HUMAN RIGHTS WATCH

SUBMISSION TO THE UNITED NATIONS COMMITTEE AGAINST TORTURE

DURING ITS CONSIDERATION OF THE THIRD TO FIFTH PERIODIC REPORTS OF THE UNITED STATES OF AMERICA CAT 53rd SESSION

October 2014

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I. Summary

Human Rights Watch would like to express its appreciation to the United Nations Committee against Torture (the "Committee") for this opportunity to provide information on the compliance of the United States with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("Convention against Torture"). We would like to acknowledge the submissions of our colleague nongovernmental organizations (NGOs), specifically the joint shadow reports written by a wide cross-section of US NGOs and coordinated by the US Human Rights Network. Our submission is complementary to these joint submissions and not an attempt to catalog all of the instances in which US policies or practices raise concerns under the Convention against Torture.

The issues raised in this submission are linked to research undertaken by Human Rights Watch since the Committee's review of the United States in 2006.

The US continues to struggle with implementing its obligations under the Convention against Torture. The United States has failed to adequately tackle the need for accountability for abuses, including torture, committed in the aftermath of the September 11, 2001 attacks on the United States. Barack Obama stated shortly before taking office in January 2009, in response to a question about appointing a special prosecutor to investigate post 9/11 abuses by US officials, that "we need to look forward as opposed to looking backwards"[1] – suggesting his administration would not pursue investigations into illegal conduct. The United States continues to prosecute suspects before the military commissions at Guantanamo Bay despite their fundamental flaws, including provisions that permit the use of certain evidence obtained by torture or other ill-treatment. Finally, the US reservation to the Convention against Torture that equates the treaty's prohibition on cruel, inhuman or degrading treatment or punishment with the language of the Eighth

[1] Alex Koppelman, "Obama: 'We need to look forward,'" *Salon,* January 12, 2009, (accessed October 6, 2014), http://www.salon.com/2009/01/12/obama_prosecutor/

Amendment to the US Constitution (barring "cruel and unusual punishment") narrows the scope of the Convention impermissibly. By seeking to limit its obligations in this way, the United States has demonstrated an unwillingness to ensure respect for fundamental rights and protection against unlawful treatment.

In this submission, Human Rights Watch addresses concerns about US implementation of obligations under the Convention against Torture in the fields of national security, criminal justice, policing, and immigration enforcement. We discuss the continued use of indefinite detention without trial and fundamentally flawed military commissions at Guantanamo Bay, as well as the continued lack of accountability and transparency on issues connected to torture and other ill-treatment. We discuss the use of solitary confinement in US prisons as well as the egregious cruelty of recent executions. We express concern about the use of excessive force by police in places like Ferguson, Missouri, and policing practices that have resulted in mistreatment of sexual assault survivors in Washington, DC and other jurisdictions. Finally, we discuss how immigration enforcement practices can result in the return of persons to countries where there are substantial grounds for believing they are at risk of torture.

We hope the Committee will find the following information helpful to its work.

II. National Security

Continued US detentions at Guantanamo Bay violate the Convention's requirement that states parties take effective action to prevent acts of torture and cruel, inhuman or degrading treatment or punishment, and provide redress to victims (articles 2, 3, 13, 15, and 16)

Responding to Question 8 of the Committee's List of Issues Prior to Reporting

The United States has held detainees at Guantanamo Bay without charge or trial for nearly 13 years. In its 2006 Concluding Observations, the Committee noted that detention without charge at Guantanamo constitutes a *per se* violation of the Convention against Torture, citing articles 2, 3 and 16.[2] In its 2013 Periodic Report, the United States lists an array of actions taken try to transfer detainees out of Guantanamo, such as speeches given, task forces formed, personnel appointments made, and executive orders issued. But none of them adequately explain why more than a dozen years after Guantanamo opened, 149 detainees remain at the facility, only 7 of whom face criminal charges, all of which in the fundamentally flawed military commission system.

The United States purports to lawfully hold the Guantanamo detainees pursuant to the laws of war, yet even where applicable it has not met the requirements of that law, whether for international or non-international armed conflicts.[3] Those detained should now have been released or appropriately prosecuted. In Guantanamo cases brought to US federal court for habeas corpus review, for example, the threshold evidentiary standard that the government must satisfy to continue to detain individuals at Guantanamo without charge is exceedingly low. US courts have established a "conditional probability" test: if the

[2] United Nations Committee against Torture, "Conclusions and Recommendations of the Committee against Torture, United States of America," CAT/C/USA/C/2, May 19, 2006, www1.umn.edu/humanrts/cat/observations/usa2006.html (accessed October 8, 2014), para. 22.

[3] Human Rights Watch, Supplemental Submission to the Human Rights Committee During its Consideration of the Second and Third Periodic Reports of the United States, June 2006, http://www.hrw.org/sites/default/files/related_material/us063006_iccpr_submission.pdf.

government can prove that a Guantanamo detainee was captured carrying an AK-47 assault rifle on a route typically used by Al-Qaeda fighters, then that could satisfy the government's burden for continued detention.[4] If a detainee trained at an Al-Qaeda camp or stayed at an Al-Qaeda guesthouse, this would "overwhelmingly" carry the government's burden.[5] US courts deciding habeas claims also use an excessively deferential standard in weighing government documentary evidence, presuming the facts contained therein to be accurate, unless rebutted.[6]

The United States points to its establishment of a task force in 2009 to review the cases that remain at Guantanamo that ultimately recommended the transfer of 156 detainees out of the detention facility. Yet five years after making its recommendations, 79 of those cleared for transfer remain at Guantanamo. And even though the Obama administration slated many of these men for transfer years ago, it has opposed many of their habeas challenges in US federal courts.

The administration also touts the establishment of military Periodic Review Boards (PRBs) as an example of efforts it has made to review the necessity of continued detention for Guantanamo detainees. The PRBs were announced by executive order on March 7, 2011 and were supposed to begin reviewing cases of detainees not slated for transfer or trial within a year. But the board did not start reviewing cases until July 2013, more than a year after the deadline, and as of this writing, the PRBs have reviewed and decided the cases of only seven detainees, four of whom were slated for release. All of them, however, remain in detention.[7]

In both habeas review and PRB reviews, detainees are denied access to classified evidence, even if it is used to justify their continued detention. Detainees are afforded no assistance in habeas cases and must either hire counsel or rely on volunteer attorneys. During the PRB process, detainees are provided a government appointed "personal representative" who is not required to be a lawyer. While detainees may have the

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4 *Almerfedi v. Obama*, 2011 U.S. App. LEXIS 11696, *10 at n. 7 (D.C. Cir. June 10, 2011).

5 Ibid.

6 *Latif v. Obama*, 677 F.3d 1175, 1180-81 (D.C. Cir. 2011).

7 See "Full Review," Periodic Review Secretariat, U.S. Department of Defense. http://www.prs.mil/ReviewInformation/FullReviewpage.aspx (accessed October 8, 2014).

assistance of private counsel, the rules allow some information to be provided only to the personal representative, not to counsel, even with a security clearance.

