

# **USA**

## **A SUBMISSION TO THE UN COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION**

**FOR THE 85<sup>TH</sup> SESSION OF THE COMMITTEE  
(11 TO 29 AUGUST 2014)**

**AMNESTY  
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## INTRODUCTION

Amnesty International submits this briefing with regard to consideration by the United Nations (UN) Committee on the Elimination of Racial Discrimination of the United States of America's (USA) combined seventh, eighth and ninth periodic reports under the International Convention on the Elimination of All Forms of Racial Discrimination (CERD). The USA's report was submitted in June 2013 and is due to be considered at the 85th session of CERD in August 2014. It is six years since the Committee issued its concluding observations on the USA's combined fourth, fifth and sixth periodic reports, in May 2008.

This briefing does not seek to address the range of areas in the USA in which enjoyment of rights under the Convention continue to be affected by race, colour, ethnicity or nationality, many of which are addressed by other organizations. Amnesty International has taken note of the July 2014 list of themes sent by the Country Rapporteur to the USA "with a view to guiding the dialogue" between the US delegation and the Committee during the session in Geneva in August. In this briefing the organization outlines its concerns regarding aspects of a number of these themes, including racial disparities in the criminal justice system (list of themes, 2a), with particular emphasis on juvenile life without parole (JLWOP), the death penalty, and remedy for abuses in the criminal justice system; access to healthcare in the context of maternal health issues (list of themes, 2b); the prevalence of gun violence (issue 2b); racial profiling, including in immigration enforcement (list of themes, 2d); the government's failure to protect indigenous women from sexual violence (list of themes, 3d); and access to justice for foreign nationals held at the US naval base at Guantánamo Bay in Cuba (list of themes, 5c).

The USA's report to the Committee recognizes that "the path toward racial equality has been uneven, racial and ethnic discrimination still persists, and much work remains to meet our goal of ensuring equality for all."<sup>1</sup> At the same time, as previously, the USA emphasizes how the US Constitution, federal and state laws, the judiciary and federal agencies provide protection against discrimination on the basis of race, colour, ethnicity or national origin.<sup>2</sup> Here it could be accused of accentuating the positive, as these protections are not always effective – much more can and must be done in order to make them a reality. For example, the burden on individual litigants to show proof of intent to discriminate, even where there may be compelling statistical evidence of a discriminatory effect, can make it extremely hard for such cases to prevail. Successfully challenging a death sentence on the grounds of racial discrimination, for instance, has been rendered all but impossible since 1987 due to the US Supreme Court *McCleskey v. Kemp*<sup>3</sup> ruling in that year and legislative inaction since. Laws or policies targeting immigrants for enforcement of immigration laws have resulted in discriminatory treatment of communities of colour along the US-Mexico border. Factors such as poverty and race can affect the right to equality before the law, with indigent defendants, for example, being reliant on often under-resourced legal aid systems.

### THEME – CRIMINAL JUSTICE

**List of themes, 2(a): "Racial disparities at different stages of the criminal justice system, including overrepresentation of individuals belonging to racial and ethnic minorities, in particular African Americans, among persons who are arrested, charged, convicted, incarcerated and sentenced to death".**

President Barack Obama has acknowledged the "history of racial disparities in the application of our criminal laws", including on the death penalty,<sup>4</sup> and US Attorney General

Eric Holder has pointed to the need to “confront the reality” that “people of colour often face harsher punishments than their peers.”<sup>5</sup>

The pervasive discrimination faced by members of racial or ethnic minorities in the USA at the hands of law enforcement officials has been extensively documented by many organizations, including Amnesty International.<sup>6</sup> Across the USA, racial minorities have been found to be disproportionately the victims of police ill-treatment, unjustified stops and searches, physical abuse and unjustified shootings.<sup>7</sup> Systematic abuses have been identified in some of the country’s largest police departments, often involving units operating in inner-city areas largely populated by racial or ethnic minorities.<sup>8</sup> While a number of police departments have improved their policies in recent years – some forced to take action following Justice Department “pattern and practice” investigations<sup>9</sup> – others still do not have adequate systems for monitoring police abuses, such as checking for patterns of racism or tracking officers involved in repeated complaints.

The US prison population has grown by 500 per cent over a 30-year period.<sup>10</sup> More than 2.2 million people are incarcerated in the USA today,<sup>11</sup> the highest total prison population and incarceration rate in the world.<sup>12</sup> Using Illinois as an example, the prison population in that state has nearly quadrupled over a 30-year period since 1981, when 12,996 prisoners were under jurisdiction of state or federal correctional facilities.<sup>13</sup> Currently, the Illinois prison population stands at 48,427 prisoners under the jurisdiction of state or federal correctional facilities.<sup>14</sup> The majority of those held in Illinois’s correctional facilities are people of colour. According to the Illinois Department of Corrections, 60 per cent of the prison population within the state was African American or Hispanic during the 2012 Fiscal Year.<sup>15</sup> These numbers are an inverse of the racial demographics of the state’s total population, which is 63 per cent white.<sup>16</sup>

At the federal level, Attorney General Holder announced an initiative in 2013 to reform the federal criminal justice system, calling for changes to drug-related, mandatory minimum sentencing guidelines and diverting people convicted of low-level offences to drug treatment and community service programs, while expanding a program to allow for the release of some elderly, non-violent offenders and certain inmates who are the only possible caregiver for their dependents.<sup>17</sup>

In 2011, then Senator Jim Webb introduced the National Criminal Justice Commission Act,<sup>18</sup> which if passed, would create a commission to undertake a review of all areas of the criminal justice system, including state, local and tribal criminal justice practices and policies. Substantial and comprehensive reforms are needed to address mass incarceration; prison conditions; harsh mandatory minimum sentences; discriminatory profiling by law enforcement; excessive use of force by law enforcement, as well as racial and economic disparities that exist at every stage of the criminal justice system in the USA.<sup>19</sup>

### **Recommendation**

- The US Congress should pass, and the President should sign the National Criminal Justice Commission Act, which would require the undertaking of a comprehensive review of the US criminal justice system and the implementation of reforms that would address the problems of mass incarceration, prison conditions, capital punishment, harsh mandatory minimum sentences, discriminatory profiling by law enforcement, excessive use of force by law enforcement, as well as racial and economic disparities that exist at every stage of the criminal justice system.

### **JUVENILE LIFE WITHOUT PAROLE (JLWOP)**

In its 2008 concluding observations on the USA, the Committee on the Elimination of Racial Discrimination expressed concern regarding the disproportionate imposition of life

imprisonment without the possibility of parole on young offenders, including children, belonging to racial and ethnic minorities. It held that “the persistence of such sentencing is incompatible with article 5(a) of the Convention (the right to equal treatment before the tribunals and all other organs administering justice).<sup>20</sup> The Committee called on the USA to discontinue the use of LWOP against those who were under 18 at the time of the crime.<sup>21</sup> In so doing, the Committee recalled the concern on this issue that had already been expressed by the UN Human Rights Committee and the Committee against Torture.<sup>22</sup> Amnesty International welcomes the fact that in its April 2014 concluding observations on the USA’s compliance with the International Covenant on Civil and Political Rights, the Human Rights Committee called on the USA to “prohibit and abolish” life imprisonment without parole for those under 18 at the time of the crime, “irrespective of the crime committed”.<sup>23</sup>

In its report to the Committee on the Elimination of Racial Discrimination the USA has not expressly said whether or not it will end its use of JLWOP, simply reporting recent judicial rulings which have “limited applicability of juvenile sentences without the possibility of parole (JLWOP)”<sup>24</sup> (see below). In 2011, it had responded in the Universal Periodic Review process to recommendations to abolish JLWOP that such recommendations did not enjoy US support.<sup>25</sup>

The sort of racial disparities in the use of JLWOP reported by Amnesty International and Human Rights Watch in their joint study published in 2005, persist.<sup>26</sup> For example, the Sentencing Project states that currently:

“Racial disparities plague the imposition of JLWOP sentences. While 23.2% of juvenile arrests for murder involve an African-American suspected of killing a white person, 42.4% of JLWOP sentences are for an African-American convicted of this crime. White juvenile offenders with African-American victims are only about half as likely (3.6%) to receive a JLWOP sentence as their proportion of arrests for killing an African-American (6.4%).”<sup>27</sup>

Since the Committee last reviewed the USA’s record under CERD, and as the USA has reported to the Committee, the US Supreme Court has handed down two major decisions on this issue.

In 2010, the Court prohibited the imposition of sentences of life without parole for defendants convicted of non-homicide crimes committed when they were under 18 years old.<sup>28</sup> And, in 2012, in *Miller v Alabama*, it outlawed mandatory life imprisonment without parole for such offenders. The Court ruled that mandatory sentencing prevents the sentencing authority from taking into account the characteristics associated with childhood, including the individual’s “lack of maturity and an underdeveloped sense of responsibility, leading to recklessness, impulsivity, and heedless risk-taking,”<sup>29</sup> their vulnerability to negative influences and pressures, and their particular capacity for change and development.<sup>30</sup>

According to the Court at the time of the *Miller* ruling, 28 states and the federal government made life without parole sentences mandatory for some children convicted of murder in adult court with more than 2,000 inmates sentenced under mandatory sentencing schemes.<sup>31</sup> A number of states have revised their mandatory JLWOP laws in the wake of the ruling, including a small number which have entirely eliminated juvenile life without parole.<sup>32</sup> A number have yet to act upon the *Miller* ruling.<sup>33</sup> In Illinois, for instance, while legislation to this end was introduced in 2013, it did not pass before the end of the legislative session in 2014.<sup>34</sup>

The USA report to the Committee provides the example of Iowa, where the state governor responded to the *Miller* ruling by commuting the JLWOP sentences of 38 individuals. What the federal government did not report to the Committee was that he commuted them to 60

years without the possibility of parole. Amnesty International responded at the time of this development that his move flouted the spirit if not the letter of the *Miller* ruling.<sup>35</sup> The organization welcomes the Iowa Supreme Court's subsequent judgment in which it held that "the rationale of *Miller*, as well as *Graham*, reveals that the unconstitutional imposition of a mandatory life-without-parole sentence is not fixed by substituting it with a sentence with parole that is the practical equivalent of a life sentence without parole. Oftentimes, it is important that the spirit of the law not be lost in the application of the law. This is one such time."<sup>36</sup> The Iowa Court held that the *Miller* ruling was fully retroactive.

Many states are also in the process of determining whether the *Miller* ruling applies retroactively to those who already received a sentence of mandatory JLWOP. The US Supreme Court was silent on this issue. However the US Department of Justice has taken the position that the ban applies to those previously sentenced, meaning that more than 2,000 individuals would be eligible for a new sentencing hearing. However, whether individuals actually receive a new hearing depends on where they live. Courts in Iowa, Mississippi, Michigan and Massachusetts have ruled that the ban is retroactive;<sup>37</sup> the Minnesota Supreme Court has ruled that it is not.<sup>38</sup> In March 2014, the Illinois Supreme Court issued an opinion that the ban applies retroactively and ordered the state to provide hearings to those who were sentenced to mandatory JLWOP to review their sentences in consideration of the characteristics set forth in the *Miller* case, including the youth of the offender.<sup>39</sup>

For Amnesty International, the bottom line is that the imposition of a sentence of life without the possibility of parole against an individual for a crime committed when under the age of 18 – regardless of the nature of that crime or its consequences – is an unequivocal violation of international law, i.e. the right not to be subject to cruel, inhuman and degrading treatment and/or punishment. This practice should be abolished and all those currently serving such sentences should have then commuted or reduced and rendered fully consistent with international law and standards.

