA delegation consisted of 26 members from various governmental departments, including the State Department, the Department of Defence, and the Department of Homeland Security. There were representatives from 11 other States in the audience<sup>3</sup> as well as a large number of NGO representatives.

In his opening statement, Mr John Bellinger, the head of the USA delegation, emphasised that the Committee should not devote all of its time to international issues, but should allocate adequate time to the scrutiny of domestic issues. Unfortunately this was not reflected in the questions asked by the Committee. Overall the delegation provided the Committee with information on legislative measures taken, but failed to address how legislation was effectively implemented.

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<sup>1</sup> The following organisations submitted materials: the Midwest Coalition on Human Rights, the International Committee on Offensive Microwave Weapons, Human Rights Watch, the Coalition Against Torture and Racial Discrimination, the New York Organization For Human Rights and Against Psychiatric Assault, the World Organization for Human Rights, Human Rights First, the International Women's Human Rights Law Clinic, Stop Prisoner Rape, the Center for Constitutional Rights, the International Gender Association, the American Civil Liberties Union, and Amnesty International.

<sup>2</sup> Also known as maximum security prisons.

<sup>3</sup> Representatives from the States of Austria, Brazil, the Czech Republic, Denmark, Hungary, Indonesia, Ireland, Nigeria, Norway, Portugal, Qatar, the Russian Federation, Sweden, and the United Kingdom.

## Domestic Issues

The Committee addressed several issues relating to domestic prisons and government officials. Several Committee members expressed concern about the situation of women and juveniles in the nation's penitentiary system. Taking note of the fact that issues related to **rape and sexual abuse** has been raised by a number of United Nations (UN) human rights bodies<sup>4</sup>, one member explicitly asked why the implementation of the *Prison Rape Elimination Act* had been delayed. The delegation responded that the Act calls for a statistical analysis and survey, which is currently being undertaken. The Department of Homeland Security has taken some measures to implement the Act, such as training officials and the implementation of segregation systems for inmate protection. The Committee recommended that the USA should have appropriate measures to prevent all sexual violence in detention centres. The Committee also recommended that the USA should adopt appropriate measures to ensure that women in detention are treated in conformity with international standards and that the USA should ensure that detained children are kept in separate facilities.

Several Committee members enquired about the use of "**tasers**"<sup>5</sup> by penitentiary officials as well as law enforcement officers. They expressed concern about deaths related to the use of tasers. The delegation responded that extensive research is currently being done on these devices and their effects and that domestic courts, at various levels, have upheld the legality of the use of such devices. The delegation argued that the use of tasers has precluded the application of more lethal forms of violence and has prevented and reduced the number of deaths and violent incidents in penitentiary facilities. Though a Committee member specifically requested the USA to make a commitment to the elimination of the use of tasers until studies related to their safety are completed, the delegation rejected the request and upheld their firm stance that tasers are being used for public good. The Committee called for the abolition of the use of electro-shock devices as this could lead to breaches of Article 16.

Taking note of a recent case where an execution by **lethal injection**<sup>6</sup> lasted 86 minutes, a Committee member enquired about the continued use of this method and if it could be considered cruel, inhumane or degrading treatment. While touching on the issue of the death penalty, the Committee additionally enquired about the persistence of the so-called **death row phenomenon**<sup>7</sup> and the extended periods of time individuals are confined to areas designated for individuals awaiting execution. In response, the delegation noted that the Supreme Court of the USA has found that the use of lethal injections is lawful under the United States Constitution. They also noted that procedural safeguards usually cause the extension of death row sentences. The delegation felt that the Convention does not explicitly prohibit the death penalty. The Committee recommended a review of its execution methods, particularly expressing concern about the use of lethal injection.