Recommendations

1. The Committee should again urge the United States to end detention at Guantanamo Bay, and either release detainees held at the facility or prosecute them in courts that meet international fair trial standards.
2. The Committee should urge the United States to give detainees and their counsel access to all evidence used to justify their detention.

US military commissions violate the right to effectively bring allegations of torture (article 13) and the prohibition against the invocation of evidence elicited through torture (article 15)

Responding to Questions 8(b) and 29 of the Committee's List of Issues Prior to Reporting

The United States continues to use military commissions at Guantanamo Bay to try terrorism suspects even though the system fails to meet international fair trial standards. The Military Commissions Act of 2009 imposed important new restrictions on the use at trial of witness statements obtained directly from the use of torture. But under the new rules, other evidence derived from torture can be admissible in certain circumstances and is not subject to a reliability test.[8] Further, other statements that were coerced though not necessarily the product of torture are prohibited only when the statements were made by the defendants, not by other witnesses. These rules are problematic on their own, but when combined with hearsay rules that permit prosecutors to introduce witness statements through the testimony of others, the rules appear to allow the admission of even more evidence derived from coercion and torture that cannot be adequately challenged by a defendant. For example, a prosecutor could introduce a summary of statements made by an individual during an interrogation involving torture through the

[8] Manual for Military Commissions, United States (2010 edition). http://www.mc.mil/Portals/0/2010_Manual_for_Military_Commissions.pdf, (accessed October 8, 2014), Rule 304(a)(5)(A).

testimony of an official who was not even present during the interrogation, has no knowledge of its circumstances, and thus cannot be effectively cross-examined about it.

Further, the Obama administration's continued classification of information related to the time that detainees were in Central Intelligence Agency (CIA) custody has severely hampered fair process in the military commissions.[9] Sixteen of the 149 detainees currently at Guantanamo were previously held by the CIA; many of these have raised credible allegations of torture while in CIA custody, including six now facing active charges in the military commissions system. The classification of this information has caused numerous delays in the proceedings, hampered defense counsel's ability to prepare a defense, and hindered the defendants' ability to bring complaints about torture before various bodies, including the Committee.[10]

Recommendations

1. The Committee should urge the United States to end the use of military commissions and transfer detainees facing charges to federal courts.
2. The Committee should urge the United States to reconsider classification of the CIA's rendition, detention and interrogation program and to keep classified only information that must be secret to protect genuine national security interests.

Denial by the US government of reasonable access by impartial monitors to assess conditions of confinement deprives Guantanamo detainees of an effective safeguard against torture and other ill-treatment (articles 2 and 16)

Responding to Questions 38 and 43 of the Committee's List of Issues Prior to Reporting

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9 Letter from Senators Dianne Feinstein and Carl Levin to President Barack Obama, May 23, 2014. http://www.feinstein.senate.gov/public/index.cfm/press-releases?ID=77c288b3-eaeb-4ef7-9081-4c775cda87f1 (accessed, October 15, 2014).

10 Laura Pitter, "13 Years On, Will 9/11 Ever Go to Trial?" *Foreign Policy*, August 27, 2014, http://www.foreignpolicy.com/articles/2014/08/27/13_years_on_will_911_ever_go_to_trial_guantanamo_obama (accessed October 8, 2014). See also "Defense Motion to Dismiss Because Amended Protective Order #1 Violates the Convention Against Torture," US v. Khalid Shaikh Mohammad, et al., August 12, 2013, available at http://www.mc.mil/Portals/0/pdfs/KSM2/KSM%20II%20(AE200(MAHRBSWBA)).pdf (accessed October 15, 2014).

The United States points to a Department of Defense review conducted in 2010 that found the conditions of confinement in Guantanamo to be in "conformity with Common Article 3 of the Geneva Conventions" and that they "also meet the directive requirements of Common Article 3 of the Geneva Conventions."[11] So long as access is denied to impartial organizations that publicize their findings, the actual conditions of confinement will remain unknown. As the Committee is aware, the Department of Defense has denied the UN Special Rapporteur for torture's numerous requests for full access to the facility and detainees. Human Rights Watch, along with several other human and civil rights organizations, has been requesting full access to the Guantanamo Bay detention facility for more than a decade. We renewed this request in 2009 after the Obama administration came into office[12] and on subsequent occasions, but adequate access to the facilities and detainees has not been granted. We have only been invited to attend a VIP tour to observe a model Guantanamo detention camp. Until the US provides adequate access to its detention facility by impartial observers it will not be possible to fully assess whether the facilities and treatment of detainees meet US obligations under international law.

Guantanamo detainees have made numerous complaints about conditions of confinement that raise serious concerns. Indefinite detention and poor living conditions prompted large-scale hunger strikes by detainees in early 2013.[13] At its peak in July 2013, 106 detainees were on hunger strike at the facility. That hunger strike continues today, though its extent is unclear because the military no longer provides basic information on the number of detainees engaged in hunger strikes or details on how the military manages them. Lawyers representing detainees are obliged to abide by protective orders that prevent disclosure of information important to the public about hunger strikes. Additionally, the United States has attempted to keep judicial proceedings related to its management of the hunger strikes closed to the public, and videotapes of forced feedings

[11] Review of Department Compliance with President's Executive Order on Detainee Conditions of Confinement, February 2009, http://www.defense.gov/pubs/pdfs/REVIEW_OF_DEPARTMENT_COMPLIANCE_WITH_PRESIDENTS_EXECUTIVE_ORDER_ON_DETAINEE_CONDITIONS_OF_CONFINEMENTa.pdf (accessed September 30, 2014).

[12] Ibid. Appendices, No. 5.

[13] Jane Sutton and David Alexander, "Guantanamo hunger strike stems from frustration: U.S. general," *Reuters*, March 20, 2013 (accessed October 8, 2014), http://www.reuters.com/article/2013/03/20/us-usa-guantanamo-idUSBRE92JoMI20130320.

to be used in the proceedings secret, despite a federal court ordering such tapes to be made public.[14]

A March 10, 2014 release of a Defense Department document, though heavily redacted, appears to contain rules governing how the military is managing hunger strikes at Guantanamo.[15] This document and the few details that have been disclosed about the procedures raise serious concerns that US forced feedings are violating medical ethics, medical care standards and human rights obligations.[16] The World Medical Association, the American Medical Association, the International Committee of the Red Cross, the Inter-American Commission on Human Rights, and the United Nations Special Rapporteurs on torture, on human rights and counter-terrorism, and on the right to health, have all denounced the force-feeding of detainees who are on a voluntary and informed hunger strike. Human Rights Watch considers the force-feeding of competent hunger-striking prisoners to be cruel, inhuman, and degrading treatment and it can amount to torture.

Recommendations

1. The Committee should urge the United States to give unhindered access to Guantanamo Bay to United Nations special procedures, in accordance with the terms of reference for UN fact-finding missions, and impartial monitors who publicize their findings.
2. The Committee should urge the United States to ensure it is not force-feeding detainees in Guantanamo who are undertaking voluntary hunger strikes and who are competent to refuse medical treatment.