### Recommendations

- The US Congress should pass legislation which bans the sentencing of defendants to life imprisonment without parole for crimes committed when they were under 18 years old, regardless of the nature or circumstances of the crime.
- The legislatures of all states not in compliance with *Miller v. Alabama*, should pass legislation that prohibit life without parole sentences for those who were under 18 years old at the time of the crime.
- All states that have individuals serving sentences of life without parole for crimes committed when they were under 18 years old, should commute their sentences in a manner fully consistent with international law and standards.

### DEATH PENALTY

Since the USA last appeared before the Committee, another seven countries have abolished the death penalty for all crimes.<sup>40</sup> Today 140 countries are abolitionist in law or practice. While Amnesty International notes that some progress against the death penalty has been made in recent years in the USA – with death sentencing and execution rates generally down and a number of states abolishing the death penalty – the organization remains concerned at the slow pace of change, the entrenched nature of the death penalty in some mainly southern states (such as Texas, Oklahoma and Florida), and the widespread absence of principled human rights leadership on this fundamental human rights issue. With some notable exceptions, politicians are generally failing to seize the opportunity presented by increased public concern about, and softening in support for, the death penalty.



In its 2008 concluding observations, the Committee expressed its continuing concern about the “persistent and significant racial disparities with regard to the imposition of the death penalty, particularly those associated with the race of the victim”.<sup>41</sup> It reiterated its 2001 recommendation that the USA “adopt all necessary measures, including a moratorium, to ensure that the death penalty is not imposed as a result of racial bias on the part of prosecutors, judges, juries and lawyers”.<sup>42</sup> In its report to the Committee, similar to what it has said to the Human Rights Committee, the Committee against Torture, and in the context of the Universal Periodic Review, the USA has responded that “the use of the death penalty is a decision left to democratically elected governments at the federal and state levels... Any further decisions concerning a moratorium would have to be made separately at the federal level and by each of the 32 states that retain the death penalty”.<sup>43</sup>

Blacks and whites are the victims of murder in the USA in almost equal numbers, yet 78 per cent of the nearly 1,400 people executed since judicial killing resumed in 1977 under revised capital statutes were convicted of crimes involving white victims, compared to 15 per cent of case involving black victims.<sup>44</sup> Most murders in the USA are intra-racial, that is, the alleged perpetrator and the victim were of the same race.<sup>45</sup> Of the prisoners executed in the USA since 1977, 52 per cent were whites convicted of killing whites, and 12 per cent were blacks convicted of killing blacks.<sup>46</sup> One in five of all executions since 1977 has been of a black person sentenced to death for the murder of a white victim.<sup>47</sup> The figure for white on black cases is two per cent.<sup>48</sup> While these bare statistics do not necessarily show direct discrimination, study after study has shown that race, particularly race of the murder victim, continues to be a factor in the death penalty in the USA.

The racial component of the US death penalty has long been known. It is now more than two decades since the US General Accounting Office reported to the Senate and House Committees on the Judiciary in US Congress that research showed “a pattern of evidence indicating racial disparities in the charging, sentencing, and imposition of the death penalty” under capital statutes passed after 1972.<sup>49</sup> In 82 per cent of the 28 studies it reviewed, “race of victim was found to influence the likelihood of being charged with capital murder or receiving the death penalty, i.e., those who murdered whites were found to be more likely to be sentenced to death than those who murdered blacks.”<sup>50</sup> This finding is remarkably consistent across data sets, states, data collection methods, and analytic techniques”.<sup>51</sup> Since then, studies have continued to show that race, particularly race of victim, plays a role in who is sentenced to death in the USA, and the disparities remain marked.

As across the death penalty nationally, federal death row continues to display disparities by race of murder victim and race of defendant. Of the 57 people on federal death row in May 2014, 37 or 65 per cent were non-white and 33 or 58 per cent of those on federal death row were convicted of killing whites.<sup>52</sup> In part, the Obama administration, as previous administrations have done, has relied upon a notorious US Supreme Court ruling from a quarter of a century ago, *McCleskey v. Kemp*.<sup>53</sup> In that case, the Court had been presented with compelling statistical evidence of systemic racial discrimination in capital cases in Georgia. A majority of the Justices, however, held that for a defendant to be successful in an appeal, he or she would have to provide “exceptionally clear proof” that the decision-makers in his or her particular case had acted with discriminatory intent.<sup>54</sup> Absent such evidence of intentional discrimination, statistical evidence of racial disparities in death penalty cases could not be used to prove a violation of the constitution, the Court said.<sup>55</sup> It said that the kind of evidence put forward in the *McCleskey* case was “best presented to the legislative bodies”.<sup>56</sup> The North Carolina legislature passed a Racial Justice Act (RJA) in 2009, allowing prisoners to challenge their death sentences on the basis of statistical evidence of racial discrimination.<sup>57</sup> Except for Kentucky which had enacted an RJA in 1998, limited to pre-trial challenges, there have been no other such laws passed in the USA in the 25 years since

*McCleskey*. Moreover, in North Carolina, after a judge had found racism in a number of cases under that state's RJA,<sup>58</sup> the legislature repealed the Act and the governor signed the repeal in June 2013.<sup>59</sup>

A proposed Racial Justice Act for inclusion in the Violent Crime Control and Law Enforcement Act of 1994, of which the FDPA was a part, was dropped by Congress. And in 1996 (*US v. Armstrong*)<sup>60</sup>, the Clinton administration and then in 2002 the Bush administration (*US v. Bass*)<sup>61</sup> successfully litigated to compound the *McCleskey* ruling in relation to the federal death penalty:

“after *McCleskey*, in *United States v. Armstrong*, the United States Supreme Court effectively shut down litigation on race claims by holding that federal prosecutors had broad discretion to act, and that without specific proof of race discrimination..., the defendant was not entitled to discovery. To justify an order for discovery, the Court held in *United States v. Bass* that statistical evidence of racial disparities is not enough, and that a defendant needed to show both discriminatory effect, as well as specific evidence of discriminatory intent”.<sup>62</sup>

In 2011, a federal judge wrote in a case in which the Obama administration was then seeking the death penalty:

“The statistical evidence presented... suggests that it is black defendants, defendants suspected of killing white females, and defendants from southern states who are disproportionately likely to receive death sentences... As troubling as the statistical evidence...may be, the Supreme Court's decision in *McCleskey* precludes [the defendant] from prevailing...”<sup>63</sup>

In its brief in the case of *USA v. Jacques* to the court in 2010, the Obama administration had, among other things, quoted a line from the *McCleskey* ruling: “Apparent disparities in sentencing are an inevitable part of our criminal justice system”.<sup>64</sup> Again, in the capital prosecution of the three Somali defendants in 2012, the administration reminded the judge of this same line from *McCleskey*.<sup>65</sup> In November 2012, the federal judge in that case denied the motion to dismiss the federal prosecution's pursuit of the death penalty, again repeating the *McCleskey* line that “Apparent disparities... are an inevitable part of our criminal justice system”.<sup>66</sup>

In 1998, this very same line had been quoted, but out of concern about the USA's human rights compliance, in a report of the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, following his mission to the USA.<sup>67</sup> He concluded that the *McCleskey* opinion was likely incompatible with the USA's obligations under the International Convention on the Elimination of All Forms of Racial Discrimination, “which requires States parties to take appropriate steps to eliminate both direct and indirect discrimination”.<sup>68</sup>

Justice Powell, who authored the 5-4 *McCleskey* ruling, said after he retired from the Court that he wished he had voted differently in the 1987 decision, and that he had come to think that the death penalty should be abolished.<sup>69</sup> It is regrettable that a federal government that promotes itself as committed to human rights, including ending discrimination, continues to rely upon the notorious *McCleskey* ruling in defending its pursuit of death sentences rather than working for abolition.

A recent study of the federal death penalty finds a possible link between the racial disparities on federal death row and the geography of the federal death penalty:

“While the decision to prosecute federally rather than in state court has little or no difference on the jury demographics in many jurisdictions, it is highly significant in the federal judicial districts responsible for most of the black defendants on death

row. In each of these districts, the county where the offense occurs has a high minority group population, but the overall composition of the federal district is heavily white. Thus, the shift to federal court results in a far whiter jury pool.”<sup>70</sup>

A new study across six leading death penalty states of 445 US citizens who would qualify to sit on a capital jury has found that such individuals harbour “implicit racial stereotypes about Blacks and Whites generally, as well as implicit associations between race and the value of life” (specifically that whites are “more valuable” than blacks). Moreover, it has found that the “death qualified” jurors harbour “stronger racial biases” than jurors excluded from serving on capital juries because of their opposition to the death penalty.<sup>71</sup> It is nearly 30 years since the US Supreme Court wrote:

“Because of the range of discretion entrusted to a jury in a capital sentencing hearing, there is a unique opportunity for racial prejudice to operate but remain undetected...The risk of racial prejudice infecting a capital sentencing proceeding is especially serious in light of the complete finality of the death sentence.”<sup>72</sup>

Dozens of black defendants who have been executed were tried in front of all-white juries. Yet more were tried in front of jurors with only one black juror on it. Many of these defendants were being tried for murders involving white victims.<sup>73</sup>

On 26 June 2013, Kimberly McCarthy became the 500<sup>th</sup> person to be put to death in Texas since judicial killing resumed there in 1982. Kimberly McCarthy was black. The murder victim, Dorothy Booth, was white. At the 2002 trial, the jury consisted of 11 white people and one black person. As the execution approached, Kimberly McCarthy’s lawyer sought a stay of execution in order that she could present evidence of racial discrimination by the prosecution during jury selection, and to challenge the failure of Kimberly McCarthy’s previous lawyers to raise this claim at trial or on appeal. The Court denied the appeals and McCarthy was executed on June 26, 2013.<sup>74</sup>

The population of Dallas County, where Kimberly McCarthy was tried, is about 23 per cent black and 69 per cent white.<sup>75</sup> At Kimberly McCarthy’s 2002 trial there were 64 prospective jurors in the pool for individual questioning, of whom only four (six per cent) were black. Three of them were dismissed by the prosecution.<sup>76</sup> Under the 1986 US Supreme Court decision *Batson v Kentucky*, prospective jurors can only be removed for “race neutral” reasons.<sup>77</sup> If the defence makes a *prima facie* case of discrimination by the prosecution, the burden shifts to the state to provide race neutral explanations. Kimberly McCarthy’s trial lawyer did not object to the prosecutor’s dismissals and did not request a *Batson* hearing.