## Applicability of the Geneva Conventions

In the delegation's opening remarks, Mr. Bellinger said that in the view of the United States government, detention operations in Guantánamo Bay, Afghanistan, and Iraq are governed by the law of armed conflict, which is considered *lex specialis*<sup>8</sup>. He noted that during the negotiation of the Convention, the United States delegation had made it clear that the Convention would not apply in situations of armed conflict. The delegation argued that if the Convention continues to apply during times of armed conflict, the result would be an overlap of different treaties, which would undermine the objective of eradicating torture. Relating to the legal status of detainees currently held in facilities abroad, the USA opined that there are different categories of detainees. In

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<sup>4</sup> The following UN human rights bodies have touched upon this issue: the Special Rapporteur on Violence Against in her mission report from 1999 ([E/CN.4/1999/68/Add.2](#)); the Human Rights Committee in its concluding observations in 1995 ([CCPR/C/79/Add.50](#)); the Committee Against Torture in its concluding observations in 2000 ([A/55/44.paras.175-180](#)); and by the Special Rapporteur on Torture in his report on communications with Governments in 2006 ([E/CN.4/2006/6/Add.1](#)).

<sup>5</sup> Also known as "electroshock gun" or a "stun gun". It is a weapon used to pacify a person by administering electric shock causing disruption of superficial muscle functions.

<sup>6</sup> Toledo Blade, "Lethal injection, recent execution discussed on 'Editors' ", <http://toledoblade.com/apps/pbcs.dll/article?AID=/20060512/NEWS02/605120413>, 12 May 2006.

<sup>7</sup> The term "death row phenomenon" refers to the emotional and psychological distress experienced by persons who are confined to sections of the prison, referred to as the 'death row' where individuals awaiting execution are detained. For more information, please see: [http://en.wikipedia.org/wiki/Death\\_row\\_phenomenon](http://en.wikipedia.org/wiki/Death_row_phenomenon).

<sup>8</sup> *Lex specialis* refers to the principle that a more specific legal norm prevails over a more general legal norm. When two legal norms apply the same situation the one that more specifically applies to the situation in question will prevail.

its report to the Committee the USA stated: "the Geneva Convention 'appl[ies] to the Taliban detainees, but not the al Qaeda international terrorists' because Afghanistan is a party to the Geneva Convention, but al Qaeda – an international terrorist group – is not...Although the President determined that the Geneva Convention applies to Taliban detainees, he determined that, under Article 4, such detainees are not entitled to POW<sup>9</sup> status"<sup>10</sup>. The Committee did not challenge the delegation on this issue. The Committee did, however, recommend that the USA "should recognize and ensure that the Convention applies at all times, whether in peace, war or armed conflict, in any territory under its jurisdiction."

## Reservations and Declarations

Upon ratification of the Convention in 1994, the United States government lodged reservations<sup>11</sup> on Article 1, Article 3, Articles 10 through 14, Article 16, and Article 30(1). The USA registered their understanding that the Convention does not prohibit the use of the death penalty. It also declared that the provisions from Article 1 through 16 are not self-executing<sup>12</sup>. The US government has not acknowledged the competence of the Committee to receive individual complaints under Article 22 of the Convention and has not ratified the Optional Protocol to the Convention. When questioned about whether or not the US Government would consider making a declaration under Article 22 or ratifying the Optional Protocol, the delegation responded that this was not currently under consideration. The Committee reiterated its recommendation that the USA withdraw its reservations on the Convention and ratify the Optional Protocol. The Committee also recommended that the USA recognise the competence of the Committee to receive and consider individual communications.

## Definition of Torture

One of the main issues discussed was how the USA defines torture under federal law. The Committee was concerned that the US Office of Legal Counsel's<sup>13</sup> definition of torture did not cover the entire scope of 'torture' as provided for in the Convention. This led to a discussion about who has the right to interpret the Convention. Mr Camara, a member of the Committee, took the position that in the case of a difference of opinion, the view expressed by the Committee would prevail. The delegation strongly disagreed: "Although a party to a treaty can agree to establish a third party to render authoritative interpretations of that treaty, in this case, the USA did not agree to give the Committee such a role. While the Committee's views are entitled to respect, the Convention does not grant the Committee the authority to issue legally binding views on the nature of US obligations thereunder." The position of the USA seemed to be founded in its initial reservations lodged at the time of ratification defining its understanding of torture. In its concluding observations<sup>14</sup>, the Committee urged the USA to "adopt clear legal provisions to implement the principle of absolute prohibition of torture in its domestic law without any possible derogation."