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[14] Charlie Savage, "Judge Orders Disclosure of Guantanamo Videotapes," *New York Times*, Oct. 3, 2014 http://www.nytimes.com/2014/10/04/us/judge-orders-disclosure-of-guantnamo-videos.html?_r=0 (accessed October 15, 2014). See also, "Carol Rosenberg," Justice Department Seeks Delay in Redacting, Releasing Guantánamo Force-Feeding Videos," Miami Herald, October 16, 2014, http://www.miamiherald.com/news/nationworld/world/americas/guantanamo/article2859022.html#storylink=cpy (accessed October 16, 2014).

[15] Jason Leopold, "Guantanamo Now Calls Hunger Strikes 'Long-Term Non-Religious Fasts'," *Vice*, March 11, 2014, http://news.vice.com/article/guantanamo-now-calls-hunger-strikes-long-term-non-religious-fasts (accessed October 8, 2014).

[16] Letter from Human Rights Watch to Chuck Hagel, secretary of defense, US Department of Defense, April 10, 2014, https://www.hrw.org/news/2014/04/10/joint-letter-sec-chuck-hagel-guantanamo-hunger-strikes-and-force-feeding.

Failure to adequately investigate the authorization and use of torture by US officials violates the requirement of a prompt and impartial investigation into acts of torture and other ill-treatment (article 12)

Responding to Questions 18, 22, 23, and 24 of the Committee's List of Issues Prior to Reporting

The United States has failed to fulfill its obligation under the Convention against Torture to investigate and appropriately prosecute acts of torture and other ill-treatment. In its response to the Committee the United States reiterates that the prohibition against torture is absolute and notes there are a "number of ways" that US law can be relied upon to prosecute torture and ill-treatment. Yet it has failed to hold any senior official accountable for authorizing or carrying out the use of torture against detainees in US custody. Credible allegations of acts of widespread and systematic torture and ill-treatment by the US, authorized at the highest levels of government in the post-9/11 period, are well documented.[17]

As an example of its prosecutions under the federal torture statute, the United States notes the prosecution of the son of former Liberian President Charles Taylor, "Chuckie" Taylor, who was convicted for torture in Liberia between April 1999 and July 2003. However, credible allegations of torture against terrorism suspects in US custody have gone largely unaddressed. Only a few low-ranking military personnel have been punished for the abuse of detainees.[18] One former CIA contractor and a military contractor were prosecuted under federal criminal law.[19]

The United States points to a Department of Justice investigation into alleged abuses of 101 detainees in CIA custody, including two who died. But the attorney general said this investigation would only look into abuses that involved actions by officials that went

[17] Human Rights Watch, *Getting Away with Torture* (New York: Human Rights Watch, 2011), http://www.hrw.org/reports/2011/07/12/getting-away-torture-0. See also, Human Rights Watch, *Delivered Into Enemy Hands* (New York: Human Rights Watch, 2012), http://www.hrw.org/reports/2012/09/05/delivered-enemy-hands.

[18] Constitution Project's Task Force on Detainee Treatment, April 2013, http://detaineetaskforce.org/resources/alleged-wrongful-conduct-charges (accessed October 8, 2014).

[19] Noah Schachtman, "No Jail Time for Army Contractor in Revenge Killing," *Wired*, May 8, 2009, (accessed October 8, 2014), http://www.wired.com/2009/05/no-jail-time-in-human-terrain-slaying/ .

beyond what had been formally authorized by the Department of Justice in a series of legal memos. This was the case even though certain forms of torture and ill-treatment, including "waterboarding," were expressly authorized, meaning the investigation did not cover such abuses. That limited investigation closed in 2012 without anyone being criminally charged because the Justice Department "determined that the admissible evidence would not be sufficient to obtain and sustain a conviction beyond a reasonable doubt."[20] This response suggests that there may have been sufficient evidence to sustain a conviction but that such evidence was inadmissible. If the reason for the evidence's inadmissibility is that the evidence was classified, this should not suffice as a reasonable explanation as to why no prosecutions resulted.

The United States has classified the entire CIA Rendition, Detention and Interrogation (RDI) program, through which it has been widely reported that scores of detainees in US custody were tortured and ill-treated, and others were rendered to torture by other governments. Under its own rules governing the designation of classified information, material should not be classified in order to conceal violations of law or prevent embarrassment.[21] The Committee should ask the United States the extent to which US classification rules interfered with the Justice Department's ability to carry out prosecutions for torture. US classification rules should not be used as a shield that would bar the effect of anti-torture legislation enacted to implement the Convention.

In 2011 Human Rights Watch carried out its own investigation of US abuses against several detainees in US custody in Afghanistan during which it interviewed five former detainees who alleged, and presented credible evidence, that they had been tortured in CIA custody.[22] During the course of that investigation, Human Rights Watch learned that none of the five who reported being in CIA custody had been interviewed by the Justice Department or any other US official investigating allegations of torture.

Recommendations

[20] "Statement of Attorney General Eric Holder on Closure of Investigation into the Interrogation of Certain Detainees," Department of Justice news release, August 30, 2012, http://www.justice.gov/opa/pr/2012/August/12-ag-1067.html (accessed December 21, 2012).

[21] Executive Order 13526 section 1.7.

[22] Human Rights Watch, *Delivered into Enemy Hands*.

1. The Committee should ask the United States to investigate all credible allegations of torture and ill-treatment of detainees in US custody, at all levels of government, even if purportedly allowable under US law by any legal memoranda or opinion.
2. The Committee should urge the United States to create an independent, nonpartisan commission to investigate the mistreatment of detainees in US custody. That commission should have full subpoena power, be able to compel the production of evidence, and be empowered to recommend the appointment of a special prosecutor.
3. The Committee should ask the United States whether US officials interviewed any detainees who had been in US custody as part of its investigation into the use of torture and if so, how many? If not, why not?

Claims of immunity and state secrecy, as well as the failure to implement legislation, have prevented victims of torture and ill-treatment from having an enforceable right to a remedy in violation of the requirement to provide redress, rehabilitation and compensation (art. 14)

Responding to Questions 8(d) and 27 of the Committee's List of Issues Prior to Reporting

In response to a request for information on steps taken to ensure that mechanisms exist to obtain full redress and rehabilitation for acts of torture, the United States writes in its Periodic Report to the Committee that "various avenues" exist and a "wide range of civil remedies" are available. But in nearly every viable civil suit brought by alleged victims of torture while in US custody, the United States invoked claims of immunity for government officials and state secrecy laws to evade liability. No national legislation exists, or has even been proposed, seeking to provide a non-judicial remedy for those who can credibly show torture in US custody. States have an obligation under the Convention not only to prohibit torture and other violations, but also to ensure there is an effective remedy. No such remedy exists in the United States and its claims in its responses to the Committee have no credibility. The United States has fallen far short of its obligations in this regard.

Recommendation

1. The Committee should urge the United States to ensure mechanisms to obtain full redress, compensation and rehabilitation are accessible to all victims of acts of torture or ill-treatment perpetrated by government officials.