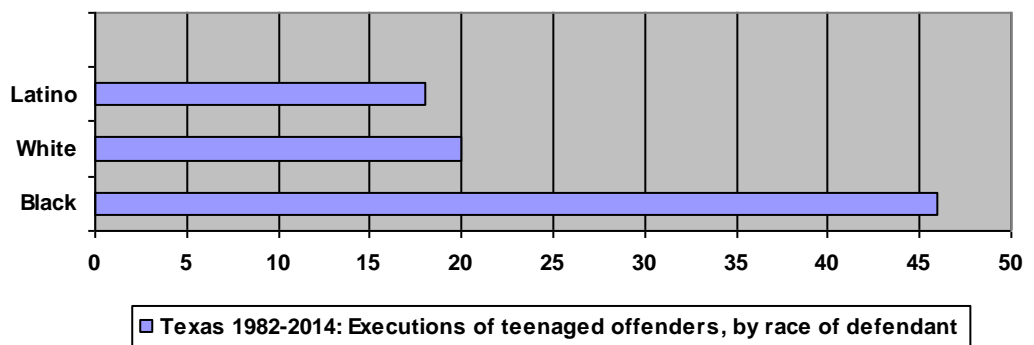
Kimberly McCarthy’s *appeal* lawyer pointed out that the “inexplicable” failure of the original defence counsel to object to the state’s dismissals meant that the record was devoid of a *Batson* hearing, including any race neutral reasons asserted by the prosecution or evidence from the defence that such reasons were the pretext for racism.<sup>78</sup> However she argued that there was nevertheless evidence of race-based intent – firstly, the history of racist jury selection tactics by prosecutors in Dallas County, as the US Supreme Court found in 2005 (*Miller-El v. Dretke*);<sup>79</sup> secondly, the bare statistic that the prosecutors dismissed 75 per cent of the blacks in the jury pool; and thirdly, evidence that they had asked different questions of white and non-white prospective jurors, also found to be an issue in the *Miller-El* case. Not only had the trial lawyer not objected, but neither had the state-appointed appeal lawyer (who reportedly visited his client only once on death row in the 10 years he represented her) raised the failure on appeal, causing it to be procedurally lost to judicial review.<sup>80</sup>

In the space of a matter of weeks in 2014, Texas executed two individuals who were 18 at the time of the crime and a third came within hours of being put to death.<sup>81</sup> All three were

African American. One of them, Robert Campbell, who received a last-minute stay, was tried in front of an all-white jury.<sup>82</sup>

Of the 13 prisoners executed in Texas for crimes committed when they were 17 years old (before the US Supreme Court raised the minimum age to 18 in 2005), eight were African American, six of whom were executed for killing whites. Of the 71 individuals who have been put to death in Texas since 1985 for crimes committed when they were 18 or 19 years old, 46 were African Americans, 33 of whom were executed for crimes involving white victims.<sup>83</sup>

In other words, some 16 per cent of the 515 prisoners put to death in Texas between 1982 and July 2014 were teenagers (17, 18 or 19 years old) at the time of the crimes for which they were sentenced to death. Of these individuals, 54 were African American (64 per cent). And of these 54 African American teenage offenders, 39 (72 per cent) were executed for crimes involving white victims. There are at least 36 prisoners on death row in Texas for crimes committed when they were 18 or 19 years old. Nineteen of these 36 prisoners (53 per cent) are black.<sup>84</sup>



- Charts are from Amnesty International report, USA: He Could Have Been a Good Kid: Texas Set to Execute Third Young Offender in Two Months, 1 May 2014, AMR 51/027/2014, page 12.

A study published in 2008 concluded that race of defendant and race of victims were both “pivotal” in capital justice in Harris County, the Texas jurisdiction that is the main supplier for the state’s death row. According to this study, “death is more likely to be imposed against black defendants than white defendants, and death is more likely to be imposed on behalf of white victims than black victims”.<sup>85</sup>

Nearly a quarter of the 84 prisoners executed in Texas since 1985 for crimes committed when they were 17, 18 or 19 years old were sentenced to death in Harris County. Fourteen of these 20 condemned prisoners were black, four were Hispanic and two were white.

Sixteen of the 36 prisoners currently on death row in Texas for crimes committed when they were 18 or 19 years old were prosecuted in Harris County. Ten of the 16 are black, two are foreign nationals (Mexican and Cambodian), three are Hispanic, and one is white.

Discrimination is not only unacceptable in itself (as well as unlawful), the racial disparities that are evident in the death penalty system, whether as a result of direct discrimination or not mean that the impact of this cruel punishment, and all of its flaws, are experienced disproportionately by minority individuals, their families and communities.

Following a widely publicized “botched” execution in Oklahoma on 29 April 2014, of an African American man convicted of the murder of a white woman, President Obama said not only that the execution itself was “deeply troubling” acknowledged that:

“in the application of the death penalty in this country, we have seen significant problems – racial bias, uneven application of the death penalty, situations in which there were individuals on death row who later on were discovered to have been innocent because of exculpatory evidence. And all these I think do raise significant questions about how the death penalty is being applied... So I'll be discussing with Eric Holder and others to get me an analysis of what steps have been taken not just in this particular instance but more broadly in this area. I think we do have to, as a society, ask ourselves some difficult and profound questions around these issues.”<sup>86</sup>

Amnesty International welcomes the fact that in its recent concluding observations on the USA, the Human Rights Committee not only urged the federal authorities to consider establishing a moratorium on the death penalty at the federal level, but also to engage with the retentionist states “with a view to achieving a nationwide moratorium”. In Amnesty International’s view, there is no solution to the discriminatory and other fundamental flaws of the death penalty other than abolition. A moratorium is a constructive step towards this end.

### **Recommendation**

- The USA should impose a moratorium on executions with a view to abolishing the death penalty.

## **REMEDY FOR ABUSES IN CRIMINAL JUSTICE SYSTEM**

The right to remedy is recognized in all major human rights instruments, including article 6 of CERD.<sup>87</sup> Victims of human rights violations, including discrimination, have the right under international law to effective access to remedy and reparation. In its General Comment on article 14 of UNCAT issued in 2012, for example, the UN Committee against Torture stated:

“When impunity is allowed by law or exists de facto, it bars victims from seeking full redress as it allows the violators to go unpunished and denies victims full assurance of their rights under article 14”.<sup>88</sup>

International law requires the USA to provide the victims of violations with remedies that are not only theoretically available in law, but are actually accessible and effective in practice.<sup>89</sup> Victims are entitled to equal and effective access to justice;<sup>90</sup> adequate, effective and prompt reparation for harm suffered;<sup>91</sup> and access to relevant information concerning violations and reparation mechanisms.<sup>92</sup> Full and effective reparation includes restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. Rejecting impunity is a crucial step in preventing recurrence of human rights violations.

The question of impunity for officers responsible for abuses has been an ongoing concern in a number of cities, including Chicago, where evidence emerged in the late 1980s of the

systematic torture of murder suspects by the Chicago Police Department's Area 2 police officers.<sup>93</sup> Amnesty International has investigated allegations that detectives in Area 2 and Area 3 police headquarters in Chicago, Illinois, systematically tortured more than 100 suspects between 1972 and 1991.<sup>94</sup> Jon Burge was at the centre of these allegations, either directly or through the chain of command.<sup>95</sup> Initially a detective, he held a number of different ranks within Area 2 before becoming the Commander of the Area 2 Violent Crimes Section. Burge later became Commander of the Area 3 Detective Division. Several Area 2 colleagues followed him to Area 3, as did the allegations that they were regularly using torture and other ill-treatment to extract confessions from suspects.<sup>96</sup> In addition to beatings, individuals alleged that they had been subjected to electric shocks, had plastic bags placed over their heads and had been threatened with mock executions.<sup>97</sup> Forced confessions resulted in dozens of individuals being sentenced to long prison sentences or, in the case of 11 individuals, death sentences.<sup>98</sup> All of the victims were of colour, with the majority of them African American; the detectives were white. Sixteen victims have since been exonerated and released, according to the People's Law Office of Chicago, and there are at least 19 individuals who remain incarcerated and allege they were tortured into confessions.<sup>99</sup> The State of Illinois Torture, Inquiry and Relief Commission, an agency set up in 2009 to review the cases of those who claimed to have been tortured by Commander Burge and his subordinates, is still reviewing as many as 71 cases where individuals claim torture by Burge, persons under his supervision at the time or involve officers who had previously been under the supervision of Jon Burge, but were not at the time of the alleged torture.<sup>100</sup>

Police Commander Jon Burge was eventually dismissed from the force in 1993; no criminal charges were brought against him, although the police department's own investigative body, the Office of Professional Standards (OPS) had, by late 1990, already reported evidence of some 50 cases of torture and abuse under Burge and had found that this abuse was "systematic," and "methodical." Two other officers were disciplined, but never criminally charged.<sup>101</sup>

After years of inaction by the authorities, torture survivors and their family members, along with community organizers and activists formed the Campaign to Prosecute Police Torture. They petitioned the Chief Judge of the Criminal Division of Cook County to appoint special prosecutors to investigate the crimes of torture committed by Burge and his detectives at Area 2 and 3 Police Headquarters from 1971-1991. Circuit Court Judge Paul P. Biebel, Jr. granted the petition and appointed two special prosecutors in 2002 who concluded their investigation in 2006. They confirmed that scores of suspects were tortured during their interrogations, including through suffocation and use of electric shocks. However the Special Prosecutors concluded that the statute of limitations prevented the prosecution of Burge or others under his command or supervision for the crime of torture.<sup>102</sup>

In 2010, decades after the first reports of torture came to light, Burge was convicted of perjury and obstruction of justice for denying the torture he and others committed.<sup>103</sup> He was sentenced to four and a-half years in prison. No Chicago police officer or city official has been convicted for any acts of torture, despite indisputable evidence that torture occurred.<sup>104</sup>

### **Recommendations**

- City of Chicago and State of Illinois officials should fully investigate any allegation of torture or other ill-treatment committed by law enforcement officials, prosecute and bring to justice any individual against whom credible allegations of torture or other ill-treatment are made, and provide reparations to survivors and their families.
- The United States Congress should pass, and the President should sign the Law Enforcement Torture Prevention Act, which would specifically criminalize acts of

torture in the United States by law enforcement personnel and others acting under colour of law, and removes the statute of limitations for such crimes.

## **THEME – GUN VIOLENCE**

**List of themes, 2(b): “disparate impact of gun violence on minorities and the discriminate effect of the ‘Stand Your Ground’ laws.”**

Gun violence impacts a range of human rights from the right to life and security of the person;

Gun violence is a widespread problem across the USA. Each year, more than 11,000 people are killed as a result of someone pulling a trigger.<sup>105</sup> In 2011, the most recent year when official statistics are available for fatal injuries, African Americans were 48 per cent of all homicide victims and accounted for 55.7 per cent of all homicides with a “firearm” despite only accounting for 13 per cent of the US population.<sup>106</sup> Gun violence has been shown to reduce African-American male life expectancy by a full year with African-American males being almost seven times more likely to die by firearm homicide than white males.<sup>107</sup> Homicide has been cited by the US Centers for Disease Control and Prevention as the second leading cause of shortened African-American male life expectancy versus their white US counterparts.<sup>108</sup> The problem is especially pervasive among African-American youth, whereby African American children and teens (ages 0-19) accounted for 60.75 per cent of all homicides due to firearms for that age range.<sup>109</sup> For non-fatal injuries, African Americans between the ages of one and 24 have a rate of 82.3 gunshot injuries per 100,000 residents, while whites in the same age range have a rate of 6.24 injuries per 100,000.<sup>110</sup>

Using the City of Chicago, Illinois, as an example of the national issue, in 2013, 414 people were killed in Chicago; with more than 80 percent of those deaths attributed to gun violence.<sup>111</sup> While amounting to an 18 percent decrease from 2012, which saw a total of 506 homicides that year, Chicago had the highest number of homicides across the country in 2013. Chicago’s homicide rate is alarmingly elevated, especially compared with other big cities like Los Angeles and New York. For instance, New York City has three times the population of Chicago, and had 333 murders in 2013. Los Angeles, with over a million more people than Chicago, had 255 murders in 2013.<sup>112</sup> Seventy-five percent of Chicago’s gun-death victims in 2012 were African-American or Latino.<sup>113</sup>

Violence affects everyone in Chicago, but it is particularly devastating for the city’s youth who are so often the perpetrators and victims of violence. From 2008-2012, almost half of Chicago’s 2,389 homicide victims were killed before their 25th birthdays.<sup>114</sup>

While 414 people were killed in 2013, there were a total of 1,864 shootings in the city which resulted in 2,328 gunshot survivors.<sup>115</sup> There were an additional 10,343 crimes committed with a handgun or firearm in Chicago during 2013.<sup>116</sup> Studies have shown that children who are exposed to violence suffer increased rates of depression, aggression, delinquency, and poor school performance.<sup>117</sup>

Under international human rights law, states have a duty to take positive measures to prevent acts of violence and unlawful killings, including those committed by private persons. There is growing recognition that states’ duties under international human rights law include exercising due diligence to ensure that basic rights – certainly the right to life and security of the person – are not abused by private actors. Where a foreseeable consequence of a failure to exercise adequate control over the civilian possession and use of arms is continued or increased violence, then states might be held liable for this failure under international human rights law. The state responsibility to exercise due diligence does not lessen the criminal

responsibility of those who carry out gun crimes. The perpetrator of the crime is the person liable under criminal law and should be brought to justice. However, the state also bears a responsibility if it fails to prevent or investigate and address the crime appropriately.

