

United States Compliance with CAT: Prison and Jail Conditions

When the United States ratified the Convention against Torture (“CAT”) in 1994, it embraced legally binding obligations to refrain from acts of torture and cruel, inhuman, or degrading treatment or punishment. While some gains have been made in adherence to CAT requirements, there is a need for greater compliance in the area of prison and jail conditions.

Many corrections facilities subject prisoners to prolonged solitary confinement, sometimes lasting years or decades, despite evidence of irreversible physical and psychological harm.¹ Some expose prisoners to unhealthy and dangerous conditions including sexual and physical violence, poor sanitation, contaminated food, and inadequate access to health care.²

The Prison Litigation Reform Act (“PLRA”) establishes burdensome restrictions on court access that apply only to prisoners and operate to deny a meaningful remedy to many victims of torture and cruel, inhuman, or degrading treatment or punishment.³ Despite U.S. ratification of CAT, grave human rights abuses, sometimes rising to the level of torture, continue to exist in prisons and jails.

Legal Framework: Convention against Torture, Articles 1, 2, 14, 16

Committee against Torture Concluding Observations

In 2006 the Committee Against Torture (“Committee”) expressed concern about “the extremely harsh regime imposed on detainees in ‘supermaximum prisons’” and “the prolonged isolation periods detainees are subjected to, the effect such treatment has on their mental health, and that its purpose may be retribution, in which case it would constitute cruel, inhuman or degrading treatment or punishment.”⁴ Noting “reliable reports” of sexual violence in U.S. places of confinement, the Committee commented on “the lack of prompt and independent investigation of such acts and that appropriate measures to combat these abuses have not been implemented by the State party.”⁵ The Committee recommended that “the State party should not limit the right of victims to bring civil actions and amend the Prison Litigation Reform Act accordingly.”⁶ Finally, the U.S. was asked to supply statistical data about efforts to prevent, investigate, and prosecute acts of torture or cruel, inhuman or degrading treatment or punishment in places of confinement.⁷

Other UN Body Recommendations

The Human Rights Committee, in its 2014 concluding observations on the U.S. periodic report, called on the State to impose strict limits on the use of solitary confinement and prohibit its use for juvenile prisoners and those with serious mental illness.⁸ The Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment has determined that solitary confinement “can amount to a breach of article 7 of the International Covenant on Civil and Political Rights, and to an act defined in article 1 or article 16 of the Convention against Torture.”⁹ The Special Rapporteur has also concluded other conditions of confinement may constitute torture, including overcrowding, lack of ventilation, and poor sanitary conditions,¹⁰ and that violence among prisoners may constitute torture when the State fails to undertake meaningful preventive action.¹¹

List of Issues

The Committee sought additional information from the United States government, including:

- Efforts made to address conditions in super-maximum prisons, including prolonged isolation;¹²
- The prevalence of sexual violence in places of detention, and steps taken to prevent, investigate, and prosecute such acts;¹³ and
- Whether it has amended the Prison Litigation Reform Act.¹⁴

U.S. Government Report

The United States government reiterates its position that “[t]here is no systematic use of solitary confinement in the United States,”¹⁵ even though a recent study undertaken by the U.S. Government Accountability Office found that the Federal Bureau of Prisons housed 435 prisoners in the federal Administrative Maximum Facility (“ADX”), and an additional 377 prisoners across its other facilities, confined alone in their cells for approximately 23 hours per day.¹⁶ Solitary confinement is widespread in state and local prisons and jails.¹⁷

The United States outlines partial implementation of domestic legislation designed to address sexual violence and notes that these regulations are applicable to all federal confinement facilities.¹⁸ Unfortunately sexual abuse remains common in U.S. prisons and jails.¹⁹ Fear of reprisal contributes to underreporting,²⁰ which may explain the “relatively small number of cases in which an inmate reports a violation to authorities” noted by the United States.²¹

The United States alleges that “there is no question that inmates may bring a civil action and receive a judicial ruling on the challenge,” and states that it has therefore not amended the Prison Litigation Reform Act.²² However, by barring compensatory damages, the PLRA denies a meaningful remedy to many prisoners who have been victims of torture or cruel, inhuman, or degrading treatment or punishment.²³

Suggested Questions for the Review

- What measures are being taken to eliminate prolonged solitary confinement in United States prisons, jails and other detention facilities?
- When will the UN Special Rapporteur on Torture be granted access to prison and jail facilities in the United States?
- Will the United States government make available disaggregated data on the use of solitary confinement in the Federal Bureau of Prisons, state and local prisons and jails, and privately contracted places of confinement?