The transfer of terrorism suspects to countries where they would be in danger of torture or ill-treatment violates the right to be free from unlawful return or refoulement (article 3)

Responding to Questions 10 and 11 of the Committee's List of Issues Prior to Reporting

During the post-9/11 period, the United States transferred numerous individuals to countries where they faced a serious risk of torture or ill-treatment. For these transfers, the United States purportedly relied upon statements from the receiving countries that they would treat those being transferred humanely—commonly referred to as "diplomatic assurances." It is well-documented that these diplomatic assurances have not protected those transferred from abuse.[23]

Although in 2009 the United States set up a task force that reviewed transfer policies, and the administration reportedly accepted its recommendations, it has failed to renounce its reliance on diplomatic assurances. Detainees who raise credible fears of torture continue to be transferred from the US detention facility in Afghanistan and from Guantanamo against their will to countries with records of abuse, without being given an opportunity to raise their concerns before an independent adjudicator. The task force recommended that, when negotiating transfers using diplomatic assurances, the US maintain the ability to monitor treatment of detainees post-transfer, with private access and minimal advance notice. Yet these measures do not sufficiently safeguard against abuse and there continues to be a lack of transparency to the process, transfer procedures, and agreements. Many forms of torture—such as prolonged solitary confinement, waterboarding and other mock executions, and sleep deprivation—leave no visible marks

[23] Andrea Prasow, "Diplomatic Assurances: Empty Promises Enabling Torture," *Jurist*, October 6, 2011, http://www.hrw.org/news/2011/10/06/diplomatic-assurances-empty-promises-enabling-torture.

and can therefore be hidden. Detainees are also often afraid to report abuse to outside monitors for fear of reprisal.

Recommendation

1. The Committee should urge the United States not to rely on diplomatic assurances as a means to ensure that receiving states will abide by the Convention's provisions against torture and ill-treatment, and should not transfer any detainee to a home or third country until they have had an opportunity raise their concerns before an independent arbiter.

Measures by the United States to combat terrorism do not all comply with its obligations under international law, and certain aggressive federal terrorism investigations have violated "human rights safeguards in law and practice"

Responding to Question 52 of the Committee's List of Issues Prior to Reporting

Human Rights Watch has recently documented the significant human cost of certain US counterterrorism practices, including overly aggressive investigations and "sting" operations – investigations using an undercover agent or informant who participates in the plans and preparation for illegal conduct.[24] While many terrorism prosecutions have properly targeted individuals engaged in planning or financing criminal offenses, many others have targeted people who do not appear to have been involved in terrorist activity or financing at the time the government began to investigate them. Through abusive counterterrorism sting operations based on religious or ethnic identity, the Federal Bureau of Investigation (FBI) has often gone after particularly vulnerable people, including those with intellectual and mental disabilities and the indigent. Pursuing sting operations on the basis of individuals' religious practice or political beliefs violates international legal obligations to conduct investigations and prosecutions in an impartial and non-discriminatory manner.[25]

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[24] Human Rights Watch, *Illusion of Justice* (New York: Human Rights Watch, 2014), http://www.hrw.org/reports/2014/07/21/illusion-justice-0.

[25] See UN Guidelines on the Role of Prosecutors, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990, U.N. Doc. A/CONF.144/28/Rev.1 at 189 (1990), guideline 13, ("In the performance of their duties, prosecutors shall: (a) Carry out their functions impartially and avoid all

Those arrested have been subjected to harsh and at times abusive conditions of detention, which often appear excessive in relation to the security risk posed, such as prolonged solitary confinement and severe restrictions on contact with family and others. Prolonged pretrial solitary confinement not only raises concerns of cruel and inhuman treatment or punishment, but it also has an impact on defendants' ability to assist in their own defense, and may compel them to waive their trial rights and accept onerous plea deals.[26]

The Convention against Torture obligates governments to systematically review arrangements for the custody and treatment of persons subjected to any form of confinement with a view to ensuring there is no inhuman or degrading treatment.[27] Limited opportunities to contest conditions of confinement, including transfer into special units where prisoners are subject to solitary confinement or restrictions on their communication, also raise concerns under the Convention. In units that hold prisoners designated as "terrorists," internal review systems often fail to provide an effective check on unnecessary or prolonged solitary confinement or other restrictive conditions.

US courts have also accepted prosecutorial tactics in terrorism cases that may violate fair trial rights, such as introducing evidence obtained by coercion, classified evidence that cannot be fairly contested, and inflammatory evidence about terrorism in which defendants played no part–and asserting government secrecy claims to limit challenges to surveillance warrants. In many of the cases Human Rights Watch documented, defendants were given lengthy sentences that appeared disproportionate to the underlying offense. Lengthy sentences violate international human rights law and US constitutional law when

political, social, religious, racial, cultural, sexual or any other kind of discrimination"). The right to freedom from discrimination based on religion, ethnicity or other grounds is enshrined in numerous international declarations and conventions, including the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights.

[26] The European Committee on the Prevention of Torture has emphasized that pretrial solitary should only be imposed "where there is direct evidence in an individual case that there is a serious risk to the administration of justice if the prisoner concerned associates with particular inmates or others in general" and that it should be subject to judicial review on a "frequent" basis. See European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), "The CPT Standards, Substantive Sections of the CPT's General Reports," CPT/Inf/E (2002) 1-Rev. 2004, http://www.cpt.coe.int/en/documents/eng-standards-prn.pdf (accessed June 29, 2014), para. 57(a).

[27] Convention against Torture, arts. 11-13.

they are grossly disproportionate to the offense committed and the individual's culpability.[28]

Recommendations

1. The Committee should ask the United States to ensure that decisions to initiate assessments, preliminary investigations or investigations are not made on the basis of religious behavior, political opinion, or other activity protected by the rights to freedom of expression, religion and association.
2. Urge the US attorney general, Department of Justice, and Bureau of Prisons to reform investigative, trial and detention practices, including ending prolonged solitary confinement and improving conditions in detention, and also ensure UN special rapporteurs have full access to facilities and prisoners to ensure compliance with international human rights standards.
3. Reform trial practices by reviewing standards for introduction of evidence about terrorism that is not directly linked to defendants' conduct to ensure such evidence is not overly prejudicial, and reform sentencing standards to avoid disproportionate sentences.

[28] Under international human rights law, the "essential aim" of a penitentiary system should be the "reformation and social rehabilitation" of prisoners, and sentencing that is solely retributory is disfavored. See ICCPR, art. 10(3) ("The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation."); UN Human Rights Committee, General Comment No. 21, concerning human treatment of persons deprived of liberty (Art. 10) (Annex VI, B) (Forty-fourth Session, 1992), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, UN Doc. HRI/GEN/1/Rev.9 (Vol.1) (1994), http://ccprcentre.org/doc/ICCPR/General%20Comments/HRI.GEN.1.Rev.9%28Vol.I%29_%28GC21%29_en.pdf (accessed October 15, 2014), para. 10. ("No penitentiary system should be only retributory; it should essentially seek the reformation and social rehabilitation of the prisoner"). Excessive punishment may constitute cruel, inhuman, or degrading punishment in violation of the ICCPR and the Convention against Torture, and it may constitute arbitrary deprivation of liberty in violation of the right to liberty. See ICCPR, arts. 7 and 9; Convention against Torture, art. 16; see also, Dirk van Zyl Smit and Andrew Ashworth, "Disproportionate Sentences as Human Right Violations," *Modern Law Review*, vol. 67, no. 4 (July 2004), p. 543; *Roper v. Simmons*, 543 U.S. 551, 572 (2005).