Another aspect of gun violence is the proliferation of “Stand your ground” laws across many states. Under such laws in Florida and other states, a private citizen is allowed to use deadly force against a perceived imminent threat of death or bodily harm in any place where he or she has a right to be, without an obligation to retreat. The law in effect presumes the individual is acting in self-defence unless there is specific evidence to the contrary and the burden is on police and prosecutors to prove that the individual did not act in self-defence.

While everyone has the right to self-defence, Amnesty International is alarmed by mounting evidence suggesting that stand-your-ground laws may encourage the use of deadly force in situations where this is not warranted, for example where such force is not used as a last resort. In such cases, stand-your-ground laws allow private individuals to be held to a lower standard on the use of deadly force than even law enforcement officers, perverting the concept of self-defence, and protecting aggressors rather than the victims of violence. The ultimate result of this could be *more* rather than less violence.

Already in Florida researchers have found that “justifiable homicides” have tripled since the law was introduced in 2005.<sup>118</sup> A 2012 study by the National Bureau of Economic research also found an increase in firearms-related homicides in states which had introduced similar bills.<sup>119</sup> A 2012 study by Texas A&M University of 23 states with stand-your-ground laws found that homicide rates increase by 7-9 per cent in those states as compared to states without such laws, leading to anywhere from 500 to 700 more homicides every year.<sup>120</sup>

Furthermore, researchers are finding data suggesting that stand-your-ground laws may legitimize racial bias in the criminal justice systems of the states where they are enacted. For instance, according to a recent study of criminal justice data from 22 states with stand-your-ground laws, white homicide defendants with black victims were more likely to have their homicides ruled justified than black defendants whose victims were white: the shooting of a black person by a white person was found justifiable 17 percent of the time, while the shooting of a white person by a black person was deemed justifiable just over 1 percent of the time. This disparity was significantly greater than in states without stand-your-ground laws, where white-on-black shootings were found justified just over 9 percent of the time.<sup>121</sup> Given the persistent concerns about racism and racial profiling within law enforcement agencies and in the wider community – so tragically highlighted in the Trayvon Martin case – stronger measures to address this issue are needed, not laws that may actually increase racial disparities in the way the justice system is applied and serve to sanction the use of deadly force based on a perceived offender’s race or color.

**Recommendations:**

- Local, state and federal officials, in partnership with civil society and police, should develop community safety programs that promote practical ways of halting the violence arising from the proliferation and misuse of guns.
- Local, state and federal authorities and civil society organizations should mobilize official resources and community structures to address some of the social and economic roots of armed gang violence. Local, state and federal officials should ensure that any policy to curb gun violence also addresses issues of poverty, income inequality and unemployment, including implementation of the plan developed by the Illinois Commission on the Elimination of Poverty to eliminate extreme poverty by 2015.



- All federal legislators in Illinois should co-sponsor and the US Congress should pass the Youth Prison Reduction through Opportunities, Mentoring, Intervention, Support, and Education Act (“Youth PROMISE Act”) a bi-partisan bill that would fund, implement and evaluate evidence-based locally run youth and gang violence prevention and intervention programs.
- Local, state and federal officials should act with due diligence to prevent and investigate violent criminal acts which infringe the right to life, liberty, dignity and security of the person; bring to justice those responsible for such crimes; and take steps to curb the proliferation of guns in the community.
- Local, state and federal officials should enact strict laws and procedures to control guns and reduce the quantity of surplus and illegal arms in circulation. Federal legislators in Illinois should co-sponsor, the US Congress should pass and the President should sign the Gun Trafficking Prevention Act.
- The Attorney General should undertake a more comprehensive nationwide study, examining all states where stand-your-ground laws are in place to determine the following: whether the laws have led to an increase in gun homicides; whether the laws and the broadening of the concept of self-defense violate the right to life; and whether they violate the right to be free from discrimination. The Department of Justice should publicly disclose the findings of its study and ensure that any recommendations made are with a view to bringing current legislation into compliance with international human rights law and standards.
- State legislatures should repeal stand-your-ground laws on the basis that these laws may violate the right to life and the right to be free from discrimination, and run afoul of international standards on the use of lethal force, which can only be effective in advancing public safety and protecting human rights if they are applicable to both state and non-state actors.

## THEME – EDUCATION

### List of themes, 2(b): “Racial and ethnic disparities in education, poverty, housing, health and exposure to crime and violence”

All children have the right to education, the right to life, security and to be free from discrimination. However thousands of children in Chicago in 2013 saw their schools closed and have been placed at risk of violence or even death, by the need to attend new schools in areas controlled by rival gangs.

In March 2013, the City of Chicago announced the closure of 49 public elementary schools.<sup>122</sup> This represents the largest wave of school closures in US history, encompassing 10 per cent of all public schools in Chicago. The schools targeted for closure were predominately in African American communities. Nearly 30,000 students, over 80 per cent of whom are African American, were affected by the closures.<sup>123</sup> Due to the prevalence of gangs in many of these communities, students forced to go to new schools face an increased risk of violence and have to travel via “safe passage” routes. Safe passage routes are patrolled by approximately 1,200 unarmed workers, wearing neon vests, who have been trained to stand watch as students pass by. Since the implementation of the Safe Passage program, there have been reports of “shots fired”, and even other incidents where, because of a gang run-in, children were chased back to school after a fight broke out.<sup>124</sup>

The school closures prompted the Midwest Coalition for Human Rights to make a submission to the United Nations Office of the High Commissioner on Human Rights, requesting an investigation to address the potential domestic and international human rights violations that

could result from the school closings, including the right to non-discrimination; the right to life; security of the person; and education.<sup>125</sup> Notwithstanding the concerns raised by human rights organizations, parents, students, teachers and community organizations, the Chicago Board of Education continued with school closures.

#### **Recommendations**

- Local, state and federal officials should ensure that children enjoy their right to be protected from harm and discrimination, and that their access to education is not restricted. The “Safe Passage Routes” in Chicago should continue to be adequately resourced to ensure that all children’s right to life, security of the person are respected.

## **THEME – HEALTH**

### **List of themes, 2(b): “Racial and ethnic disparities in education, poverty, housing, health and exposure to crime and violence”**

In 2010, Amnesty International published a report, USA: Deadly Delivery: The maternal health care crisis in the USA,<sup>126</sup> followed by a one year update in 2011.<sup>127</sup> The report described the high rates of maternal mortality and morbidity in the USA. In 2010, more than 40 countries had lower maternal mortality rates than the USA,<sup>128</sup> with hundreds of women dying each year in preventable pregnancy-related deaths.<sup>129</sup> Since that time, the USA has fallen to 50<sup>th</sup> in the world.<sup>130</sup> Amnesty International’s report notes that despite the 34 per cent decrease in global maternal mortality between 1990 and 2008, with 147 countries seeing declines in their maternal death rates, the USA was one of only 23 countries to experience an increase.<sup>131</sup> The World Health Organization reports that the maternal mortality rate in the USA has increased from 13 per 100,000 births in 2000, to 17 per 100,000 births in 2005, to 28 per 100,000 births in 2013. This is the highest rate in decades. Meanwhile, the USA spends more on health care than any other country in the world and more on maternal health than any other type of hospital care. Over four million women give birth each year<sup>132</sup>, at a cost of \$98 billion.<sup>133</sup>

Women of certain groups are disproportionately affected, as age, gender, race, ethnicity, immigration status, Indigenous status or income level can all affect a woman’s access to health care, the way she is treated by health care providers, and the quality of health care she receives. This results in disparities in health outcomes. African American women in the US are nearly four times more likely to die of pregnancy-related complications than white women.<sup>134</sup> This disparity holds steady regardless of income, education or location. Amnesty International’s report noted that for 2005-2007, the maternal mortality rate was highest among black women at 34.0 per 100,000 births, followed by Native American and Alaska Native women at 16.9 per 100,000 births, Asian and Pacific Islanders at 11.0 per 100,000 births, non-Hispanic whites at 10.4 per 100,000 births, and Hispanics at 9.6 per 100,000 births.<sup>135</sup>

In March 2010, President Obama signed the Affordable Care Act into law.<sup>136</sup> The law intended to extend health care coverage to 30 million uninsured people, institute an individual mandate to encourage universal coverage, open healthcare exchanges, expand Medicaid, offer coverage for young adults under their parents’ plans, cover preventative care without co-payments, outlaw rejection of coverage based on pre-existing conditions, and require the same rates regardless of gender. In June 2012, the Supreme Court upheld the individual mandate.<sup>137</sup> A number of these provisions are helping women to access affordable health care.

In 2011, the Maternal Health Accountability Act was proposed but was not passed by Congress.<sup>138</sup> The law would have given grants to states to establish maternal mortality review committees to collect data on pregnancy-related deaths and to work toward the elimination of disparities.

#### **Recommendations**

- The US government must ensure that the problem of high maternal mortality and morbidity be given greater attention and take proactive steps toward its reduction.
- The US government must ensure equal access to quality, affordable health care for all, especially maternal health services, family planning services, and post-natal care, irrespective of racial origin.
- The US government must ensure the full implementation of the Affordable Care Act.
- The US government should undertake regular in-depth collection of maternal mortality and morbidity data, as outlined in the Maternal Health Accountability Act. Currently, little data is available on maternal mortality and morbidity, despite its frequency. Data should distinguish based on race, income level, location, and Indigenous status.

## **THEME – RACIAL PROFILING**

### **List of themes, 2(d): “Progress made, in law and in practice, to end the practice of racial profiling and surveillance by law enforcement officials”**

In order to combat racial profiling across the country, the End Racial Profiling Act of 2001 (ERPA 2001) was proposed in the US Congress in 2001.<sup>139</sup> ERPA compels all law enforcement agencies to ban the practice of racial profiling, document data on stops, searches and arrests disaggregated by both race and gender, and create a private right of action for victims of profiling.<sup>140</sup> At that time, studies showed that US citizens of all races and ethnicities believed that racial profiling was a widespread problem and this was reflected in bipartisan support for the bill.<sup>141</sup> However, following the 9/11 attacks, support by members of Congress for ERPA 2001 dissipated.<sup>142</sup> Congress has since tried and failed to pass various versions of the ERPA. The most recent version was introduced into the US Senate in May 2013 and was awaiting further action by Congress at the time of writing.<sup>143</sup> Without passage of ERPA, it is difficult for individuals to challenge violations of their constitutional rights to be free from discrimination since they must show proof of intent of the individual officer to discriminate.

Racial and ethnic profiling in the USA has been specifically documented by Amnesty International in the contexts of national security, immigration and policing.<sup>144</sup> Racial or ethnic profiling occurs when the police include criteria such as skin colour, language, religion, nationality or ethnic origin in identifying individuals who they intend to question or arrest. While the use of such criteria in law enforcement activity does not always amount to discrimination, it is discriminatory if it has no reasonable or objective justification. While the issue is a national problem in jurisdictions across the country, Amnesty International’s research has focused on the City of Chicago and State of Illinois. Though both the City and the State have taken some steps in addressing racial profiling, there is still more that can be done at the local and state levels, including enhanced data collection related to the use of “contact cards” by Chicago Police Department, and legislation to ensure protection against racial profiling at the state level.