Mr. Menéndez, the member of the Committee acting as the Country Rapporteur, commented specifically on the non-inclusion by the USA of the term "mental suffering" in the definition of torture. The delegation responded that when drafting a criminal statute there was a need to clearly state everything that might be punishable. The term "mental suffering" was excluded as there was no clarity about what the term more specifically implied. The delegation noted that there was no intent to limit the scope of Article 1. Considering the allegations concerning "mental suffering", the delegation could have put more effort into addressing the question accordingly. The Committee said that the USA should include provisions ensuring that acts of psychological torture are limited to "prolonged mental harm".

The Committee also inquired about the view of the USA on whether or not practices such as forced disappearances and incommunicado detention<sup>15</sup>, 'waterboarding'<sup>16</sup>, and domestic violence are covered by the definition of torture. The delegation explained that waterboarding is not permitted in the *Army Field Manual*.

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<sup>9</sup> Prisoner of War (POW).

<sup>10</sup> [CAT/C/48/Add.3/Rev.1, p. 53.](#)

<sup>11</sup> Reservations, Declarations, Objections and Derogations on the Convention are available at [www.ohchr.org/english/countries/ratification/9.htm#reservations](http://www.ohchr.org/english/countries/ratification/9.htm#reservations).

<sup>12</sup> Under US domestic law, a treaty or provisions in a treaty are considered to be 'self-executing' if they are considered to be directly applicable by domestic courts without any further action by the legislative branch.

<sup>13</sup> Office of Legal Counsel memoranda, <http://www.usdoj.gov/olc/18usc23402340a2.htm>, 30 December 2004.

<sup>14</sup> [CAT/C/USA/CO/2.](#)

<sup>15</sup> Incommunicado detention refers to being detained without the means or right to communicate.

<sup>16</sup> A form of mock drowning of prisoners. For further information see <http://en.wikipedia.org/wiki/Waterboarding>.

Relating to whether forced disappearances and incommunicado detention could be covered by the definition of torture, the delegation explained that it would depend on the circumstances of the case. However, when one Committee member followed up by stating that at least relating to the family members these practices constituted acts of torture, the delegation replied that since these practices were provided for by the Geneva Conventions, at least in relation to spies<sup>17</sup>, the USA did not consider them illegal as such. In its concluding observations, the Committee stated that the practice of enforced disappearance is, *per se*, a violation of the Convention and recommended the abolition of interrogations techniques, such as "water boarding" and sexual humiliation.

For the most part, this area of the discussion was more heated than the rest of the meeting. There was strong disagreement on key issues between the Committee and the delegation. One Committee member thanked the delegation for their replies, but respectfully stated that he did not agree with the responses. This effectively ended the discussion on the matter.

### Definition of Article 16<sup>18</sup>

Another controversial subject was the reservation<sup>19</sup> lodged made by the USA to Article 16. A number of NGO reports<sup>20</sup> highlighted concerns on the Government's view that the applicability of this provision is limited to the territory of the USA. Though the Committee has clearly stated that the Convention is applicable to all areas under de facto effective control<sup>21</sup> of the State party, the US Government does not accept the concept of de facto effective control of a territory. The USA now interprets its initial reservations as relating to both the terminology and the geographical applicability to provision<sup>22</sup>. The Committee posed written questions to the delegation on the subject, to which it replied that the reservations were made to clarify the meaning of the phrase "cruel, inhuman or degrading treatment or punishment" in order to make sure that domestic constitutional standards satisfy the obligations under Article 16. Mr Camara then suggested that the delegation reread paragraph 2 of the provision since this clearly stated that the provision was without prejudice to any national legislation on cruel inhuman or degrading treatment or punishment. The delegation explained that the reservation was simply made to define clearly the scope of its obligations. While broadly following up on the definition of cruel, inhuman or degrading treatment or punishment, the Committee did not pursue the question of the application of the provision to territory under the jurisdiction of the USA. However, in its concluding observations the Committee urges the USA to recognize and ensure that the provisions of the Convention related to "territory under the State party's jurisdiction" apply to and are fully enjoyed by all persons under the effective control of its authorities. During the discussions, the delegation said that though it had not ratified the *Vienna Convention on the Law on Treaties*<sup>23</sup>, its reservations were in compliance with the Convention. Unfortunately, the Committee did follow-up on this statement.

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<sup>17</sup> The delegation expressed the opinion that under the Geneva convention spies could be considered as having waived their normal rights as prisoners of war and could therefore be held in incommunicado detention.

