

Midwest Coalition for Human Rights

Advocating for fairness and human dignity

Prepared by the Midwest Coalition for Human Rights – June 13, 2011

Civil Society Consultation with the U.S. Government RE its Fifth Periodic Report to the UN Committee Against Torture

The Midwest Coalition for Human Rights (Midwest Coalition or Coalition) makes the following recommendations and observations with regards to the questions raised by the Committee Against Torture prior to the US submission of its fifth periodic report.

Q #1 – ENACTING A FEDERAL CRIME AGAINST TORTURE CONSISTENT WITH ARTICLE I OF THE CONVENTION AGAINST TORTURE

The Midwest Coalition for Human Rights calls for the enactment of a federal crime of torture that proscribes acts of torture that occur within U.S. territory.

The U.S. government has not made torture a distinct federal crime, except for acts committed outside U.S. territory (see 18 U.S.C. § 2340). While there are federal laws that criminalize acts of torture that occur within U.S. territory, none of the statutes brands the criminal acts of torture as torture. Moreover, 18 U.S.C. § 242, the primary federal statute used to bring criminal charges against law enforcement officers, has an unnecessarily high mental state that often serves as obstacle to obtaining convictions. It requires proof that a law enforcement agent specifically intended to violate an individual's constitutional rights, rather than merely intend to commit the act(s) which results in rights violations. Thus, the mental standard is contravention of the definition of torture included in Article 1 of the Convention Against Torture. Furthermore, the short statutes of limitations for criminal prosecutions for acts amounting to torture under federal law effectively prohibit bringing perpetrators of torture in the United States to justice, as was the case with Jon Burge and the detectives under in the Chicago Police torture cases (see Question #25).

To comply with the Convention Against Torture, the administration should support and take active efforts to pass the "Law Enforcement Torture Prevention Act" (H.R. 5688) introduced in 2010. This legislation utilizes the Convention Against Torture's definition of torture and provides that such a crime have no statute of limitations.

Q #25 – INVESTIGATIONS AND PROSECUTIONS RELATING TO THE ALLEGATIONS OF TORTURE PERPETRATED IN AREAS 2 AND 3 OF THE CHICAGO POLICE DEPARTMENT

The Midwest Coalition for Human Rights calls for the U.S. Government to criminally prosecute all perpetrators who engaged in acts of torture in Chicago Police torture cases.

From 1972 to 1991, former Chicago Police Commander Jon Burge and white detectives under his command tortured over 110 African American men and women at Area 2 and 3 Police Headquarters. In June 2010, the U.S. Attorney's Office in the Northern District of Illinois, in conjunction with the U.S. Department of Justice's Civil Rights Division, successfully prosecuted Burge for two counts of obstruction of justice and one count of perjury. Burge was ultimately convicted for the lies he told under oath when denying he and others committed acts of torture. However, he was not prosecuted for his actual acts of torture because the statute of limitations had expired for these crimes.

Burge did not act alone and there is more than ample evidence that demonstrates he worked with several detectives when engaging in this pattern and practice of torture. At least five other detectives who worked alongside Burge at Area 2 and 3 Police Headquarters have testified and denied under oath that they or any other detectives engaged in acts of torture. These denials have all occurred within this last five years. Therefore, these alleged crimes are not barred by the relevant statute and limitations and these detectives can and should be criminally investigated and prosecuted by the U.S. Government in order to heed the Committee Against Torture's 2006 recommendation to bring the perpetrators to justice.

Q #32 – SEXUAL VIOLENCE IN DETENTION CENTERS

The Midwest Coalition for Human Rights calls for application of the protections of the Prison Rape Elimination Act to all detention facilities, including immigration detention facilities.

Advocates frequently receive horrific complaints from detained individuals regarding mistreatment, assault, and rape in immigration detention. The Department of Justice's exclusion of immigration detention from the standards threatens the safety of the hundreds of thousands of men, women, and unaccompanied children in the custody of Immigration and Customs Enforcement (ICE), Border

Patrol, and the Office of Refugee Resettlement.

Q #35 – SENTENCING OF JUVENILES TO LIFE INPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE

The Midwest Coalition calls for the end to extreme sentencing of youth, in particular imposition of the sentence of life without the possibility of parole for youth.

The United States continues to be the only country in the world that sentences youth who commit offenses while under the age of 18 to life in prison without the possibility of parole. More than 2500 individuals are currently serving the sentence.

