

BY FAX AND MAIL

The President
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500
USA

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22 June 2000

Dear Mr President

I am writing following the hearings in Geneva on 10 and 11 May 2000, in which the United Nations (UN) Committee against Torture considered the United States of America's Initial Report on its implementation of the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture). Amnesty International submitted its own report to the Committee outlining the organization's concerns regarding the incidence of torture and ill-treatment in the USA, a copy of which was made available to Ambassador George Moose and to the US delegation to Geneva. In his address to the Committee, US Assistant Secretary of State Harold Koh stated that the US Government welcomed the constructive input of NGOs, and we trust that this letter will be received in the same spirit.

The hearings before the Committee raised important issues regarding the USA's compliance with the Convention against Torture, both in law and in practice. While welcoming the various mechanisms in place to protect against torture and ill-treatment and to compensate victims, the Committee nevertheless highlighted a significant number of US practices which are at clear odds with the Convention. These included areas of concern raised by Amnesty International and other human rights organizations as well as the UN Human Rights Committee and the Special Rapporteur on torture. The Committee also expressed concern at the USA's failure fully to incorporate the terms of the Convention into US law.

Amnesty International welcomes the commitment given by the US Government in its address to the Committee to ensure that "every vestige of torture will be wiped out" and to constantly re-examine US practices. We note, too, that while the initial report was regrettably five years late (something nearly every committee member commented on strongly), the delegation indicated that future reports would follow more expeditiously as a result of coordinated efforts undertaken by the Interagency Working Group. We hope, therefore, that the Government will take concrete steps towards implementing the Committee's recommendations without delay.

Amnesty International wishes to comment in particular on the following concerns addressed by the Committee. Our more detailed concerns are contained in our submission to the Committee against Torture, a copy of which is enclosed.

1. Criminalizing torture under US law and withdrawing reservations, declarations and understanding.

The Committee recommended that the USA should enact a federal crime of torture consistent with Article 1 of the Convention and withdraw its "reservations, declarations and understandings" relating to the treaty. Amnesty International believes that these measures are essential if the USA is to meet its obligations under the treaty and its commitment to eradicate torture and ill-treatment.

The Committee expressed particular concern at the reservation to article 16.¹ We believe that this goes to the heart of the question of whether the USA is fully prepared to accept international human rights standards. During the hearings, the US Government conceded that certain practices (including the use of stun belts and chain gangs) did not on their face violate the US Constitution, despite being of concern to the Committee (and other human rights bodies). By entering the reservation to article 16 the US has indicated that it is willing to accept the treaty only insofar as this requires no change to existing US law, thus removing any additional protection against cruel practices that might otherwise be provided under the treaty. This severely undermines

¹ In its reservation to Article 16 the US considered itself bound "only insofar as the term 'cruel, inhuman or degrading treatment or punishment' means that cruel, unusual and inhumane treatment or punishment prohibited by the ... Constitution of the United States".

the force of the Convention in the USA and, indeed, the whole framework of international human rights protection. The Committee was also concerned that the USA has declared the treaty to be non-self-executing, thus depriving individuals of the right to take private action for violations of the treaty before the US courts.

The Committee also recommended that the USA consider declaring in favour of article 22 of the Convention, by which it would recognize the competence of the Committee to receive and consider communications from individuals who claim that their rights under the treaty have been violated. Amnesty International urges the USA to join the more than 40 other countries who have declared in favour of article 22, and allow individuals under US jurisdiction to benefit from this important protection under the treaty.

2. Use of stun belts, electro-shock equipment and restraint chairs

Amnesty International welcomes the Committee's recommendation that the USA should abolish the use of stun belts and restraint chairs against people in custody on the ground that they lead to breaches of article 16. We urge that you take immediate steps toward implementing these two recommendations. We should be grateful to be informed of any such measures taken.