<sup>18</sup> Prohibition of cruel, inhuman or degrading treatment or punishment. Prohibiting torture like practices not amounting to torture.

<sup>19</sup> The USA stated that it felt it self bound by Article 16 insofar as this was consistent with the definition of this term in domestic law (the fifth, eighth and fourteenth amendment to the Constitution of the United States of America).

<sup>20</sup> For example, see Human Rights Watch, *Submission to the Committee against Torture during its consideration of the second periodic report of the United States*,

[http://portal.ohchr.org/pls/portal/docs/PAGE/CAT/36SESS/USA\\_CAT/HUMAN%20RIGHTS%20WATCH-SUBMISSION%20TO%20CAT.DOC](http://portal.ohchr.org/pls/portal/docs/PAGE/CAT/36SESS/USA_CAT/HUMAN%20RIGHTS%20WATCH-SUBMISSION%20TO%20CAT.DOC), August 2005; and Human Rights First, *Issues to be considered during the examination of the second periodic report of the United States of America*,

[http://portal.ohchr.org/pls/portal/docs/PAGE/CAT/36SESS/USA\\_CAT/HUMAN%20RIGHTS%20FIRST-ISSUES%20TO%20BE%20CONSIDERED%20DURING%20THE%20EXAMINATION%20THE%20US%20REPORT.DOC](http://portal.ohchr.org/pls/portal/docs/PAGE/CAT/36SESS/USA_CAT/HUMAN%20RIGHTS%20FIRST-ISSUES%20TO%20BE%20CONSIDERED%20DURING%20THE%20EXAMINATION%20THE%20US%20REPORT.DOC), April 2006.

<sup>21</sup> Concluding observations to the UK submission in 2004 ([CAT/C/CR/33/3](#)).

<sup>22</sup> The position of the USA is that since it does not recognise the concept of de facto effective control, Article 16 does not apply outside US territory as the provision specifically mentions "a territory under [a State party's] jurisdiction". The fact that the reservations to the provision refers to domestic legislation is used as another reason for non-application, since the fifth, eighth and fourteenth amendment does give any substantive rights to foreigners interrogated by the USA outside its territory.

<sup>23</sup> Article 19 of the Vienna Convention on the Law of Treaties provides that State parties can lodge reservations to a Treaty unless "the reservation is incompatible with the object and purpose of the treaty".

## Non-Refoulement<sup>24</sup>

The principle of non-refoulement was advanced from various perspectives. The Committee directed its attention to the subjects of the definition of the term “substantial grounds”<sup>25</sup>, use of diplomatic assurances<sup>26</sup>, and the options of appeal. The Committee expressed concern whether the USA’s interpretive understanding of the phrase “more likely than not that he would get tortured”<sup>27</sup> covered the Convention’s requirement of “substantial ground for believing that he would be in danger”. The Committee asked if the definition changed the scope of protection offered by the provision especially relating to the burden of proof. The delegation replied that this should not be seen as a reservation but merely a statement of the understanding of the term “substantial ground”. The delegation clarified that there was no intention of limiting the protective scope of Article 3. While focusing intensely on other areas the Committee did not follow up on this issue during the discussion or in its concluding observations. This was unexpected given that the Committee issued a General Comment on the implementation of Article 3, focusing on, *inter alia*, the criteria for assessing the risk of torture.

The Committee sought information on the importance of diplomatic assurances when deciding on removing or extraditing persons. Furthermore, the Committee enquired about the influence of opinions of international bodies; prior practices of torture; cases of torture despite the issuance of diplomatic assurance; and whether people are extradited to States showing a general lack of respect for human rights. The delegation replied that diplomatic assurances are just one of the many elements taken into consideration in the case-by-case decision-making. It was the opinion of the USA that international bodies have no role to play in the decision on refoulement. Replying to questions regarding refoulement to States with a history of torture or a general lack of human rights protection, the delegation said that it would depend on the merits of the specific case. The Committee was generally very focused on this issue and posed several follow up questions. One Committee member commented that the fact that the USA felt that it had to ask for a diplomatic assurance showed sufficient uncertainty about the situation of torture in the receiving State.