Concerns have been raised community organizations regarding investigatory stop and frisk practices in Chicago, and how the lack of effective data collection makes it difficult to establish whether racial profiling is taking place. When Chicago police conduct an investigatory street stop, they are required to fill out a “contact card”, which is a form that

includes the age, address, race, time and location, and reason the stop occurred. Investigatory street stops are only authorized if the officer has a “reasonable suspicion” that the citizen is committing, is about to commit, or has committed a crime.<sup>145</sup> The use of contact cards has recently expanded. In 2011 the Chicago Police Department (CPD) accrued 379,000 contact cards and in 2012 the total reached 516,500 cards.<sup>146</sup> In the first 10 months of 2013 the CPD filled out more than 600,000 contact cards.<sup>147</sup> Because of the information they contain, a rigorous analysis of contact cards could help establish whether CPD officers are engaging in racial profiling. However, the format of the contact cards makes them difficult to use for these purposes. While the Chicago City Council passed an ordinance in 2001 which prohibits all officers from engaging in racial profiling, the limited data that has been released to the ACLU indicates that there may be issues within the CPD regarding its use of investigatory stops and frisks. Reforms to the contact card system are needed to ensure proper data collection and analysis of these issues.

The State of Illinois has failed to pass a law prohibiting racial profiling by law enforcement agencies across the state. The State Legislature, however, did pass a law that went into effect in 2004 which requires all law enforcement entities in the state to collect specific information on each traffic stop that resulted in a citation.<sup>148</sup> However this legislation will expire on January 1, 2015. A Bill has been recently introduced in the Illinois legislature which will repeal the sunset provision of the data collection law and continue the ongoing data collection beyond that date.<sup>149</sup> The data from across the state generated under this law has led to troubling findings about particular law enforcement agencies, notably the Illinois State Police. For instance, according to the latest data reviewed by the ACLU, Hispanic drivers are nearly 2½ times, and African Americans are more than 1½ times more likely than white drivers to be asked for permission to search their cars by a state trooper.<sup>150</sup> While Hispanic and African American motorists are more likely to be subjected to searches, white motorists are apparently more likely to be discovered with contraband.<sup>151</sup> The ACLU’s multi-year analysis of traffic stops, and the specific data for 2012, both demonstrate the need for the State of Illinois to pass legislation prohibiting racial profiling by all law enforcement agencies; such legislation must be complemented by adequate training, enforcement and monitoring procedures.

Until comprehensive anti-profiling legislation and effective documentation measures are in place in effect in every state and at the federal level, many will continue to worry that their fundamental right to live without fear of racial, ethnic, or religious discrimination may be violated at any time by the very people who are charged to protect them.

### **Recommendations**

- The United States Congress should pass, and the President should sign the End Racial Profiling Act, which would specifically prohibit any law enforcement agent or agency from engaging in racial profiling and grants the United States or an individual injured by racial profiling the right to obtain declaratory or injunctive relief.
- All state legislatures should pass legislation that explicitly prohibits racial profiling by state, county and local law enforcement agencies, and require the collection of data disaggregated by race, age and gender in order to identify and assess whether or not law enforcement activities result in racial profiling.
- The City of Chicago should reform the Chicago Police Department Contact Cards and create an effective database to allow for better oversight and accountability of potential racial profiling by CPD officers during stops of Chicago residents. These reforms should include, requiring all officers to fully document all sidewalk stops and frisks, including all facts supporting reasonable suspicion; require supervisory review of that documentation, including whether there was reasonable suspicion;

create a database of all stop and frisk documentation which can automatically identify patterns that may raise human rights concerns; and, disclose this data to the public.

## SOUTH-WESTERN BORDER

Racial and ethnic profiling targeting Latinos and communities living along the south-western border, including Indigenous communities and US citizens, have reportedly risen in recent years. The increased risk of racial profiling follows the expansion of federal immigration enforcement measures and the blurring in practice of responsibilities between local/state and federal officials in the enforcement of immigration laws. Several Immigration and Customs Enforcement (ICE) programmes, collectively known as ICE ACCESS (ICE Agreements of Cooperation in Communities to Enhance Safety and Security), engage state and local agencies in the enforcement of immigration laws. These include §287(g) of the Immigration and Nationality Act, a provision which allows the federal government to authorize state and local law enforcement agencies to act as federal immigration officers in investigating, detaining and initiating removal proceedings against immigrants; and the Secure Communities programme, which enables federal immigration authorities to screen the fingerprints of people arrested by state and local law enforcement agencies.

State and local law enforcement agencies in these programmes frequently conduct stops, searches and identity checks that target individuals based on their racial and ethnic identity. Studies and surveys show that Latinos and other communities of colour are disproportionately stopped for minor infractions and traffic violations and that these stops are often used as a pretext to inquire about citizenship and immigration status.<sup>152</sup>

Much of the criticism of the §287(g) programme has focused on deputized officers making traffic stops based on the perceived race of the driver and passengers.<sup>153</sup> Deputized agencies are also engaging in so-called “immigration roadblocks” whereby police create checkpoints in areas with large Hispanic populations.<sup>154</sup> Under the guise of checking for licenses and miscellaneous traffic violations, police require those passing through to verify their legal status.<sup>155</sup> In practice, the §287(g) programme typically is carried out by local law enforcement officers screening individuals in jails who have been arrested on criminal charges or investigating people in the field during police operations.<sup>156</sup>

Some of these practices clearly contradict directives issued by the federal immigration authorities, which have routinely prioritized individuals involved in serious criminal offences for immigration enforcement. In September 2007, for example, ICE clarified its policy regarding the use of traffic violations to enforce immigration laws during the implementation of the §287(g) programme. According to the 2007 ICE Fact Sheet, “Officers trained and certified in the §287(g) program may use their authority when dealing with someone suspected of a state crime that is more than a traffic offense”.<sup>157</sup> However, while never publicly stating a change in policy, ICE has since removed this information from its website and replaced it with a document that does not discuss whether local police can use their federal powers during routine traffic stops.<sup>158</sup>

In December 2011, the US Department of Justice released the findings of its investigation into the Maricopa County Sheriff’s Office (MCSO) in Arizona.<sup>159</sup> The investigation found that, since 2007, MCSO had conducted discriminatory policing whereby Latino drivers were four to nine times more likely to be stopped than non-Latino drivers in similar situations.<sup>160</sup> After reviewing the findings, ICE terminated the MCSO’s remaining §287(g) agreement for Jail Enforcement, restricted the law enforcement agency’s access to Secure Communities, and informed the Sheriff’s Office that it would cease ICE responses to Maricopa County Sheriff’s traffic stops, civil infractions, or other minor offences.<sup>161</sup> While MCSO clearly represents an extreme example of these types of discriminatory enforcement programmes, there currently are no ongoing official investigations of other jurisdictions with §287(g) agreements in place.

More studies of the programme are needed to ensure it is being implemented without discrimination against immigrants and communities of colour. The use of §287(g) agreements should be suspended until it has been demonstrated that it does not result in racial profiling in other jurisdictions where implemented. In December 2012, Immigration and Customs Enforcement announced that no task force agreements would be renewed at the end of the year as ICE slowly phases out the Task Force component of the §287(g) programme.<sup>162</sup> The Jail Enforcement model (the second component of the §287(g) programme, where deputized officers make determinations on immigration status following arrest) continues to be utilized and there are currently 36 such contracts in place.<sup>163</sup>

Racial profiling by state and local law enforcement has been observed during jail and prison booking where §287(g) agreements for local jails are in operation. According to one former official who observed the booking process at the Harris County Jail in Texas in 2008, while all individuals go through the process and are asked where they were born, if an individual said “here” and appeared to be Caucasian, no follow-up questions were asked by the Sheriff Department’s §287(g) deputies.<sup>164</sup> However, if the person looked like an “immigrant” and gave the same reply, they were asked for their citizenship papers or other documentation.<sup>165</sup> Advocates in Texas have voiced similar concerns about racial, ethnic and linguistic profiling in local jails. For instance, they have told Amnesty International that if someone does not speak English when he or she is brought into the jail, he or she is sent to speak with ICE.<sup>166</sup>

In Texas, “Secure Communities” was implemented in several jurisdictions in 2008. Since then, advocates report concerns about a potential increase in racial profiling by state and local law enforcement officers, who appear to pull individuals over for “driving while brown” to check whether the person has a driver’s license or identification, or to inquire about his or her immigration status.<sup>167</sup> Advocates believe that these types of stops are much more prevalent in smaller, more rural communities. Undocumented immigrants in both Arizona and Texas are unable to obtain state issued identification, such as driver’s licenses, and are, therefore, more likely to be taken in to custody for fingerprinting in order to verify their identity, which then triggers Secure Communities. Secure Communities has now been implemented by ICE in all relevant jurisdictions nationwide.<sup>168</sup>

Under the Criminal Alien Program (CAP), ICE agents have access to local jails. Although this purportedly takes immigration enforcement out of the hands of local officials, it can encourage discriminatory arrests based on racial profiling because the individuals identified for questioning by ICE may have been arrested in the first place precisely by local officers who relied on racial or ethnic identity as an indication of undocumented status. In 2009, the Chief Justice Earl Warren Institute on Law and Social Policy at the University of California-Berkeley School of Law analyzed arrest data.<sup>169</sup> This data indicated a marked increase in discretionary arrests of Hispanics for petty offences immediately following the September 2006 implementation of a CAP partnership in Irving, Texas, in which local law enforcement had 24-hour access to ICE via video and telephone conferencing.<sup>170</sup> Analysis of the data found strong evidence to support claims that Irving police were engaging in racial profiling.<sup>171</sup> The Warren Institute study found that felony charges accounted for only two per cent of ICE “detainers” (individuals held while ICE decides whether to instigate deportation proceedings); 98 per cent resulted from arrests for misdemeanours under CAP.<sup>172</sup> Studies have also found that Hispanics were arrested at disproportionately higher rates than whites and African Americans for the least serious offences; that is, offences that afford police the most discretion in decisions to stop, investigate and arrest.<sup>173</sup>

ICE ACCESS programmes also lack sufficient oversight and safeguards to ensure that they do not encourage discriminatory profiling and other abuses by local law enforcement officials.<sup>174</sup> A review by the Department of Homeland Security (DHS) Office of the Inspector General (OIG) in 2010 found that ICE needed to develop protocols to adequately monitor local agencies that have entered into §287(g) contracts; to collect data and conduct studies to

address potential civil rights issues; and to supervise §287(g) officers and to provide them with proper training on immigration issues.<sup>175</sup> At present the Secure Communities programme does not contain adequate oversight to determine whether racial profiling is occurring or to prevent it. In September 2011, a taskforce commissioned by DHS completed a review of Secure Communities, which aimed to address some of the concerns about the programme, including its impact on community policing, the possibility of racial profiling, and ways to ensure the programme's focus is on "individuals who pose a true public safety or national security threat."<sup>176</sup> Advocates have criticized the taskforce's report for failing to provide concrete recommendations to address some of the fundamental flaws of Secure Communities, and have called for the programme to be terminated instead.<sup>177</sup> CAP has received even less oversight by federal authorities. Although the programme has been studied by the Office of Inspector General of DHS to determine whether it is effective in identifying individuals eligible for removal, no analysis was undertaken to determine whether it has led to racial profiling by local law enforcement officials.

### Recommendation

- The Department of Homeland Security's Office of Inspector General must immediately conduct and complete thorough reviews of all relevant immigration enforcement programs, including the Immigration and Customs Enforcement Agreements of Cooperation in Communities to Enhance Safety and Security – Criminal Alien Program, the Secure Communities program and 287(g) agreements – to determine whether they are resulting in racial profiling and/or other human rights violations. These programs should be suspended pending the completion of the reviews and until it can be determined that the programs can be operated in a non-discriminatory manner. Transparent oversight and accountability measures must be put in place in order to prevent, identify, and address violations of civil and human rights.
- All state, county and local police departments must implement policies that prevent officers from inquiring into the immigration status of individuals when people are reporting crime as victims or witnesses so that immigrants are not afraid of reporting victimizations. Police have an obligation to ensure the public safety of all community members.