Amnesty International believes that the use of remote-control electro-shock stun belts, *even when not activated*, constitutes inherently cruel, inhuman or degrading treatment. We are disturbed that, during its reply to questions put by the Committee, the US Government defended the use of stun belts and other electro-shock weapons "as an effective tool for law enforcement under limited and closely regulated conditions". Amnesty International believes that all electro-shock weapons are inherently open to abuse and we are concerned by their proliferation among law enforcement agencies in the USA and by the growing use of such weapons by custody officials in US prisons and jails. Far from being closely regulated, reports indicate that electro-shock devices are frequently abused. Recent cases cited in Amnesty International's report to Committee against Torture include allegations that prisoners have been tortured with stun guns in two supermaximum security prisons in Virginia; a report of a jail inmate in Colorado punished with a stun gun for "verbal aggression" while he was handcuffed to a wall; and prisoners in a private facility in Tennessee subjected to punitive electro-shocks while handcuffed following a prison disturbance. Amnesty International's June 1999 report *Cruelty in Control? The Stun Belt and other Electro-shock equipment in Law Enforcement* gives further examples of why we are calling for a ban on the promotion, manufacture, distribution, and use of stun belts and for the promotion, manufacture, distribution and use of all other electro-shock equipment to be suspended following a rigorous independent inquiry into their use and effects. A further copy of our report is enclosed with this letter.

Similarly, Amnesty International has called on the federal authorities to institute an urgent national inquiry into the use of restraint chairs in US detention facilities, in light of numerous reports involving the torture and ill-treatment of people placed in them. As we note in our report to the Committee against Torture, people strapped into the chair for minor acts of non-compliance in local jails have been tortured and hooded, stripped naked and left in chairs for hours in their own waste. At least 11 people have died after being placed in restraint chairs.

In its reply to a question from the Committee about whether an evaluation had been conducted into the use of restraint chairs, the US Government said that the Federal Bureau of Prisons had implemented a pilot program which determined the restraint chair to be beneficial for the "specified limited purposes of short-term transportation", and that it is not intended for routine use in the federal system. However, this ignores the far wider use of restraint chairs in jails and other detention facilities in the USA, in many of which there is inadequate regulation or monitoring. Reports we have received indicate that the chair is being used routinely in some jurisdictions to control inmates in cruel and unnecessary circumstances, often against intoxicated, disturbed or mentally ill inmates or detainees. We believe that the potential for abuse with this particular restraint device makes it highly inappropriate for use in detention facilities.

We note that the US delegation told the Committee that it would be unconstitutional to use the restraint chair for interrogation purposes. However, this is promoted as a use for the chair by one of the leading manufacturers in its literature, and we urge that the Government investigate this aspect of the chair also.

3. Supermaximum security prisons

Amnesty International urges the US Government to address the concern raised by the Committee against Torture about the “the excessively harsh regime” in US supermax prisons. Similar concerns have also been expressed by the Special Rapporteur on torture and the Human Rights Committee.

The US Government reported to the Committee that “For certain violent inmates, supermax facilities have proven to be a necessity ...”. Amnesty International does not dispute that it is sometimes necessary to segregate prisoners for safety or security reasons. However, we believe that conditions in many US supermax facilities are far more punitive than is required for legitimate security purposes and constitute cruel, inhuman or degrading treatment. Conditions frequently fall below specific minimum international standards in areas such as exercise, access to natural light and fresh air; the need for all prisoners to have access to some form of work, educational or rehabilitation programs; and provision of adequate medical or mental health care. We are concerned that the growing use of long-term isolation in the US prison system is itself a violation of standards for the humane treatment of prisoners.

In response to questions about safeguards raised during the Committee hearings, the US Government described only the procedures applying to ADX, the supermax prison within the federal system. As you know, the vast majority of prisoners subjected to supermax confinement are housed in state facilities. Although the US delegation said that many states modelled their supermax facilities on the federal system, no evidence for this was provided. According to our own investigations, and information provided by other NGOs and local monitoring groups, many states have much broader criteria than in the federal system for confining prisoners to supermax facilities and systems for assignment to, or removal from, such units are often highly inadequate. Once assigned to a supermax prison or unit, prisoners have very little effective recourse for redress or review outside the institution or prison system.

Although the Government said that the Civil Rights Division monitors conditions in state facilities, to our knowledge the Justice Department has only investigated one supermax facility and recommended changes: The Correctional Adjustment Center, Maryland, in 1996. We call on the US Government to establish a comprehensive, national review of the structure and operation of US supermax facilities. Such a review should aim to ensure that no prisoner is confined long-term or indefinitely in conditions of acute isolation; that all prisoners in segregated facilities are treated humanely and in accordance with international standards; and that strict criteria are developed for confinement to such units with adequate monitoring and review.