The Committee also focused on the right to appeal in extradition cases. Concern was voiced over the fact that in these cases the Secretary of State makes the final determination and that there is no right to appeal. The delegation confirmed this while noting that in other situations of refoulement, appeal measures are in place.

## Habeas Corpus<sup>28</sup> and prohibition of torture

The Committee expressed concern about the revision of the habeas corpus statute<sup>29</sup> eliminating the right to file habeas corpus claims outside the territorial jurisdiction of the USA. While explaining that the *Detainees Treatment Act* provided other means of reviewing the detention of persons outside the territorial jurisdiction of the USA, the delegation noted that the procedural protection provided for enemy combatants captured during an ongoing armed conflict was unprecedentedly high. One Committee member followed up on this, but the issue was not addressed sufficiently in the discussion or in the Committee’s concluding observations.

When addressing the specific prohibition of the crime of torture, the Committee showed a remarkable lack of cohesion. Many members expressed their concern that US law does not explicitly prohibit torture and noted that it was a general view of the Committee that torture should be explicitly prohibited in the State parties in order to take full effect. Unfortunately, the Chairperson of the Committee ended the first round of questions by saying that, in his personal opinion, the USA fulfils their obligations under the Convention as long as their domestic legislation fully covers all acts that might constitute torture. With this comment the chairman undermined the Committee’s ability to address two important issues. One relates to the fact that the US law does not include mental suffering in its definition of torture. This could be a problem as some acts inflicting mental suffering might

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<sup>24</sup> The principle of non-refoulement is set down in Article 3 of the Convention. It prohibits states from returning people to countries where they are in risk of being tortured.

<sup>25</sup> The term is used in Article 3 of the convention.

<sup>26</sup> Assurance given by the receiving government that the person returned to this country will not be subjected to torture.

<sup>27</sup> Interpretive understanding 2 of the United States of America to the Convention.

<sup>28</sup> Commonly known as a writ challenging the lawfulness of a person’s detention. The claim is not addressing the merits of the case in question. It determines whether fundamental rights of the detainee, such as right to council, questions of illegally obtained evidence *inter alia*, have been violated.

<sup>29</sup> *Detainee Treatment Act*, Section 1005(e)(1)(e)(1), <http://jurist.law.pitt.edu/gazette/2005/12/detainee-treatment-act-of-2005-white.php>, 31 December 2005.

not necessarily constitutes a criminal act, but they can still be used as a method of torture<sup>30</sup>. Another issue that was partially touched upon was the need for a specific prohibition of torture in order to keep statistics. At the request of one Committee member the delegation promised to provide statistics on penalties concerning acts of torture. While the Committee seemed inconsistent during discussions, it took a coherent and unified approach to this issue in its concluding observations. It recommended the enactment of a federal crime of torture, consistent with Article 1 for the Convention.

## Implementation of Legal Standards

In its initial response to the Committee's *List of Issues*,<sup>31</sup> the USA addressed the question of **interrogation rules and techniques**. The delegation referred frequently to the recently passed *Detainee Treatment Act* of 2005<sup>32</sup> (also known as the McCain Amendment) which explicitly bans the use of "any treatment or technique of interrogation not authorized by and listed in the United States Army Field Manual on Intelligence Interrogation"<sup>33</sup> for people in the custody or under the effective control of the Department of Defense or under detention in a Department of Defense facility. The written responses of the USA to the list of issues further relate that this provision applies to the military, Department of Defense civilians, and contract interrogators<sup>34</sup>. Intelligence agencies are not guided by the provisions in the Field Manual, but are subject to the extraterritorial criminal torture statute and the *Detainee Treatment Act's* prohibition on cruel, inhuman or degrading treatment or punishment. When questioned about various practices that are allegedly used in detention facilities, such as waterboarding, the delegation responded that the practice of waterboarding is not included in the Army Field Manual and so is not authorised. While it did not explicitly address the question, the delegation did mention that the technique would be prohibited in the new Army Field Manual, which is currently being discussed in Congress.<sup>35</sup> In its concluding observations, the Committee stressed that "any interrogation rules, instructions or methods do not derogate from the principle of absolute prohibition of torture and that no doctrine under domestic law impedes the full criminal responsibility of perpetrators of acts of torture." Furthermore, the concluding observations highlight that there must be investigation into the responsibility of senior military and civilian officials who authorise, acquiesce in or consent to acts of torture.