The United States Supreme Court in *Roper v. Simmons* has explicitly stated that children under the age of 18 are “categorically less culpable” than adults and should therefore not be subject to the death penalty. Most recently, in *Graham v. Florida*, the Court held that JLWOP constituted cruel and unusual punishment for youth who do not commit homicide offenses, requiring a “meaningful opportunity” for release. The Court reiterated the notion that youth are different than adults and have great capacity to change. It likened JLWOP to the death penalty and cautioned against making irrevocable judgments about children based on their conduct as teenagers.

Notwithstanding *Graham* and *Roper*, children continue to be sentenced to JLWOP in cases involving homicide, even where their role in the offense is relatively minor, and continue to be sentenced to terms of incarceration that are the equivalent of a life sentence—often times (because of the mandatory nature of the sentence) with little or no consideration of their personal background, lack of family or community support, lack of educational opportunities and/or history of trauma and abuse.

In Illinois JLWOP inmates can and do serve time in supermax facilities. Given the extreme conditions of such facilities—including complete isolation—they are theoretically reserved for only the “worst” offenders. In light of juveniles’ lessened culpability, the incarceration of JLWOP inmates in such facilities is arguably a violation of the Eighth Amendment.

Racial disparities abound in the imposition of JLWOP. In Illinois, over 80% of youth who receive the sentence are youth of color.

Q #36 – USE AND REGULATION OF ELECTROSHOCK DEVICES

The Midwest Coalition calls for regulation of the use of electroshock devices by federal, state and local officials.

While the federal government has commissioned some studies on the use of electroshock devices, particularly regarding use by federal officials, it has failed to conduct studies on the use of electroshock devices by state and local law enforcement or advocate for state-based reviews of local law enforcement electroshock device use—the divisions most often associated with misuse of these devices.

The Coalition commends the United States for taking a position against law enforcement’s use of electroshock devices against already restrained prisoners, but to comply with its obligations under the Convention the United States must take steps to ensure that federal, state, and local law enforcement refrain from using electroshock devices as pain compliance tools or instruments of torture and cruelty against already restrained individuals.

Congress or the Department of Justice should take the lead by regulating federal officials’ use of electroshock devices and encourage states to adopt similar regulations. In particular, the Coalition recommends that state and local law enforcement (1) be required to seek the approval of public officials in an open and transparent process for policies, training materials, and protocols regarding electroshock devices, rather than adopt the manufacturer’s materials with no public input and (2) mandate officer training about the dangers of electroshock devices and limitations on their use.

Q #37 – SUPER-MAXIMUM SECURITY PRISONS AND THE PRACTICE OF PROLONGED ISOLATION

The Midwest Coalition for Human Rights calls on the U.S. to adopt policies and practices for the use of solitary confinement that acknowledge the widespread harm from this practice. In particular, the U.S. must confront the problem of housing seriously mentally ill prisoners in supermax/solitary confinement conditions and seek to remedy the problem.

For decades nearly all United States prison systems, both state and federal, have housed some housed prisoners in long-term isolation, often in free-standing units known as super-maximum security prisons or supermaxes. Conditions at these prisons involve extreme social isolation, restricted environmental stimulation, severely restricted movement, and harsh punishment for problematic behavior sometimes caused by mental illnesses. Often prisoners are sent to supermaxes without knowing why they are transferred or how they can earn their way out. They may remain in these conditions of extreme isolation for long periods of time, sometimes for decades. The harm caused by long-term isolation of prisoners has been documented extensively by mental health professionals and criminal justice experts.

Housing mentally ill prisoners under conditions of solitary confinement is particularly disturbing. Yet, such prisoners are disproportionately represented in supermax confinement situations.

The U.S. should commit to gathering data on the use of solitary confinement in all our prisons, and it should gather the data from federal prisons for its Third Periodic Report.

U.S. prisons have increasingly relied on solitary confinement as a prison management tool; but the policies and practices have been veiled in secrecy. As an essential first step, the U.S. should commit to gathering data on solitary confinement. Sorely needed transparency can assist in addressing the problems created by this confinement, which have long been questioned by the CAT. Recently, the American Civil Liberties Union has called on the U.S. administration to commit the Federal Bureau of Prisons to gather such data for the government's upcoming Third Periodic Report to the CAT. The government should also commit to having the Bureau of Justice Statistics of the U.S. Department of Justice gather similar data from all U.S. states.