4. Alleged sexual assaults and other ill-treatment of women prisoners

The Committee expressed concern about allegations of sexual assault on female prisoners by corrections officers and by the fact that “female detainees and prisoners are also very often held in humiliating and degrading circumstances”.

Amnesty International is aware that measures have been taken to encourage states to improve their procedures for the investigation and prevention of sexual abuse of women prisoners. However, we remain concerned that male guards continue to have unsupervised access to female jail and prison inmates in many jurisdictions, a situation that can invite abuse particularly given that many women continue to fear reprisals for reporting misconduct. There are also practices which we consider to be inherently degrading, for example, allowing male staff to conduct pat searches of clothed women prisoners or to patrol areas where women may be viewed naked in their cells or while taking showers. We note that some jurisdictions have placed restrictions on male duties in women’s facilities, which have been upheld by the US courts. We urge the US Government to do more to encourage restricting the role of male staff in women’s facilities as well as to promote international standards which provide that female prisoners should be supervised only by female staff.

During the course of the proceedings, several committee members raised concern about the shackling of pregnant women prisoners during labour, a procedure which Amnesty International has condemned as cruel, inhuman or degrading treatment, and potentially harmful to both the mother and her baby. We were surprised by the US delegation’s response that the US Government had received from Amnesty International only “unconfirmed allegations that restraints have been used in unidentified facilities”. However, we welcome their statement that, if provided with specific, reliable information of such incidents, the government would be willing to investigate further.

Amnesty International's March 1999 report *Not Part of My Sentence: Violations of the Human Rights of Women in Custody* (a copy of which is enclosed) provides clear information that certain jurisdictions provide for the routine shackling of pregnant women during labour - which commonly takes place during transportation to, and during a woman's stay in, hospital for the birth. Far from such reports being unsubstantiated, Amnesty International obtained from the authorities copies of their policies authorizing the use of restraints in such cases as well as individual prisoner testimony. Although some policies state that restraints may be removed during the birth itself on the advice of a doctor, the report notes instances in which women have remained shackled up to the moment of birth, during several hours of labour. Jurisdictions which allow the use of mechanical restraints on pregnant women prisoners during labour, and immediately after the birth, include prisons and/or jails in Arizona, California, New York, Kentucky, Massachusetts and Ohio. While we do not have comprehensive national data, we believe that there are many jurisdictions across the USA which allow for restraints to be used in the case of pregnant women prisoners in the circumstances mentioned above.

Following Amnesty International's March 1999 report and local lobbying, the state of Illinois changed its laws to prohibit the shackling of pregnant women in prisons and county jails while being transported to hospital, during labour and after giving birth. Similar draft legislation is currently pending before the New York state legislature. We urge the federal government to institute a national inquiry into the use of restraints in the case of pregnant women prisoners and to take vigorous steps to discourage this cruel and unnecessary practice in all US jurisdictions.²

5. Police ill-treatment

The Committee expressed concern about the number of cases of police ill-treatment of civilians, and ill-treatment by prison guards, much of which, it said "seems to be based on race discrimination". We welcome the steps taken by your Administration last year to address the problem of police brutality through a national summit and certain other initiatives. However, we believe that more needs to be done to make police departments more accountable and to eradicate racial bias in police stops, searches, arrests and the use of force. We should be grateful to be informed of any policy and practice recommendations developed by the US Government regarding police use of force and racial bias, which the Attorney General announced at the June 1999 summit would be circulated to police agencies around the country.

We continue to urge your Administration to seek adequate funding and to develop procedures to allow the Justice Department to fulfill its mandate under the Crime Control Act of 1994 to compile and analyse national data on police use of excessive force, including all fatal police shootings and deaths in custody. We urge too that adequate resources be provided to enable the Justice Department to pursue more "pattern and practice" lawsuits against police departments engaging in widespread or systematic abuses.