III. Criminal Justice

The continued reliance of the United States on prolonged isolation of detainees and prisoners, including children, violates the prohibitions against torture and cruel, inhuman or degrading treatment or punishment (articles 2 and 16)

Responding to Questions 34 and 37 of the Committee's List of Issues Prior to Reporting

Solitary confinement in the United States is most commonly used as punishment for breaches of discipline ("disciplinary segregation") or to manage people in confinement considered to be particularly difficult or dangerous ("administrative segregation"). The increase in solitary confinement in the United States has occurred primarily through administrative segregation, particularly the segregation of prisoners in special super-maximum security facilities built solely for this purpose. The practice of isolating prisoners for prolonged periods of time also takes different names: solitary confinement, isolation, segregation, room confinement, and restricted housing, to name a few.

Isolation of prisoners can take different forms. The basic model is as follows: people in isolation typically spend 22 to 24 hours a day locked in small, sometimes windowless, cells. They lack opportunities for meaningful social interaction with other prisoners; most contact with staff is perfunctory and may be wordless (such as when meals are delivered through a slot in the cell door). Phone calls and visits by family and loved ones are severely restricted or prohibited. A few times a week, prisoners are let out for showers or solitary exercise in a small, enclosed space, sometimes indoors. They often have extremely limited or no access to educational and recreational activities or other sources of mental stimulation. The extent of some isolation practices is clearly cruel. In Pennsylvania's most restrictive units, for example, prisoners have all the usual deprivations but are also not permitted to have photographs of family members or newspapers and magazines (unless these have religious content).[29]

[29] "US: Look Critically at Widespread Use of Solitary Confinement," Human Rights Watch news release, June 18, 2012, http://www.hrw.org/news/2012/06/18/us-look-critically-widespread-use-solitary-confinement.

Persons in isolation have described their confinement as akin to living in a tomb. Their days are marked by idleness, tedium, and tension. People suffer grievously in prolonged isolation because human beings are social animals. For many, the absence of normal social interaction, reasonable mental stimulus, exposure to the natural world, and almost all facets of normal human life, takes an immense emotional, physical, and psychological toll. As one federal judge noted, prolonged super-maximum security confinement "may press the outer bounds of what most humans can psychologically tolerate."[30]

Youth are especially vulnerable to the destructive impact of isolation. Because young people are still developing, isolation can have a profound effect on their chance to rehabilitate and grow. Solitary confinement can exacerbate short- and long-term mental health problems or make it more likely that such problems will develop. Young people in solitary confinement are routinely denied access to treatment, services, and programming required to meet their medical, psychological, developmental, social, and rehabilitative needs.[31] One youth interviewed by Human Rights Watch referred to isolation as "dying a slow death."[32]

The United States, in its response to the Committee, continues to attempt to defend its regime of prolonged prisoner isolation by claiming that there is "no systematic use of solitary confinement" in the United States. The United States also claims that prisoners in its Florence ADX (administrative maximum) facility in Colorado are not deprived of human interaction because they can communicate with correctional staff or with inmates on either side of their cells. Bureau of Prisons Director Charles Samuels has testified that the federal government uses solitary confinement "only for brief periods of time for the vast majority of inmates and involves only a very small subset of the population."[33]

The reality belies the US position. As of February 2013, the US Bureau of Prisons had approximately 12,460 federal inmates in isolation.[34] Over 25,000 people are held in

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[30] Ibid.

[31] Human Rights Watch, *Growing Up Locked Down* (New York: Human Rights Watch, 2012), http://www.hrw.org/reports/2012/10/10/growing-locked-down.

[32] Ibid.

[33] Statement of Charles E. Samuels, Jr., Director, Federal Bureau of Prisoners, "Hearing on Reassessing Solitary Confinement: The Human Right, Fiscal, and Public Safety Consequences", United States Senate Committee on the Judiciary, Subcommittee on the Constitution, Civil Rights, and Human Rights, February 24, 2014. http://www.judiciary.senate.gov/imo/media/doc/02-25-14SamuelsTestimony.pdf (accessed October 8, 2014).

[34] United States Government Accountability Office, "Bureau of Prisons: Improvements Needed in Bureau of Prisons' Monitoring and Evaluation of Impact of Segregated Housing," May 2013, http://www.gao.gov/assets/660/654349.pdf (accessed October 8, 2014).

supermax isolation in both federal and state prisons. And across the US system as a whole, on any given day over 80,000 people are held in isolation.[35] While UN special rapporteur on torture Juan Mendez raises the concern that isolation beyond 15 days may be a violation of the prohibition on cruel, inhuman or degrading treatment or punishment, or even amount to torture,[36] the US requires 12 months in isolation for prisoners in its ADX facility—at a minimum. The average length of isolation at ADX has been three years.[37] And this does not account for the extremely long isolation imposed in several well-known cases, including the more than four decades Albert Woodfox has spent in isolation.[38]

The continued willingness of the United States to use of prisoner isolation is reflected in its recent purchase of the Thomson Correctional Center in Illinois to house even more people in supermax conditions.[39] Yet as the United States continues to subject federal prisoners to prolonged isolation, other jurisdictions are reducing the use of isolation. The City of New York has recently announced that it will end the use of isolation for 16- and 17-year-olds at Riker's Island, its main jail facility. States such as Mississippi, Maine, Ohio, and Washington are taking steps to reduce their dependence on prisoner isolation.[40] Even the US Department of Homeland Security is taking steps to rein in and monitor the use of detainee isolation in immigration detention facilities. [41]

Recommendations

1. The Committee should urge the United States to end the isolation of youth and the isolation of persons with intellectual or psychosocial disabilities.

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[35] Amnesty International USA, "Entombed: Isolation in the US Federal Prison System," July 16, 2014, http://www.amnestyusa.org/sites/default/files/amr510402014en.pdf (accessed October 8, 2014).

[36] UN Office of the High Commissioner for Human Rights, "California jails: 'Solitary confinement can amount to cruel punishment, even torture' – UN rights expert," August 23, 2013 http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13655 (accessed October 8, 2014).

[37] Amnesty International USA, "Entombed: Isolation in the US Federal Prison System," July 16, 2014.

[38] Ed Pilkington, "Angola Three inmate in longest solitary confinement seeking damages in court," *Guardian*, September 4, 2014 (accessed October 8, 2014), http://www.theguardian.com/world/2014/sep/04/angola-three-albert-woodfox-lawsuit-louisiana-prison.

[39] James Ridgeway and Jean Casella, "Welcome to the New Federal Supermax," *Mother Jones,* February 11, 2013 (accessed October 8, 2014), http://www.motherjones.com/politics/2013/02/thompson-federal-supermax-solitary-illinois-dick-durbin.