Q # 39 – INCONSISTENT AND INADEQUATE MEDICAL CARE FOR IMMIGRANT WOMEN HELD BY ICE AND HIV-POSITIVE IMMIGRANT DETAINEES

The Midwest Coalition calls for the release of individuals from immigration detention who suffer from significant medical or mental health issues. If individuals must be detained, provide effective, timely, medical assistance to immigrants from qualified personnel.

Because ICE detention standards governing the treatment of detained immigrants are not codified into law, they are not legally enforceable and are frequently violated. The medical care system in U.S. immigration detention is dangerously inadequate. Since 2003, 121 people have died in immigration detention. Ill-equipped facilities, lack of well-trained staff, and the remote location of immigration detention facilities, have unique consequences for women seeking medical attention. Routine violations are reported in relation to grossly inadequate gynecological care, mammography and breast health, pregnancy, pre and postnatal care, and mental health services for survivors of sexual and gender-based violence.

DHS currently has no policy in place to identify survivors of torture when they enter immigration detention. Conditions of confinement have consistently proven to re-traumatize individuals. DHS has not developed or implemented any programs to comprehensively address short and long term consequences of violence, and the cultivation of partnerships with community service providers, while women remain in immigration detention.

In 2011 alone, Heartland Alliance's National Immigrant Justice Center (NIJC) received numerous complaints about grave neglect and abuse of HIV-positive immigrants in detention. One NIJC client recently reported how he was transported to a doctor's appointment for an HIV check-up while his feet, waist, and hands were shackled. A doctor and nurse repeatedly asked for the shackles to be removed so that they could withdraw blood, but the officer refused. Medical staff were forced to withdraw blood from the back of the detainee's hand (as these were the only veins accessible while he remained shackled) despite the detainee protesting that it caused excruciating pain.

Q #42 – BRUTALITY AND USE OF EXCESSIVE FORCE BY LAW ENFORCEMENT OFFICIALS AND ILL-TREATMENT OF VULNERABLE GROUPS

The Midwest Coalition calls for an end of the use of solitary confinement for vulnerable populations in detention.

Jails and prisons that DHS contracts with to detain immigrants routinely hold sexual minorities and individuals suffering from mental health disabilities in solitary confinement. The cells used are often the same cells used to punish individuals held pursuant to "disciplinary segregation." Therefore, vulnerable populations are often placed in solitary confinement for indefinite and prolonged periods of time, isolated from the general population, denied privileges, and more susceptible to abuse by guards without proper safeguards.

The Midwest Coalition calls for an end to the government's unfair and unjust immigration enforcement program, "Secure Communities."

Although DHS has not fully rolled out the Secure Communities program, it has already led to surging detention and deportation numbers. The program is breaking down trust between immigrant communities and the police, as some police officers target immigrants for minor offenses, such as driving without a tail-light or a license. The agency has defended the program on the basis that it targets "serious criminal aliens;" however, almost 60% of immigrants arrested under the program have either no criminal history or have only been charged with minor offenses.

The Midwest Coalition calls on the U.S. Government to institute a database that tracks all complaints, investigations, criminal prosecutions and convictions of law enforcement officers nationwide who engage in acts of torture or other cruel, inhuman, and degrading treatment or punishment (CID). This data should include the race, gender, sexual orientation, gender identity, nationality, and religious affiliation with respect to the victims and law enforcement officers.

Throughout the United States, people who belong to marginalized or vulnerable populations continue to suffer a disproportionate amount of torture and CID at the hands of law enforcement officials as documented in regional studies conducted by the U.S.

Department of Justice's civil rights division and non-governmental organizations. For example, the U.S. Department of Justice's civil rights division found that African Americans were disproportionately subjected to an alarming rate of force by New Orleans Police Officers and that African Americans along with members of the lesbian, gay, bisexual and transgender community were subjected to racial and gender profiling for a range of crimes by New Orleans Police Officers, including sex-related offenses. And, the National Coalition of Anti-Violence Programs found that law enforcement officers are the third largest perpetrator of hate violence against LGBT people across the United States. The full extent to which this abuse and profiling continues to be perpetrated, however, is unknown because the U.S. Government fails to track such incidents and measure taken to deter such violence.

The Midwest Coalition for Human Rights is a network of 56 organizations collaborating to promote and protect human rights in our Midwest region, in the U.S., and internationally. Working together we provide broader visibility for urgent human rights issues in the Heartland and project a strong Midwest advocacy voice in the national and international human rights debate. For more information go to www.MidwestHumanRights.org or contact Claire Leslie at cleslie@MidwestHumanRights.org