6. The treatment of children in the justice system

During the proceedings, the Committee repeatedly raised concern about children held with adults in US prisons and jails and the Committee's chair also questioned the delegation about juvenile offenders held on death row. One of its recommendations was for the USA to "ensure that minors (juveniles) are not held in prison with the regular prison population".

This recommendation echoes the concerns of Amnesty International and many juvenile justice organizations in the USA who are disturbed by the nation's growing trend towards prosecuting and punishing children as if they were adults, an approach inconsistent with that encouraged by international standards adopted by almost every country in the world. One ramification of the USA's approach is that large numbers of

² In October 1998 Amnesty International wrote to the US Attorney General, Janet Reno, requesting an inquiry into the use of restraints on pregnant women prisoners. The letter was referred for response to the criminal section of the Civil Rights Division, which is responsible for enforcing federal criminal civil rights statutes. Our letter, however, had asked for a broader based inquiry. Following the publication of *Not Part of My Sentence*, Amnesty International has continued to lobby for such an inquiry.

under-18-year-olds are held without being segregated from adults, in violation of article 10(3) of the International Covenant on Civil and Political Rights and other international instruments.

Standards requiring the segregation of children from adults were developed in recognition of the particular vulnerability of children and the increased risk of physical and sexual abuse, as well as self-harm, by placing them in an adult prison environment. As Amnesty International pointed out in its November 1998 report, *Betraying the Young: Human Rights Violations against Children in the US Justice System* (copy enclosed), authorities in the USA have acted inconsistently in their responses to the need to protect incarcerated children from adult inmates. This inconsistency was reflected in the US delegation's response to the Committee's questions on this issue. The delegation explained that "in the federal system, juveniles are never housed with adult offenders", and that at state level, "as a condition of receiving federal grants or funding, states must hold juveniles who are being processed in the juvenile justice system separately from adults. Thus, it is the general practice in the states to separate juveniles from adults both in pre-trial facilities and in prisons." This downplayed the thousands of children, prosecuted as adults for violations of state criminal laws, who are not segregated from adult prisoners.

According to the Justice Department's own figures the number of people under 18 sent to adult state prisons each year had more than doubled between 1985 and 1997 - from 3,400 to 7,400. In 1997, 26% of the under 18-year-olds sent to adult prison were between 13 and 16 years old. We are concerned that, far from aiming to reduce this number, US authorities are moving to further remove safeguards and pass laws providing for the automatic transfer of certain children into adult courts to be tried and, if convicted, punished as adults.

Amnesty International also raised in its report to the Committee the issue of the interrogation of children and the use of incriminating statements made by them under allegedly coercive circumstances without a parent or other adult present. The US delegation responded to the Committee that "the Federal Bureau of Investigation has a policy of having parents present while its agents are interviewing juveniles", but acknowledged that "there is no specific constitutional or statutory right to have a juvenile's parent present before a statement made by a juvenile could be admitted into open court...". In the light of cases such as those raised in AI's report, the organization urges the US Government to promote across the country the practice adopted at federal level.

The disproportionate representation of racial and ethnic minority children in confinement is a matter of serious additional concern. For example, a recent study based on Justice Department statistics found that African American children are over represented "at every decision point in the process".³ Whilst they make up 15 per cent of the nation's under-18-year-olds, they account for 26 per cent of juvenile arrests, 31 per cent of referrals to juvenile court, 32 per cent of youth adjudicated delinquent, 46 per cent of youth judicially waived to criminal court, and 58 per cent of youth admitted to state adult prison. The report concludes that "the cumulative disadvantage of minority youth will continue to spiral as states continue to pass more punitive laws allowing youth to be charged as adults and, therefore, subject to adult sanctions... unless significant action is taken at the federal, state and local levels... It is time for a nationwide effort to identify the causes of this differential treatment of minority youth and a concerted campaign to provide a fair and equal justice system for our youth."

Amnesty International urges the US Government to play a leading role in such an effort. In addition the organization repeats its call for the USA to join the 191 other countries that have ratified the Convention on the Rights of the Child. Such a step would be an important indication of the USA's commitment to promote and protect the internationally agreed human rights of its children.

³ *And Justice for Some*. Eileen Poe-Yamagata and Michael A Jones, National Council on Crime and Delinquency, San Francisco. 25 April 2000.