In the aforementioned discussion and in regards to several other areas, the Committee questioned the delegation about the interrogation techniques used by **intelligence agencies**, namely the Central Intelligence Agency (CIA). Numerous media and non-governmental reports have alleged mistreatment by the CIA<sup>36</sup>. The Committee emphasised that actions and practices carried out by intelligence agencies are actions undertaken by the Government and therefore are of concern to the Committee. This was also emphasised twice in the Committee's concluding observations. The delegation responded to nearly all questions related to this subject that due to the nature of intelligence activities, the USA was unable to publicly discuss these allegations. When questioned about oversight and monitoring of intelligence activities to ensure that actions and practices are in line with the international legal commitments of the USA, the delegation assured the Committee that, in the case of the CIA, there is an independent inspector general within the CIA as well as oversight inspector committees in Congress. The Committee failed to further question the delegation about the independence of these monitoring mechanisms and did not emphasise the importance of having independent monitoring mechanisms.

In its *List of Issues*<sup>37</sup> and its questions posed to the delegation during the session, the Committee enquired about **investigations of allegations** of abuse, torture, misconduct, and deaths in custody. Specifically, the Committee asked about the frequency of investigations in relation to the numbers of allegations and the independence of

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<sup>30</sup> For example, please see: [http://news.bbc.co.uk/2/hi/middle\\_east/3042907.stm](http://news.bbc.co.uk/2/hi/middle_east/3042907.stm).

<sup>31</sup> [CAT/C/USA/Q/2](#).

<sup>32</sup> Detainee Treatment Act, <http://jurist.law.pitt.edu/gazette/2005/12/detainee-treatment-act-of-2005-white.php>, 31 December 2005

<sup>33</sup> U.S. Army Field Manual on Intelligence Interrogation, <http://www.fas.org/irp/doddir/army/fm34-52.pdf>, 28 September 1992

<sup>34</sup> U.S. responses to the List of Issues to be considered during the examination of the second periodic report of the United States of America, available at <http://www.ohchr.org/english/bodies/cat/cats36.htm>.

<sup>35</sup> For the most recent progress on the development of the updated Army Field Manual, please see J., Barnes, *Army Rules Put on Hold* (Los Angeles Times), <http://www.latimes.com/news/nationworld/nation/la-na-manual11may11.0.2174549.story?coll=la-home-headlines>, 11 May 2006.

<sup>36</sup> For example see "[By the Numbers: Findings of the Detainee Abuse and Accountability Project](#)" published by the Center for Human Rights and Global Justice, Human Rights First, and Human Rights Watch; "[The Road to Abu Ghraib](#)" published by Human Rights Watch; and "[The United States' Disappeared](#)": The CIA's Long-Term "Ghost Detainees" published by Human Rights Watch.

<sup>37</sup> [CAT/C/USA/Q/2](#).

these investigations. In its written responses, the USA gives a significant amount of data on investigations that are ongoing in Iraq, Afghanistan, and Guantánamo for abuse of detainees. Some NGOs alleged that the numbers quoted by the USA do not accurately reflect the small percentage of investigations carried out. Notably, Mr. Menéndez pointed this out during the first round of questioning. During the session, the delegation stated that 12 major investigations have been conducted by the Department of Defense into all aspects of its detention operations following the events of Abu Ghraib. When pressed about the independence of these investigations and asked about whether there might be an independent court investigation, the delegation again argued that the investigations were impartial, that they were reviewed by bodies within Congress, and that the USA did not feel that additional investigations of any form were necessary at this time. In its concluding observations, the Committee stated that the USA should consider "establishing an independent mechanism to guarantee the rights of all detainees in its custody."