[40] Erica Goode, "Prisons Rethink Isolation, Saving Money, Lives and Sanity," *New York Times,* March 10, 2012 (accessed October 8, 2014), http://www.nytimes.com/2012/03/11/us/rethinking-solitary-confinement.html?pagewanted=all

[41] Department of Homeland Security, "ICE Releases New Segregation Policy," November 4, 2013 (accessed October 8, 2014), http://www.dhs.gov/ice-releases-new-segregation-policy.

2. The Committee should urge the United States to require all federal agencies that operate or contract for confinement facilities to prohibit prolonged and indefinite isolation.

3. The Committee should urge the United States to require all federal agencies that operate or contract for confinement facilities to institute meaningful procedures of review and scrutiny for any decision to isolate a person for more than a two-week period.

The practice of capital punishment in the United States violates US obligations to prevent acts of torture and cruel, inhuman or degrading treatment or punishment (articles 2 and 16)

Responding to Question 31 of the Committee's List of Issues Prior to Reporting

People executed in the United States continue to experience severe pain and suffering in the course of their executions. In the first nine months of 2014, state governments in the United States had executed 30 people, all by lethal injection.[42] At least four of the individuals executed displayed visible signs of distress after officials administered their injections. In Oklahoma in January, inmate Michael Wilson said, "I feel my whole body burning" shortly after being administered a three-drug cocktail.[43] Clayton Lockett in Oklahoma was administered a different, experimental three-drug cocktail on April 29. He appeared to regain consciousness during the execution, twitching and groaning. It took him 43 minutes, rather than the expected 6 to 12 minutes, to die.[44] In Arizona on July 23, it took 2 hours for Joseph Wood to die after receiving the initial injection.[45] Officials

[42] Death Penalty Information Center, "Execution List 2014," http://www.deathpenaltyinfo.org/execution-list-2014 (accessed October 2, 2014).

[43] Mark Berman, "What it was like watching the botched Oklahoma execution," *The Washington Post*, May 2, 2014, http://www.washingtonpost.com/news/post-nation/wp/2014/05/02/what-it-was-like-watching-the-botched-oklahoma-execution/ (accessed October 2, 2014).

[44] Kate Fretland, "Clayton Lockett Writhed and groaned. After 43 minutes, he was declared dead," *Guardian*, April 30, 2014, http://www.theguardian.com/world/2014/apr/30/clayton-lockett-oklahoma-execution-witness (accessed October 2, 2014).

[45] Erik Eckholm, "Arizona Takes Nearly 2 hours to execute inmate," *New York Times*, July 23, 2014, http://www.nytimes.com/2014/07/24/us/arizona-takes-nearly-2-hours-to-execute-inmate.html?_r=0 (accessed October 2, 2014).

administered 15 injections to Wood during his execution.[46] In Ohio, Dennis McGuire gasped for breath repeatedly during the 25 minutes it took him to die following his injection on January 16.[47]

The Committee has previously addressed US lethal injection practices. In its 2006 Concluding Observations, the Committee called upon the United States to "review its execution methods, in particular lethal injection, in order to prevent severe pain and suffering."[48] Because each US state controls its own criminal justice system, there is no uniform lethal injection protocol in place nationwide. Since 2011, states have varied their protocols due to shortages of certain drugs they had previously used in their standard three-drug cocktails.[49] Experimentation with new drug combinations played a role in the four botched executions that took place in 2014. Executions are on hold in Arizona, Arkansas, California, Kentucky, Louisiana, Montana, North Carolina, Ohio, and Oklahoma while their lethal injection protocols are under review.[50] Under the current circumstances, there are no guarantees that future executions by lethal injection can be conducted without causing severe pain and suffering to those executed.

Recommendations

1. The Committee should urge the United States and its constituent states to abolish the death penalty, and to commute the sentences of persons currently on death row. Prior to abolition there should be a moratorium on carrying out the death sentence.

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[46] Tom Dart, "Arizona inmate Joseph Wood was injected 15 times with execution drugs," *Guardian*, http://www.theguardian.com/world/2014/aug/02/arizona-inmate-injected-15-times-execution-drugs-joseph-wood (accessed October 2, 2014).

[47] Ed Pikington, "Ohio execute inmate using untried, untested lethal injection method," *Guardian*, http://www.theguardian.com/world/2014/jan/16/ohio-executes-inmate-untried-untested-lethal-injection-method (accessed October 2, 2014).

[48] Report of the Committee against Torture, Forty-seventh session (October 31–November 25, 2011), Forty-eighth session (May 7–June 1, 2012).

[49] American Bar Association Death Penalty Representation Project, "Challenges to lethal injection protocols continue," *Project Press*, Spring 2013, http://www.americanbar.org/publications/project_press/2013/spring/challenges-to-lethal-injection-protocols-continue.html (accessed October 2, 2014).

[50] Death Penalty Information Center, "State by State Lethal Injection," http://www.deathpenaltyinfo.org/state-lethal-injection (accessed October 2, 2014).

IV. Sexual Assault in Confinement

Despite welcome progress in recent years, the United States does not ensure effective safeguards against sexual assault for persons in confinement, violating the right to be free from cruel, inhuman or degrading treatment (article 16)

Responding to Question 32 of the Committee's List of Issues Prior to Reporting

Sexual assault in US confinement facilities continues to be widespread. In a single day snapshot survey in 2013, an estimated 80,600 people in prisons and jails experienced some form of sexual victimization.[51] Accounting for turnover in confinement populations, the actual estimate for people in confinement who experienced sexual victimization is closer to 200,000.[52]

The federal Prison Rape Elimination Act (PREA) was enacted in 2003 to help combat sexual assault in confinement facilities. A landmark piece of legislation designed to prevent, detect, and respond to sexual assault in confinement facilities, PREA has yet to be fully implemented—state governors have only been required to designate whether their state was compliant with PREA. Six states—comprising 20 percent of the US population— have refused to comply with PREA: Arizona, Florida, Idaho, Indiana, Texas, and Utah.[53]

Recently, the US Congress indicated that it may weaken PREA even further. PREA is structured to elicit state compliance by holding back 5 percent of federal grant funds used for prison purposes from states that refuse to comply. However, in September the Senate Judiciary Committee unanimously passed an amendment that would virtually eliminate the compliance mechanism by protecting several large federal grants from being held back.[54]

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[51] Bureau of Justice Statistics, US Department of Justice, "Sexual Victimization in Prisons and Jails Reported by Inmates, 2011-12," http://www.bjs.gov/content/pub/pdf/svpjri1112.pdf (accessed October 8, 2014), p. 8.

[52] Just Detention International, "New Report Confirms Crisis of Prisoner Rape," May 16, 2013 http://www.justdetention.org/en/listserv/2013/051613.aspx (accessed October 8, 2014).

[53] Just Detention International, "The Shameful Six," http://www.justdetention.org/en/shameful-seven.aspx (accessed October 8, 2014).

[54] US Senate Committee on the Judiciary, Executive Business Meeting, September 18, 2014 http://www.judiciary.senate.gov/meetings/executive-business-meeting-2014-09-18 (accessed October 8, 2014).