Suggested Recommendations

- Ratify the Optional Protocol to the CAT.
- Ensure that solitary confinement is used *only* when no less restrictive alternatives exist and for the shortest time possible, and that prisoners receive meaningful procedural safeguards prior to and during such confinement.
- Require federal, state, and local governments to regularly compile and publish disaggregated data on their use of solitary confinement, including racial/ethnic identity, mental health status, disability status, gender, age, and duration of isolation.

References

- ¹ See Written Statement of the American Civil Liberties Union Before the United States Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights, Hearing on Reassessing Solitary Confinement II: The Human Rights, Fiscal, and Public Safety Consequences, February 25, 2014, available at https://www.aclu.org/sites/default/files/assets/aclu_testimony_for_solitary_ii_hearing-final.pdf.
- ² See, e.g., Expert Report of Dr. Terry A. Kupers, M.D., M.S.P., *Dockery v. Epps*, No. 3:13-cv-00326-TSL-JCG (S.D. Miss.), September 25, 2014 (Doc. No. 179-4) at 19 (noting a “shocking level of filth and lack of sanitation” and “Styrofoam trays and food waste scattered all around, mixed with large puddles of water and what appeared to be excrement and/or blood”), available at https://www.aclu.org/sites/default/files/assets/expert_report_of_terry_kupers_with_table_of_contents.pdf; Second Supplemental Report of Robert L. Cohen, M.D., *Parsons v. Ryan*, No. CV 12-00601-PHX-DJH (D. Ariz.), September 8, 2014, at 1 (“the prison health care system ... fails to deliver timely, adequate health care to prisoners with serious medical conditions”), available at <http://www.prisonlaw.com/pdfs/ParsonsCohen2ndSupp.pdf>; *Graves v. Arpaio*, 2014 WL 4898717 (D. Ariz., Sept. 30, 2014) (federal court finds deficient medical and mental health care in local jail).
- ³ Human Rights Watch, *No Equal Justice: The Prison Litigation Reform Act in the United States* (2009), available at <http://www.hrw.org/sites/default/files/reports/us0609web.pdf>.
- ⁴ Conclusions and Recommendations of the Committee against Torture, United States of America, CAT/C/USA/CO/2 (25 July 2006), ¶ 36.
- ⁵ *Id.*, ¶ 32.
- ⁶ *Id.*, ¶ 29.
- ⁷ *Id.*, ¶ 42.
- ⁸ Human Rights Committee, Concluding Observations on the Fourth Periodic Report of the United States of America, CCPR/C/USA/CO/4 (23 April 2014), ¶ 20.
- ⁹ Interim Report of the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment, A/66/268 (5 August 2011), ¶ 80.
- ¹⁰ Interim Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/68/295 (9 August 2013), ¶ 45.
- ¹¹ *Id.*, ¶ 48.
- ¹² Committee against Torture, List of Issues Prior to the Submission of the Fifth Periodic Report of United States of America (CAT/C/USA/5), CAT/C/USA/Q/5 (20 January 2010), ¶ 37.
- ¹³ *Id.*, ¶ 32.
- ¹⁴ *Id.*, ¶ 28.
- ¹⁵ Committee against Torture, Third to fifth periodic reports of States parties due in 2011, United States of America, CAT/C/USA/3-5 (4 December 2013), ¶ 214.
- ¹⁶ See U.S. Government Accountability Office, *Improvements Needed in Bureau of Prisons’ Monitoring and Evaluation of Impact of Segregated Housing: Report to Congressional Requesters* (Publication No. GAO-13-429), 12 n. 11, available at <http://www.gao.gov/assets/660/654349.pdf>.
- ¹⁷ See Written Statement of the American Civil Liberties Union, *supra* n. 1.
- ¹⁸ Committee against Torture, Third to fifth periodic reports of States parties due in 2011, United States of America, CAT/C/USA/3-5 (4 December 2013), ¶¶ 170-71.
- ¹⁹ Sexual Victimization in Prisons and Jails Reported by Inmates, 2011–12, Bureau of Justice Statistics, May 2013, p. 6, available at <http://www.bjs.gov/content/pub/pdf/svpjri1112.pdf>.
- ²⁰ Shannon K. Fowler, Ashley G. Blackburn, James W. Marquart, and Janet L. Mullings, *Would They Officially Report an In-Prison Sexual Assault? An Examination of Inmate Perceptions*, (90 *The Prison Journal* 220) (2010), 224-25, available at <http://www.prearesourcecenter.org/sites/default/files/library/reportingpracticesofinmates.pdf>.
- ²¹ Committee against Torture, Third to fifth periodic reports of States parties due in 2011, United States of America, CAT/C/USA/3-5 (4 December 2013), ¶ 179.
- ²² *Id.*, ¶ 151-52.
- ²³ See, e.g., *Luong v. Hatt*, 979 F. Supp. 481, 485 (N.D. Tex. 1997) (PLRA barred compensatory damages for prisoner subjected to multiple beatings).