## THEME – INDIGENOUS PEOPLES

**List of themes, 3(d): "Progress made to improve the situation of indigenous peoples, including poverty, unemployment, health-care gaps, violent crime, including violence against women..."**

Data collected by the Department of Justice (DOJ) indicates that Native American and Alaska Native women are more than 2.5 times more likely to be raped or sexually assaulted than women in the USA in general.<sup>178</sup> The DOJ found that 34.1 per cent of American Indian and Alaska Native women – or more than one in three – will be raped during their lifetimes, compared to one in five in the USA overall.<sup>179</sup>

In April 2007, Amnesty International published a report, *Maze of Injustice: The Failure to Protect Indigenous Women from sexual violence in the USA*.<sup>180</sup> The report describes how Native American and Alaska Native women suffer disproportionately high levels of rape and sexual violence and face barriers to accessing justice. This is due to the complex maze of Tribal, state and federal jurisdictions created by the US Government, which allow perpetrators (most of whom are non-Native men) to escape justice; underfunding by the

government of key services; and failure at state and federal level to pursue cases or take them seriously. AI's report describes how sexual violence against Native American and Alaska Native women today is informed and conditioned by a legacy of widespread human rights abuses and marginalization of Indigenous peoples. Historically, settlers and soldiers raped Native American women as tools of conquest and colonization. The attitudes towards Indigenous peoples that underlie such human rights abuses persist in the USA today.

In July 2010, the Tribal Law and Order Act (TLOA) was signed into law.<sup>181</sup> This Act endeavours to increase coordination between Tribal and federal law enforcement and to better equip Tribal courts with the ability to punish crime, with greater sentencing authority. The first DOJ annual report, as required by the legislation, noted that overall prosecution rates have increased by 54 per cent but that sexual assault cases makeup more than 30 per cent of all cases declined for prosecution, usually due to insufficient evidence.<sup>182</sup> Sexual assaults were the second most frequent type of case declined for prosecution.<sup>183</sup> The DOJ report also addresses problems with the computer system that is used to track cases.<sup>184</sup> The case management system is unable to check for consistency or accuracy, and it classifies declinations according to when they were declined, not when the incident occurred.<sup>185</sup> The system also categorizes each suspect as a separate declination, despite the fact that several suspects may relate to one incident. These problems mean that data may be confusing to study and yield results that are not as helpful as they could be to addressing issues of accountability and justice. Additionally, we have received reports that the standardized sexual assault policies mandated by the Act are not being implemented or followed.

Congress reauthorized the Violence Against Women Act (VAWA) in 2013.<sup>186</sup> The reauthorization includes new provisions to protect Indigenous women which will allow Tribal courts to prosecute non-Native men for certain offenses, including domestic violence, dating violence and protection order violations. The DOJ found that 86 per cent of rapes and sexual assaults were perpetrated by non-Native men, making it critical that Tribal governments are able to act against this epidemic. The new law will take effect in 2015.

Unfortunately, these laws are only partial solutions to the problems facing Indigenous women. While the Tribal Law and Order Act increased the sentencing abilities of Tribal courts, Tribal courts can still only impose a maximum of three years in prison for any crime, including rape, and Tribal Courts still lack jurisdiction to try non-Native perpetrators outside of the limited domestic violence context allowed by VAWA. The new VAWA provisions exclude a number of crimes, including sexual assaults between strangers, child abuse that does not involve a protection order, and crimes committed by a non-Native perpetrator who lacks ties to the tribe, such as a man who does not live or work on the reservation.<sup>187</sup>

Survivors of sexual violence also face barriers in accessing emergency contraceptive services. In June 2013, the US Food and Drug Administration announced that it would comply with a Federal court order making emergency contraceptives available over the counter to all, without age restrictions.<sup>188</sup> Despite this, Indian Health Services, which is the primary provider of health services for Native American and Alaska Native peoples, has failed to comply with the new policy. Emergency contraceptives are not available at all at some pharmacies, and at others, age restrictions are still in place. This leaves Indigenous women without appropriate healthcare and violates their right to non-discriminatory access to their sexual and reproductive health care rights.

#### **Recommendations**

- Congress should fully fund and implement the Tribal Law & Order Act and the Violence Against Women Act.
- Congress should ensure full restoration of Tribal court jurisdiction over crimes committed in Indian country.



- The US government should ensure the vigorous prosecution of cases, increased funding for Indian health and forensic services for sexual assault victims, recognition of Tribal jurisdiction over all offenders who commit crimes on Tribal lands, and increased funding for police forces in Indian country.
- The federal government should hold Indian Health Services accountable, and ensure that all Indigenous women are able to access health care without discrimination, including emergency contraceptives.
- The federal and state governments should take effective measures, in consultation and cooperation with Native American and Alaskan Native peoples, to combat prejudice and eliminate stereotyping of, and discrimination against, Indigenous peoples.

## THEME – DETENTION OF MIGRANTS

**List of themes, 4(b): “Mandatory detention of immigrants for prolonged periods of time and obstacles to accessing State-sponsored legal aid, interpreters, health services, education and employment opportunities while in detention; deportation of undocumented immigrants”.**

Amnesty International has found that the dramatic increase in the use of detention as an immigration enforcement mechanism in the USA results in a number of human rights violations. More than 350,000 men, women and children are now detained by US immigration authorities each year.<sup>189</sup> International human rights standards require that in immigration cases detention should only be used in exceptional circumstances must be justified in each individual case and must be subject to judicial review. However, in the USA immigrants can be detained for months or years without any form of meaningful individualized judicial review of their detention. Alternatives to detention including reporting requirements or a bond should always be considered before resorting to detention, however these more affordable options are often not considered and the use of such programs varies greatly from region to region.

The conditions under which immigrants are held violate both US and international standards on the treatment of detainees. Amnesty International documented pervasive problems including comingling of immigration detainees with individuals convicted of criminal offenses; inappropriate and excessive use of restraints; inadequate access to healthcare including mental health services; and inadequate access to exercise. Many individuals have limited or no access to family and to legal or other assistance throughout their detention.<sup>190</sup>

### Recommendations:

- The US Congress should enact legislation, which creates a presumption against the detention of immigrants and asylum seekers and ensuring that detention is used as a measure of last resort.
- The US government should ensure that alternative non-custodial measures, such as reporting requirements or an affordable bond, are always explicitly considered before resorting to detention. Reporting requirements should not be unduly onerous, invasive or difficult to comply with, especially for families with children and those of limited financial means. In addition, conditions of release should be subject to judicial review.
- The US Congress should pass legislation to ensure that all immigrants and asylum seekers have access to individualized hearings on the lawfulness, necessity, and appropriateness of detention.
- The US government should ensure the adoption of enforceable human rights detention standards in all detention facilities that house immigration detainees,

either through legislation or through the adoption of enforceable policies and procedures by the Department of Homeland Security. There should be effective independent oversight to ensure compliance with detention standards and accountability for any violations.

## THEME – ACCESS TO JUSTICE

### List of themes, 5(c): “Access to justice by foreign detainees held in Guantánamo Bay”

More than 140 foreign nationals remain held at the US naval base at Guantánamo Bay in Cuba, the vast majority without charge or trial. Some have been so held for more than 12 years. Whatever the reason they were taken there in the first place – for interrogation, eventual trial, and/or warehousing in long-term indefinite detention – what links them all is that they are foreign nationals. No US national similarly suspected of whatever activities these men were suspected would be held in the base and subjected to its conditions and its uncertainties. Unlawful discrimination on the basis of national origin is just one more aspect of the continuing human rights scandal of Guantánamo.

## HABEAS CORPUS AND INDEFINITE DETENTION

The USA has emphasised to the Committee in its report, “each detainee in military detention at Guantánamo Bay is entitled to petition the federal district courts for *habeas corpus* review of the lawfulness of his detention.”<sup>191</sup> While the detainees had this right under international law from the outset of the detentions in January 2002, but were denied it until 2008. The essence of *habeas corpus* proceedings has for centuries been that government authorities are required to bring an individual physically before the court and demonstrate that a clear legal basis exists for their detention. Normally, if the government is unable to do so promptly, the court is to order the individual released.<sup>192</sup> A court’s power to obtain the immediate release of an unlawfully held individual must be real and effective and not merely formal, advisory, or declaratory. This is the bedrock guarantee against arbitrary detention.

Guantánamo was chosen as a location for detentions in order to bypass this principle. By the time that the US Supreme Court ruled in 2008 in *Boumediene v. Bush*<sup>193</sup> that the Guantánamo detainees had the constitutional right to challenge the lawfulness of their detention in *habeas corpus* petitions filed in federal court, detainees had been held there, not for a few days, but for *six and a half years*. Six years since the *Boumediene* ruling, the notion that the detainees can obtain the “prompt” *habeas corpus* hearing ordered by the Supreme Court has long since evaporated. Even now, it can be years before a Guantánamo detainee can get a *habeas corpus* hearing. In addition, the under a global war on terror paradigm largely accepted by the federal judiciary has imposed substantial obstacles which in practice has resulted in few orders declaring that the detentions were unlawful. In practice, favourable rulings have not resulted in the immediate release of detainees. Again, US nationals do not face this regime.

Detainees were treated as little more than objects from which to extract information, rather than human beings accused of criminal conduct to whom fair legal process is due. Prior to being transferred to Guantánamo, some detainees were subjected to the crimes under international law of torture and/or enforced disappearance, for which there has been no accountability or redress. Some have been subjected to torture or other cruel, inhuman or degrading treatment at the naval base, for which there has been little or no accountability or remedy. Some have been on hunger-strike, some have been subjected to force feeding. The cruelty of the indefinite nature of this detention regime on detainees and their families is clear.<sup>194</sup> Again, all are foreign nationals.

Meanwhile, the USA continues to seek to have other countries step up and do what it, the creator of the Guantánamo detention “problem”, refuses to do: namely, to accept detainees that the USA decides no longer to detain but who cannot be immediately repatriated for whatever reason. Among the few recent releases from Guantánamo were those of three Chinese ethnic Uighur men, transferred to Slovakia more than five years after a federal judge ruled their detention unlawful under US law. Announcing the transfers on 31 December 2013, the Department of Defense said that “The United States is grateful to the government of Slovakia for this humanitarian gesture and its willingness to support US efforts to close the Guantánamo Bay detention facility.”<sup>195</sup>

While Slovakia’s move was indeed welcome, what the Pentagon failed to mention was that the three detainees could have been released immediately following the federal court ruling in October 2008 if the US government had been willing to allow them into the USA. The USA is now looking, among others, to Uruguay to take a number of released Guantánamo detainees who cannot be repatriated and whom the USA itself refuses to accept.

## MILITARY COMMISSION TRIALS

Trials by military commission were conceived as part of this approach to detentions. Contrary to international guarantees of equality before the courts and to equal protection of the law, the military commission system would be applied on prohibited discriminatory grounds: US nationals accused of identical conduct would continue to receive the full fair trial protections of the ordinary US criminal justice system while non-nationals could be deprived of those protections on the basis of their national origin alone.<sup>196</sup>

Under CERD, everyone has the right to “equal treatment before the tribunals and all other organs administering justice” (Article 5). The Committee on Elimination of Racial Discrimination has called on parties to the treaty to ensure in the administration of justice “that non-citizens enjoy equal protection and recognition before the law” and any “non-citizens detained or arrested in the fight against terrorism are properly protected by domestic law that complies with international human rights, refugee and humanitarian law”.<sup>197</sup> In its concluding observations in 2008, the Committee reminded the USA that:

“States parties are under an obligation to guarantee equality between citizens and non-citizens in the enjoyment of the rights set forth in article 5 of the Convention, including the right to equal treatment before the tribunals and all other organs administering justice”.<sup>198</sup>

The military commission system is now in its third version since President George W. Bush first established it by executive order signed on 13 November 2001.<sup>199</sup> However, in addition to the fact of its military rather than civilian nature, it still fails to meet international fair trial standards. Central to such standards is the requirement for criminal trials to be conducted before independent and impartial tribunals. Among other flaws, the commissions lack independence, whether in substance or appearance, from the political branches of government that have authorized, condoned, and blocked accountability and remedy for, human rights violations committed against the very category of detainees that will appear before them.