The risk to non-compliant states of losing federal funds is a key component to enforcing PREA. PREA did not create an individual cause of action, so people in confinement cannot cite a PREA violation as grounds for a lawsuit in response to a sexual assault. The Prison Litigation Reform Act (PLRA), enacted in 1996, also puts up major obstacles to seeking court relief in response to a sexual assault while in confinement. For instance, the PLRA requires that people in confinement who are bringing a federal lawsuit about mistreatment while in confinement show physical injury or be barred from bringing a complaint. Under this provision, prisoners who have been subjected to sexual assault and other intentional abuse by prison staff but were unable to provide evidence of a physical injury have been denied a remedy.[55]

Taking into account the existing barriers to enforcing the protections under PREA, amendments to the law that make the withholding of federal funds more difficult would leave PREA essentially without any enforcement mechanism at the state level.

While state compliance with the Prison Rape Elimination Act is contingent on cooperation by each state, PREA is fully binding on all federal confinement facilities, including immigration detention centers. However, not all federal confinement facilities are complying with PREA. The Department of Health and Human Services, whose Office of Refugee Resettlement is responsible for housing unaccompanied immigrant children, has yet to issue regulations on implementing PREA. Many privately contracted detention facilities under the auspices of the Department of Homeland Security and the US Marshals Service have also yet to implement PREA.[56] And PREA compliance in recently converted facilities for the detention of migrant families is unclear—and detainees are beginning to bring allegations of sexual abuse in those converted facilities.[57]

Recommendations

1. The Committee should urge the United States to not weaken the enforcement provisions of the Prison Rape Elimination Act.

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55 Human Rights Watch, *No Equal Justice* (New York: Human Rights Watch, 2009), http://www.hrw.org/reports/2009/06/16/no-equal-justice-0.

56 National Immigrant Justice Center, "U.S. Department of Homeland Security's Sexual Assault Regulations Take Effect Today," May 6, 2014, http://www.immigrantjustice.org/press_releases/us-department-homeland-security%E2%80%99s-sexual-assault-regulations-take-effect-today (accessed October 8, 2014).

57 MALDEF, "MALDEF and other groups file complaint detailing sexual abuse, extortion, and harassment of women at ICE family detention center in Karnes City," September 30, 2014, http://www.maldef.org/news/releases/maldef_other_groups_file_complaint_ice_family_detention_center_karnes_city/ (accessed October 8, 2014)

2. The Committee should urge the United States to repeal the Prison Litigation Reform Act, or at a minimum remove the requirement to show "physical injury" as a prerequisite to filing a lawsuit about mistreatment in confinement.
3. The Committee should urge the United States to mandate the application of PREA regulations to all forms of federal and state custody, including all contract facilities, short-term holding facilities, and transport.

V. Policing

The failure of police in the United States to investigate sexual assault cases violates the right to be free from ill-treatment and the right to have such allegations promptly investigated and heard by competent authorities (articles 2, 12, 13 and 16)

In response to Questions 41(b) and (c) in the Committee's List of Issues Prior to Reporting

In 2013, Human Rights Watch documented repeated cases in which the District of Columbia's Metropolitan Police Department mistreated sexual assault survivors, or failed to document or investigate their cases properly.[58] Survivors who had reported sexual assault said that police officers questioned their credibility, discouraged them from submitting forensic evidence, or simply did not return their calls.

Sexual assault remains the most underreported violent crime in the US, largely because many victims fear that their cases will not be taken seriously and that police will not believe them. The United States reports in its submission to the Committee that its "efforts to address violence against women in the United States have been guided by two key principles: 1) ensuring safety for victims; and 2) holding offenders accountable."[59] Yet reports of violence against women continue to not be promptly investigated and perpetrators are as a result not being prosecuted and held accountable. In the District of Columbia, police failed to file incident reports, which are required to proceed with an investigation, or misclassified serious sexual assaults as lesser or other crimes in scores of sexual assault cases.[60] DC police also presented cases to prosecutors for warrants that were so inadequately investigated that prosecutors had little choice but to refuse them. Procedural formalities were used to close many cases with only minimal investigation.

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[58] Human Rights Watch, *Capitol Offense* (New York: Human Rights Watch, 2013), http://www.hrw.org/reports/2013/01/24/capitol-offense-0.

[59] US Government, Consideration of reports submitted by States parties under article 19 of the Convention pursuant to the optional reporting procedure, Third to fifth periodic reports of States parties due in 2011, United States of America, CAT/C/USA/3-5, para. 239.

[60] Human Rights Watch, *Capitol Offense*.

Failure by police to properly investigate sexual assault cases is prevalent nationwide. One in five women is sexually assaulted in college, and survivors from colleges across the country continue to report that schools and local police mishandled their cases.[61] Additionally, police in cities such as Memphis, Detroit, and Cleveland have recently analyzed forensic exams (rape kits) that had been left in storage for years. The test results led to the discovery of dozens of serial rapists and scores of indictments, but the backlogs exposed a broader problem of police not properly investigating sexual assaults. [62]

Recommendations

1. The Committee should urge the United States and its constituent states to establish independent oversight bodies that are empowered to review sexual assault investigations for promptness, thoroughness, and impartiality.
2. The Committee should urge the United States and its constituent states to allow for survivors of sexual assault to have an advocate present, without exception, during all police interviews.
3. The Committee should urge the United States and its constituent states to act to eliminate rape kit backlogs.

Excessive use of force, racial profiling, and the lack of accountability for related allegations by law enforcement officers violate the right to be free from cruel, inhuman or degrading treatment and the right to have allegations of ill-treatment promptly investigated and heard by competent authorities (articles 2, 12, 13 and 16)

In response to Questions 42 and 49 in the Committee's List of Issues Prior to Reporting

Excessive use of force and racial profiling by police continue to be problems in the United States, and are exacerbated by a lack of accountability for police abuses. There is a long history of tensions between black communities and police in the United States. In 1919, a

[61] Glen Kessler, "One in five women in college sexually assaulted: the source of this statistic," *The Washington Post,* May 1, 2014 (accessed October 8, 2014), http://www.washingtonpost.com/blogs/fact-checker/wp/2014/05/01/one-in-five-women-in-college-sexually-assaulted-the-source-of-this-statistic/

[62] "No Longer Ignored, Evidence Solves Rape Cases Years Later," Erik Eckholm, *New York Times,* August 2, 2014, http://www.nytimes.com/2014/08/03/us/victims-pressure-cities-to-test-old-rape-kits.html (accessed September 29, 2014).