While referring to various thematic areas, such as detention facilities abroad or the domestic penitentiary system, both the delegation and the committee raised issues regarding **personnel training** numerous times. The written material, as well as the statements made by the delegation during the sessions, referred to a variety of programs and centres. While this information seemed to allay some of the Committee member's concerns, the delegation provided very little statistical information on how many personnel receive the training, the content of this training, or information on the rigor of training or standards personnel were held up against. In response to a question as to whether inadequate training led to abuse in detention centres abroad, the delegation quoted an investigation done by General Kern, Lieutenant General Jones, and Major General Fay, which found that "the pictures you have seen...were not the result of any doctrine, training or policy failures, but were violations of the law and misconduct"<sup>38</sup>. Furthermore, the delegation argued, no training will be able to prevent all cases of abuse. Additionally, the delegation argued that the majority of allegations or incidents of mistreatment of detained enemy combatants occurred several years ago and that personnel training is more rigorous now. Other issues raised briefly in this area included training that includes a gender dimension and the training of civilian personnel. The Committee emphasised that the USA should have training on how to identify signs of torture and cruel, inhuman or degrading treatment and reporting on them.

Relating to the issue of the Guantánamo Bay detention centre, the Committee addressed the subject of access to the facility and the detention of juveniles. In their opening statement, the delegation asserted that the International Committee of the Red Cross (ICRC) has full access to Guantánamo and has issued statements saying that conditions at the facility are improving. The delegation neglected to mention that while conditions had indeed improved, it did not mean that there were no longer problems relating to the treatment of prisoners<sup>39</sup>. The delegation also said that the USA demonstrated its commitment to human rights by inviting the Special Rapporteur on Torture and several of his colleagues to the facility. The delegation regretted that the Special Rapporteurs had rejected the invitation. In fact, the Special Rapporteurs cancelled their visit due to violations of the terms of reference by the USA, specifically the exclusion of private interviews with detainees. The Committee did not clarify or follow-up on this point during the discussion, however, in the concluding observations it recommended that the State party invite the Special Rapporteur "in full conformity with the terms of reference for fact-finding missions." In response to the question about juvenile detainees, the delegation answered that there are currently no juvenile detainees. In January 2004, the three juveniles who had been detained were returned to their homes with the assistance of NGOs. In terms of the conditions of their confinement, the delegation responded that the juveniles were housed separately, were taught math, English, and provided with daily physical activity. In a strong statement in its concluding observations, the Committee urged the USA to "cease to detain any person at Guantánamo Bay and close this detention facility, permit access by the detainees to judicial process or release them as soon as possible, ensuring that they are not returned to any State where they could face a real risk of being tortured."

### *Conclusions*

Considering the seemingly cooperative attitude of the large US delegation, the stage was set for a fruitful dialogue; however, the level of discussion remained superficial and failed to adequately address key issues. Though the Committee delved into a number of crucial concerns with thorough questions, the delegation failed

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<sup>38</sup> U.S. responses to the List of Issues to be considered during the examination of the second periodic report of the United States of America, p. 61, available at [www.ohchr.org/english/bodies/cat/cats36.htm](http://www.ohchr.org/english/bodies/cat/cats36.htm).

<sup>39</sup> Please see: ABC news, *Guantánamo Bay Conditions have improved: Red Cross*, <http://abcnews.go.com/US/wireStory?id=1887485>, 25 April 2006.

to engage in the dialogue. Instead, the delegation provided answers lacking quality and depth, which appeared to be designed to hinder substantial discussion.

In many cases the Committee did not follow up adequately on the delegations responses or to certain key issues. Specifically, it failed to address the following issues: practices constituting torture or cruel, inhumane, or degrading treatment or punishment; non-refoulement; habeas corpus; the prohibition of torture; the monitoring of intelligence agencies; and the Guantánamo Bay detention facility. The Committee also did not sufficiently address key legal issues, such as the definition of torture, and reservations to Article 16. This may have been linked to the complex nature of these issues and the lack of time available to the Committee. This problem especially manifested itself when the Committee completely failed to challenge the delegation's opinion that the law of armed conflict, and not the Convention, is the *lex specialis* in certain circumstances. However, in its concluding observations, the Committee commented on these issues strongly. It should be noted however that while the majority of the discussion focused on international issues, the Committee's questions and follow-up regarding domestic problems was comprehensive. Furthermore, the Committee reiterated many concerns originating from prior concluding observations.

The Committee utilised some material from Special Procedure reports on issues relating to sexual abuse and rape in detention facilities. It was regrettable that the Committee did not comment further on the delegation's statement about special procedure mandate holders rejecting the invitation to visit Guantánamo Bay detention facility.