The military commissions are discriminatory. If any Guantánamo detainee slated for prosecution was a US national, they would not be tried by these military commissions. Under US law a US detainee has the right to a civilian jury trial in an ordinary federal court. They may not be tried before a panel of US military officers operating under rules and procedures that provide a lesser standard of fairness. To discriminate in the quality of criminal justice in this manner is a clear breach of the USA’s human rights obligations.

Saudi Arabian national Ahmed Mohammed Ahmed Haza al Darbi pled guilty to charges under the Military Commissions Act (MCA) of 2009 (a revised version of MCA 2006) at a hearing before a military commission judge at Guantánamo in February 2014, while agreeing not to sue the USA in relation to his prior treatment in custody after his rendition from Azerbaijan in 2002.<sup>200</sup> His conviction brought to eight the number of detainees convicted by military commission since detentions began at Guantánamo in January 2002. Six of these eight men were convicted under pre-trial plea bargains.<sup>201</sup>

Six of the seven detainees currently charged for military commission trials (all but Ahmed al Darbi) are facing a government intending to seek the death penalty. The Human Rights Committee has emphasised that fair trial guarantees are particularly important in cases leading to death sentences, and that any trial not meeting international fair trial standards that results in a death sentence would constitute a violation of the right to life under the ICCPR. Military commissions do not meet these standards.

Asked about how he saw his role in ensuring a fair trial in the case before him, a military judge presiding over a pre-trial military commission hearing conducted at Guantánamo on 9 November 2011, US Army Colonel James Pohl noted that “one might say there may be certain gaps that are not present in other more developed systems.”<sup>202</sup>

In a speech on 21 May 2009, former Vice President Cheney is reported to have stated that after Pakistani national Khalid Sheikh Mohammed was arrested in Pakistan in March 2003, “American personnel were not there to commence an elaborate legal proceeding, but to extract information from him”.<sup>203</sup> By “elaborate legal proceeding”, the former Vice President apparently meant an ordinary criminal trial. The detainee was not brought to trial in a US federal court (where he had previously been indicted), but instead put into secret CIA custody for the next three and a half years during which time he was subjected to enforced disappearance, torture and other cruel, inhuman or degrading treatment, including 183 applications of “waterboarding” in March 2003.

The US Supreme Court *Hamdan v. Rumsfeld*<sup>204</sup> ruling in 2006 overturning President Bush’s system of military commissions was seen by the administration as a threat to the CIA’s secret detention program – in which foreign nationals were being subjected to enforced disappearance, torture or other ill-treatment – and the wall of impunity built around it. The administration moved Khalid Sheikh Mohammed and 13 other CIA detainees to Guantánamo and exploited their cases to obtain passage of the MCA of 2006. Congress passed the Act, authorizing military commissions that were a very close relative to the ones blocked by the *Hamdan* ruling a few months earlier.

Nearly eight years later, Khalid Sheikh Mohammed and four other detainees – Walid bin Attash, Ramzi bin al-Shibh, ‘Ali ‘Abd al-‘Aziz and Mustafa al Hawsawi – whom the USA has charged with involvement in the 9/11 conspiracy have still not been brought to trial (they are now in pre-trial stage). Domestic politics have intervened to deny them “the elaborate legal proceeding”, the fair trial, they are due under international law.

The US government has itself admitted that the federal courts would be an entirely legal, appropriate and available forum in which to conduct the trials of these men. In November 2009, the Department of Justice announced that the five men would be brought to trial “as soon as possible” in ordinary civilian federal court in New York. The “alleged 9/11 conspirators”, said Attorney General Eric Holder, “will stand trial in our justice system before an impartial jury under long-established rules and procedures.”<sup>205</sup> The promise was short-lived, however, falling victim to domestic politics. In April 2011, citing congressional blocking, the Attorney General announced a U-turn.<sup>206</sup> The five would no longer be prosecuted under long-established rules and procedures in a long-established civilian court,

but under essentially untested procedures before a military commission under a post-9/11 law. This outcome is clearly contrary to the UN Basic Principles on the Independence of the Judiciary which state:

“everyone shall have the right to be tried by ordinary courts or tribunals using established legal procedures. Tribunals that do not use the duly established procedures of the legal process shall not be created to displace the jurisdiction belonging to the ordinary courts or judicial tribunals”.<sup>207</sup>

Amnesty International is opposed to the trial of civilians by military courts. Even applying the criteria set out by the Human Rights Committee, however, the military commissions are not by any measure tribunals of demonstrably legitimate necessity, but creations of political choice. The use of military courts in the context of Guantanamo amounts to a violation of the right to fair trial.

The UN Human Rights Committee has stated, on the right to a fair trial under article 14 of the ICCPR, that the trial of civilians (anyone who is not a member of a state’s armed forces) by special or military courts must be strictly limited to exceptional and temporary cases where the government can show that resorting to such trials is “necessary and justified by objective and serious reasons”<sup>208</sup>, and where “with regard to the specific class of individuals and offences at issue the regular civilian courts are unable to undertake the trials”.<sup>209</sup> The US government cannot point to any such rationale. It can only point to domestic politics.

Given the continuing failure of the USA to meet its obligations of independent investigation, accountability, justice, and effective remedy, for the now well-documented allegations of torture and other ill-treatment, enforced disappearance, and other similar human rights violations against the individuals selected for trial by military commission, the military commissions cannot be divorced from the unlawful detention and interrogation regime for which they were developed.

Again, all the detainees in question are foreign nationals. Amnesty International requests the Committee on the Elimination of Racial Discrimination to condemn the Guantánamo detentions and military commissions for what they are: travesties of justice.

### **Recommendations**

- The USA must cease to invoke, and should publicly disavow, the “global war” doctrine, and fully recognize and affirm the applicability of international human rights obligations to all US counter-terrorism measures. This is so whether those measures are taken in the context of specific geographically-circumscribed non-international armed conflicts or away from any armed conflict, and whether on the ordinary territory of the USA or elsewhere.
- The USA must address the Guantánamo detentions as a human rights issue. The detentions must be resolved in a way that fully complies with international law.
- The USA should not place any conditions on transfers of detainees that would, if imposed by the receiving government, violate international human rights law and standards.
- Detainees who are to be prosecuted should be charged and tried without further delay in ordinary federal civilian court, without recourse to the death penalty. Any detainees who are not to be charged and tried should be immediately released.

## ENDNOTES

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<sup>1</sup> Periodic Report of the United States to the United Nations Committee on the Elimination of Racial Discrimination, 12 June 2013, page 4, para 2.

<sup>2</sup> Periodic Report of the United States to the United Nations Committee on the Elimination of Racial Discrimination, 12 June 2013, page 6, para 7.

<sup>3</sup> *McCleskey v. Kemp*, 481 U.S. 279 (1987).

<sup>4</sup> “The African American community is also knowledgeable that there is a history of racial disparities in the application of our criminal laws – everything from the death penalty to enforcement of our drug laws”. Remarks by the President on Trayvon Martin, 19 July 2013, <http://www.whitehouse.gov/the-pressoffice/2013/07/19/remarks-president-trayvon-martin>;

<sup>5</sup> Attorney General Eric Holder to American Bar Association, 12 August 2013, op. cit.

<sup>6</sup> See Amnesty International, *Threat and Humiliation: Racial Profiling, Domestic Security and Human Rights in the United States*, October 2004, available at: [www.amnestyusa.org/pdfs/rp\\_report.pdf](http://www.amnestyusa.org/pdfs/rp_report.pdf).

<sup>7</sup> Ronald Weitzer & Steven A. Tuch, *Race and Perceptions of Police Misconduct*, 51(3) *Social Problems* 305, 315 (2004), available at <http://web.missouri.edu/~ilfm89/Race%20Perceptions%20of%20Police%20Misconduct.pdf> (showing that the majority of individuals who claim to have been subjected to police misconduct in the U.S. are racial minorities); New York City Police Department, *Crime and Enforcement Activity in New York City* (Jan. 1 – June 30, 2012), 15, available at [http://www.nyc.gov/html/nypd/downloads/pdf/analysis\\_and\\_planning/crime\\_and\\_enforcement\\_activity\\_jan\\_to\\_jun\\_2012.pdf](http://www.nyc.gov/html/nypd/downloads/pdf/analysis_and_planning/crime_and_enforcement_activity_jan_to_jun_2012.pdf) (showing that racial minorities were the subject of over 90% of stop and frisks in New York City in the first six months of 2012).

<sup>8</sup> Amnesty International, *USA: Bringing Human Rights Home: Chicago and Illinois: Torture and Other III-Treatment*, 2014, available at [http://www.amnestyusa.org/sites/default/files/bringinghumanrightshomechicagoreport\\_0.pdf](http://www.amnestyusa.org/sites/default/files/bringinghumanrightshomechicagoreport_0.pdf) (documenting torture by Chicago police from the 1970s to 1990s); Ronald Weitzer, Steven A. Tuch, Wesley G. Skogan, *Police-Community Relations in a Majority-Black City*, 45(4) *J. Res. in Crim. & Delinquency* 398, 419 (2008), available at [http://skogan.org/files/Police\\_Community\\_Relations\\_in\\_a\\_Majority\\_Black\\_City.pdf](http://skogan.org/files/Police_Community_Relations_in_a_Majority_Black_City.pdf) (finding that Blacks living in Washington, D.C.—a majority-Black city—were more likely than Whites to perceive police abuse).

<sup>9</sup> Under the Violent Crime Control Act of 1994, U.S.C. Section 14141, the Justice Department may pursue “pattern and practice” lawsuits against individual federal, state or local police agencies accused of systemic, department-wide patterns of civil rights violations. Such investigations have typically resulted in court-supervised Consent Decrees providing detailed reform plans, or memoranda of agreement setting out reforms.

<sup>10</sup> *Incarceration: US State and Federal Prison Population, 1925-2012*, The Sentencing Project, available at <http://www.sentencingproject.org/template/page.cfm?id=107>.

<sup>11</sup> Bureau of Justice Statistics, *Correctional Populations in the United States, 2012*, Appendix Table 1, December 2013, available at <http://www.bjs.gov/content/pub/pdf/cpus12.pdf>.

<sup>12</sup> *Highest to Lowest – Prison Population Total*, International Centre for Prison Studies, available at [http://www.prisonstudies.org/highest-to-lowest/prison-population-total?field\\_region\\_taxonomy\\_tid=All](http://www.prisonstudies.org/highest-to-lowest/prison-population-total?field_region_taxonomy_tid=All).

<sup>13</sup> *Prison Population: 1980 – 2011: Illinois*, The Sentencing Project, available at

<http://www.sentencingproject.org/map/map.cfm>.

<sup>14</sup> Prison Population: 1980 – 2011: Illinois, The Sentencing Project, available at <http://www.sentencingproject.org/map/map.cfm>.

<sup>15</sup> Fiscal Year 2012 Annual Report, Illinois Department of Corrections, 46, October 2013, available at <http://www2.illinois.gov/IDOC/reportsandstatistics/Documents/FY2012%20Annual%20Report.pdf>. (IDOC does not break down population numbers by both race and gender, so the racial breakdown is for total population).

<sup>16</sup> US Census Bureau, State and County Facts, available at <http://quickfacts.census.gov/qfd/states/17000.html>

<sup>17</sup> Attorney General Eric Holder Delivers Remarks at the Annual Meeting of the American Bar Associations House of Delegates, San Francisco, Monday, August 12, 2013, U.S. Department of Justice, available at <http://www.justice.gov/iso/opa/ag/speeches/2013/ag-speech-130812.html>.

<sup>18</sup> National Criminal Justice Commission Act of 2011, S. 306, 112th Cong., 1st Sess. (2011).