17-year-old African American named Eugene Williams drowned near a Chicago lakeside beach after white beachgoers threw stones at him. Officers refused to arrest the stone-throwers, and a week of riots ensued.[63] The 1964 Philadelphia riots were touched off by an altercation between police officers and an African American woman over her inability to move her stalled car.[64] In 1967, there were riots in Detroit following a police raid on a predominantly African American bar.[65] Riots occurred in Los Angeles in 1992 after a jury acquitted officers who had been filmed brutally beating Rodney King, an African American man.[66] In Cincinnati in 2001, Timothy Thomas, an unarmed 19-year-old African American, was killed by police who were attempting to arrest him on a warrant for several minor offenses, mostly traffic violations.[67] The killing touched off three days of rioting and looting.[68]

In the summer of 2014, police killed at least four unarmed black men—Eric Garner in New York, Michael Crawford in Ohio, Ezell Ford in California, and Michael Brown in Missouri.[69] Brown, 18, was shot by a white police officer, causing weeks of unrest in Ferguson, Missouri. Police responded to protests following the shooting with heavy-handed tactics, approaching protest sites in armored personnel vehicles and using teargas, sound cannons, and non-lethal projectiles against peaceful protesters. Journalists were arrested. The US Department of Justice has launched investigations into both the shooting of Brown and the police response to protests.

There are more than 13,000 state and local law enforcement agencies in the United States. The federal government has no direct control over these agencies. The US Department of

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[63] Ron Grossman, "Chicago 1919: a racial tinderbox," *Chicago Tribune*, August 23, 2014, http://www.chicagotribune.com/news/ct-1919-race-riot-flashback-0824-20140822-story.html#page=1 (accessed October 2, 2014).

[64] "Today in Philadelphia History: The Philadelphia race riot of 1964," *Philly*.com, August 28, 2013, http://www.philly.com/philly/blogs/TODAY-IN-PHILADELPHIA-HISTORY/The-Philadelphia-race-riot-of-August-1964.html (accessed October 2, 2014).

[65] Robyn Meredith, "5 days in 1967 still shake Detroit," *New York Times*, July 23, 1997, http://www.nytimes.com/1997/07/23/us/5-days-in-1967-still-shake-detroit.html (accessed October 2, 2014).

[66] Paythell Benjamin, "Rodney King Verdict sparks LA riots," *Guardian*, May 1, 1992, http://www.theguardian.com/theguardian/2013/may/01/la-riots-rodney-king-race (accessed October 2, 2014).

[67] Danny Vinik, "We've been here before," *The New Republic*, August 18, 2014, http://www.newrepublic.com/article/119133/cincinnatis-2001-race-riots-reveal-solutions-fergusons-unrest (accessed October 2, 2014).

[68] Marc Fisher, "Cincinnati still healing from its riots, and has lessons to share with Ferguson," *Washington Post*, September 5, 2014, http://www.washingtonpost.com/politics/cincinnati-still-healing-from-its-riots-and-has-lessons-to-share-with-ferguson/2014/09/05/2ff8b944-34a1-11e4-9e92-0899b306bbea_story.html (accessed October 2, 2014).

[69] Josh Harkinson, "4 Unarmed Black Men Have Been Killed By Police in the Last Month," *Mother Jones*, August 13, 2014, http://www.motherjones.com/politics/2014/08/3-unarmed-black-african-american-men-killed-police (accessed October 3, 2014).

Justice, however, has authority to investigate allegations of patterns and practices of police misconduct among local law enforcement agencies, and has used this authority 24 times over the past 20 years.[70] While the Department of Justice can also criminally prosecute police for rights violations, these prosecutions are made difficult since the Department of Justice can only prosecute state and local officials for willfully depriving somebody of their federal constitutional rights.[71] This limitation has meant that federal prosecutions of police abuses are rare, even though the Obama administration had brought more of these prosecutions than its predecessor.[72]

The US government has not adequately monitored police abuses in the country. This is glaringly reflected in the absence of reliable national data on shootings by police officers.[73] Without such data, it will be difficult if not impossible to gauge whether the government has made any progress in reducing such deaths.

Recommendations

1. The Committee should urge the United States and its constituent states to improve oversight and accountability mechanisms related to claims of excessive use of force by police.
2. The Committee should urge the United States to improve data collection efforts on use of force, including shooting deaths, by law enforcement officers.

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[70] Chuck Raasch, ""Justice Department has widened involvement in local law enforcement in past two decades," *St. Louis Post-Dispatch*, August 12, 2014, http://www.stltoday.com/news/local/crime-and-courts/justice-department-has-widened-involvement-in-local-law-enforcement-in/article_2ae8b9bf-0c29-5f7c-b8ef-6437d57d03b9.html (accessed October 2, 2014).

[71] Julia Edwards and David Ingram, "US government faces high bar charging cop in Ferguson death," Reuters, August 21, 2014, http://www.reuters.com/article/2014/08/21/us-usa-missouri-shooting-civilrights-idUSKBN0GL20X20140821 (accessed October 2, 2014).

[72] Eric Tucker, "Federal prosecutions not easy in police shootings," *Associated Press*, August 27, 2014, http://www.cdispatch.com/news/article.asp?aid=35849; Bob Egelko, "Obama team more likely than predecessors to prosecute police," *San Francisco Chronicle*, August 26, 2014, http://www.sfgate.com/crime/article/Obama-team-more-likely-than-predecessors-to-5702851.php#-page-2 (accessed October 3. 2014).

[73] Wesley Lowery, "How many police shootings a year? No one knows," *Washington Post,* September 8, 2014, http://www.washingtonpost.com/news/post-nation/wp/2014/09/08/how-many-police-shootings-a-year-no-one-knows/ (accessed October 2, 2014).

VI. Immigration Enforcement Abuses

Current US border screening practices do not meet the obligation to ensure that individuals are not returned or refouled to a place where there are substantial grounds for believing they are at risk of torture (article 3).

In response to Question 42 of the Committee's List of Issues Prior to Reporting

The US government's system of screening of noncitizens at the border fails to adequately identify people who may be at risk of torture if deported. Under US law authorizing "expedited removal," border guards are charged with asking people apprehended at the border if they are afraid to return to their countries. If border crossers report that they are afraid, they should be referred to an asylum officer to assess their need for international protection. Recent deportees to Honduras told Human Rights Watch that they had told US border guards they feared returning, but were not referred for further assessment and were rapidly deported. These individuals said that they had fled death threats, rape, and violent assaults in their home country and feared similar harm or worse upon their return. A 2005 study by the US Commission on International Religious Freedom found that the process of expedited removal, as then implemented, failed to screen for those in need of international protection.

Despite past criticisms of the program, the Department of Homeland Security has expanded geographically the use of expedited removal. The number of people deported via expedited removal has grown from 84,020 in 2005 to 174,048 in 2012.[74] Despite this expansion, many protection gaps remain unaddressed. Because there is no right to government-appointed counsel in immigration matters in the United States, those in danger of refoulement often must represent themselves in complex proceedings.

[74] Immigration and Customs Enforcement, Immigration Enforcement Actions: 2013, http://www.dhs.gov/sites/default/files/publications/ois_enforcement_ar_2013.pdf (accessed October 8, 2014).

Recommendations

1. The Committee should urge the United States to end its use of expedited removal for border crossers who are likely to have international protection concerns.
2. The Committee should urge the United States to ensure protection under the Convention by considering providing appointed counsel to indigent people who are faced with removal to their countries of origin in cases where they claim a fear of persecution or torture upon return.

(front cover) A guard tower at the Camp Delta detention facility, Guantanamo, June 2010.