We should be grateful for your comments on the Committee's findings and recommendations, and to learn of measures taken by the US Government in response to them. We believe that all the matters raised during the course of the hearings, and in the Committee's conclusions and recommendations merit the serious attention of the US Government in pursuing its commitment to fully observing international human rights treaties.

Yours sincerely,

Pierre Sané
Secretary General

copies to: Ambassador George Moose
 Attorney General Janet Reno
 Secretary of State Madeleine Albright
 Assistant Secretary of State Harold H. Koh

Conclusions and Recommendations of the Committee against Torture :
United States of America. 15/05/2000. CAT/C/24/6. (Concluding
Observations/Comments)

COMMITTEE AGAINST TORTURE
24th Session
1-19 May 2000
UNEDITED VERSION

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 19 OF THE CONVENTION

Conclusions and Recommendations of the Committee against Torture

United States of America

1. The Committee considered the initial report of the United States of America (CAT/C/28/Add.5) at its 424th, 427th and 431st meetings on 10, 11 and 15 May 2000 (CAT/C/SR.424, 427 and 431), and adopted the following conclusions and recommendations.

A. Introduction

2. The Committee welcomes the submission of the comprehensive initial report of the United States of America, which, although almost five years overdue, was prepared in full accordance with the guidelines of the Committee.

3. The Committee also thanks the State party for its sincere cooperation in its dialogue with the Committee and takes note of the information supplied in the extensive oral report.

B. Positive Aspects

4. The Committee particularly welcomes the following:

a. The extensive legal protection against torture and other cruel, inhuman or degrading treatment or punishment that exists in the State party and the efforts pursued by the authorities to achieve transparency of its institutions and practices;

b. The broad legal recourse to compensation for victims of torture, whether or not such torture occurred in the United States of America;

c. The introduction of executive regulations preventing refoulement of potential torture victims;

d. The State party's contributions to the United Nations Voluntary Fund for the Victims of Torture;

e. The creation by executive order of an inter-agency working group to ensure coordination of federal efforts towards compliance with the obligations of the international human rights treaties to which the United States of America is a party;

f. The assurances given by the delegation that a universal criminal jurisdiction was assumed by the State party whenever an alleged torturer is found within its territory;

g. The obviously genuine assurances of cooperation extended to the Committee by the delegation of the State party to ensure the observance of the Convention.

C. Subjects of concern

5. The Committee expresses its concern about:

a. The failure of the State party to enact a federal crime of torture in terms consistent with article 1 of the Convention;

b. The reservation lodged to article 16 in violation of the Convention, the effect of which is to limit the application of the Convention;

c. The number of cases of police ill-treatment of civilians, and ill-treatment in prisons (including instances of inter-prisoner violence). Much of this ill-treatment by police and prison guards seems to be based upon discrimination;

d. Alleged cases of sexual assault upon female detainees and prisoners by law enforcement officers and prison personnel. Female detainees and prisoners are also very often held in humiliating and degrading circumstances;

e. The use of electro-shock devices and restraint chairs as methods of constraint that may violate the provisions of article 16 of the Convention;

f. The excessively harsh regime of the "supermaximum" prisons;

g. The use of "chain gangs", particularly in public;

h. The legal action by prisoners seeking redress, which has been significantly restricted by the requirement of physical injury as a condition to bringing a successful action under the Prison Litigation Reform Act;

i. The holding of minors (juveniles) with adults in the regular prison population.

D. Recommendations

6. The Committee recommends that the State party:

a. Although it has taken many measures to ensure compliance with the provisions of the Convention, the State party should also enact a federal crime of torture in terms consistent with article 1 of the Convention and should withdraw its reservations, interpretations and understandings relating to the Convention;

b. Take such steps as are necessary to ensure that those who violate the Convention are investigated, prosecuted and punished, especially those who are motivated by discriminatory purposes or sexual gratification;

c. Abolish electro-shock stun belts and restraint chairs as methods of restraining those in custody. Their use almost invariably leads to breaches of article 16 of the Convention;

d. Consider declaring in favour of article 22 of the Convention;

e. Ensure that minors (juveniles) are not held in prison with the regular prison population.

f. Submit the second periodic report by 19 November 2001.

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