<sup>19</sup> See Amnesty International USA, Bringing Human Rights Home, Chicago & Illinois: 10 Point Human Rights Agenda, 2014, available at: <http://www.amnestyusa.org/sites/default/files/bringinghumanrightshomechicagoreport.pdf>

<sup>20</sup> A study published in October 2005 by Amnesty International and Human Rights Watch (HRW) reported that, as of 2004, at least 2,225 child offenders under 18 at the time of the crime were serving sentences of life imprisonment without the possibility of parole in the USA. The study found that black youths nationwide were serving life without parole sentences at a rate 10 times higher than for white youth and constituted 60 per cent of all child offenders in this category. While the study was unable to draw conclusions from the data available as to the cause of the disparity, it was consistent with research studies which have found that minority youths receive harsher treatment than similarly situated white youths at every stage of the criminal justice system in the USA. See, for example, Eileen Poe-Yamagata and Michael A. Jones, And Justice for Some (Building Blocks for Youth Initiative for the National Council on Crime and Delinquency, 2000), <http://www.buildingblocksforyouth.org/justiceforsome/jfs/html>.

<sup>21</sup> Committee on the Elimination of Racial Discrimination, Consideration of Reports Submitted by States Parties under Article 9 of the Convention, Concluding observations of the Committee on the Elimination of Racial Discrimination on the UNITED STATES OF AMERICA, CERD/C/USA/CO/6, 8 May 2008, page 6, para21.

<sup>22</sup> Concluding Observations of the Human Rights Committee: United States of America ¶ 14, U.N. Doc. CCPR/C/USA/CO/3/Rev.1 (Dec. 18, 2006) and Committee Against Torture, Conclusions and Recommendations of the Committee Against Torture: United States of America ¶ 34, U.N. Doc. CAT/C/USA/CO/2, 25 July 2006.

<sup>23</sup> UN Human Rights Committee, Concluding observations on the fourth report of the United States of America, Advanced Unedited Edition, page 10, para 23.

<sup>24</sup> Periodic Report of the United States to the United Nations Committee on the Elimination of Racial Discrimination, 12 June 2013, para 71

<sup>25</sup> Report of the United States of America, Submitted to the U.N. High Commissioner for Human Rights, In Conjunction with the Universal Periodic Review, Response to the U.N. Human Rights Council Working Group Report, 10 March 2011, available at: <http://www.state.gov/j/drl/upr/archive/157986.htm>.

<sup>26</sup> Amnesty International, USA: The Rest of their Lives – Life Without Parole for Child Offenders in the United States, AI index: AMR 51/162/2005, October 2005, available at <http://www.amnesty.org/en/library/asset/AMR51/162/2005/en/209dd2da-d4a1-11dd-8a23-d58a49c0d652/amr511622005en.pdf>

- <sup>27</sup> Juvenile life without parole: An overview, page 3, [http://www.sentencingproject.org/doc/publications/ji\\_Juvenile%20Life%20Without%20Parole.pdf](http://www.sentencingproject.org/doc/publications/ji_Juvenile%20Life%20Without%20Parole.pdf)
- <sup>28</sup> *Graham v. Florida*, 560 U.S. 48 (2010).
- <sup>29</sup> *Miller v. Alabama*, 132 S. Ct. 2455 (2012).
- <sup>30</sup> *Miller v. Alabama*, 132 S. Ct. 2455 (2012).
- <sup>31</sup> *Miller v. Alabama*, 132 S. Ct. 2455, 21-22 (2012).
- <sup>32</sup> Hawaii, Massachusetts, Texas, and Wyoming.
- <sup>33</sup> Alabama, Arizona, Connecticut, Idaho, Illinois, Iowa, Minnesota, Mississippi, Missouri, New Hampshire, New Jersey, Ohio, Vermont, Virginia.
- <sup>34</sup> See, *Slow to Act: State responses to 2012 Supreme Court mandate on life without parole*. The Sentencing Project, 2014, [http://sentencingproject.org/doc/publications/ji\\_State\\_Responses\\_to\\_Miller.pdf](http://sentencingproject.org/doc/publications/ji_State_Responses_to_Miller.pdf)
- <sup>35</sup> See USA: Politics of punishment: Iowa governor flouts spirit if not letter of US Supreme Court decision on young offenders, AI Index: AMR 51/067/2012, 20 July 2012, <http://www.amnesty.org/en/library/info/AMR51/067/2012/en>
- <sup>36</sup> *Iowa v. Ragland*, 836 N.W.2d 107, 212 (Iowa 2013).
- <sup>37</sup> See, *Iowa v. Ragland*, 836 N.W.2d 107, 212 (Iowa 2013); *Parker v. State* 119 So.3d 987 (2013); *Hill, et. al. v. Snyder, et. al.*, 2013 WL 364198 (2013); *Diatchenko v. District Attorney for the District of Suffolk & others*, 466 Mass. 655 (2013).
- <sup>38</sup> *Chambers v. State*, 831 N.W.2d 311 (2013).
- <sup>39</sup> *State v. Morfin*, 2012 IL App (1st) 103568 (2012).
- <sup>40</sup> The following countries have abolished the death penalty for all crimes since the United States last appeared before the CERD Committee: Bolivia, Burundi, Togo, Gabon, Uzbekistan, Argentina and Latvia. See Amnesty International Fact Sheet, *Abolitionist and Retentionist Countries*, December 31, 2013. <http://www.amnesty.org/en/death-penalty/abolitionist-and-retentionist-countries>.
- <sup>41</sup> CERD Committee. "Concluding Observations of the Committee on the Elimination of Racial Discrimination." Page 7, Para 23. CERD/C/USA/CO/6, 8 May 2008. <http://www.state.gov/documents/organization/107361.pdf>.
- <sup>42</sup> CERD Committee, "Concluding Observations of the Committee on the Elimination of Racial Discrimination: United States of America, U.N. Doc. CERD/C/59/Misc.17/Rev.3 (2001), para 17.
- <sup>43</sup> "Periodic Report of the United States of America: Concerning the International Convention on the Elimination of All Forms of Racial Discrimination," 12 June 2013. Page 40, para. 70. <http://www.state.gov/documents/organization/210817.pdf>.
- <sup>44</sup> Amnesty International USA, *He Could Have Been a Good Kid: Texas Set to Execute Third Young Offender in Two Months*, AI Index: AMR 51/027/2014, Page 11, 1 May 2014, <http://www.amnesty.org/en/library/asset/AMR51/027/2014/en/49432d20-9f80-45da-9b1b-dd17d600ae88/amr510272014en.pdf>.
- <sup>45</sup> Amnesty International USA, *He Could Have Been a Good Kid: Texas Set to Execute Third Young Offender in Two Months*, page 11.
- <sup>46</sup> Amnesty International USA, *He Could Have Been a Good Kid: Texas Set to Execute Third Young Offender in Two Months*, page 11.



- <sup>47</sup> Amnesty International, *United States of America: Death by Discrimination- The Continuing Role of Race in Capital Cases*, AI Index: AMR 51/046/2003, 23 April 2003, page 1., available at <http://www.amnesty.org/en/library/asset/AMR51/046/2003/en/bfe434a5-d712-11dd-b0cc-1f0860013475/amr510462003en.html>.
- <sup>48</sup> Amnesty International, *United States of America: Death by Discrimination- The Continuing Role of Race in Capital Cases*, page 1.
- <sup>49</sup> United States General Accounting Office, *Death Penalty Sentencing*, February 1990, page 5, available at <http://www.gao.gov/assets/220/212180.pdf>.
- <sup>50</sup> United States General Accounting Office, *Death Penalty Sentencing*, February 1990, page 5, available at <http://www.gao.gov/assets/220/212180.pdf>.
- <sup>51</sup> Death penalty sentencing: Research indicates pattern of racial disparities. Report to Senate and House Committees on the Judiciary, United States General Accounting Office, February 1990.
- <sup>52</sup> Federal Death Penalty Resource Counsel, *Federal Death Penalty*, 14 May 2014, available at [https://www.capdefnet.org/FDPRC/pubmenu.aspx?menu\\_id=94&id=2094](https://www.capdefnet.org/FDPRC/pubmenu.aspx?menu_id=94&id=2094).
- <sup>53</sup> Dissenting from the McCleskey ruling, Justice William Brennan had characterized the majority decision as “a fear of too much justice” – specifically a fear that to rule in McCleskey’s favour would be to “open the door to widespread challenges”.
- <sup>54</sup> *McCleskey v. Kemp*, 481 U.S. 279, 292-297, (1987).
- <sup>55</sup> Amnesty International, *Judge Finds Racism in Three More Death Penalty Cases*, AI Index: AMR 51/100/2012, 20 December 2012, page 1, available at <http://www.amnesty.org/ar/library/asset/AMR51/100/2012/en/8cd321af-6d30-40c0-b592-b4c3e3c32dab/amr511002012en.pdf>.
- <sup>56</sup> Amnesty International, *Judge Finds Racism in Three More Death Penalty Cases*, AI Index: AMR 51/100/2012, 20 December 2012, page 1, available at <http://www.amnesty.org/ar/library/asset/AMR51/100/2012/en/8cd321af-6d30-40c0-b592-b4c3e3c32dab/amr511002012en.pdf>.
- <sup>57</sup> General Assembly of North Carolina. *North Carolina Racial Justice Act*, Session Law 2009-464, Senate Bill 461. <http://www.ncga.state.nc.us/sessions/2009/bills/senate/pdf/s461v7.pdf>.
- <sup>58</sup> North Carolina General Assembly, *Article 101. North Carolina Racial Justice Act*, 19 June 2013. [http://www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/ByArticle/Chapter\\_15A/Article\\_101.html](http://www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/ByArticle/Chapter_15A/Article_101.html).
- <sup>59</sup> USA: *Judge finds racism in three more death penalty cases: Death sentences overturned under North Carolina’s Racial Justice Act*, AI Index: AMR 51/100/2012, 20 December 2012, <http://www.amnesty.org/en/library/info/AMR51/100/2012/en>; See also USA: *Another brick from the wall*, AI Index: AMR 51/028/2012, 27 April 2012, <http://www.amnesty.org/en/library/info/AMR51/028/2012/en>
- <sup>60</sup> A number of black co-defendants charged with drugs offences alleged that the federal prosecutor had determined to prosecute them because of their race. They sought discovery from the government to obtain information that they asserted would support that claim. The district court judge granted the motion for discovery. When the government indicated that it would not comply with the discovery order, the judge dismissed the indictment. The Ninth Circuit Court of Appeals, 7-4, affirmed the dismissal of the indictment. The Clinton administration appealed and the US Supreme Court reversed. *United States v. Armstrong, et al*, 517 U.S. 456 (S. Ct. 1996).
- <sup>61</sup> A black federal death row prisoner brought a claim that the government had pursued the death penalty in his case because of his race. He moved for dismissal of the death penalty, or alternatively,

discovery relating to the government's capital charging practices. The District Court judge granted his discovery motion and dismissed the death penalty notice after the government said that it would not comply with the discovery order. The US Court of Appeals for the Sixth Circuit affirmed the District Court's order. In the US Supreme Court, the Bush administration successfully argued that the Sixth Circuit's decision "flout[ed]" US v. Armstrong "by affirming the discovery order despite [Bass's] failure to present any evidence that 'similarly situated individuals of a different race were not prosecuted.' The decision below also overrides McCleskey v. Kemp by relying on aggregate, national statistics as evidence of discrimination rather than requiring facts that bear on the individualized decisions of the prosecutors in this case." USA v. Bass, Reply brief for the United States. In the US Supreme Court, June 2002. See also United States v. Bass, 536 U.S. 862 (S. Ct. 2002).

<sup>62</sup> G. Ben Cohen and Robert J. Smith, The racial geography of the federal death penalty, Washington Law Review, Vol. 85:425 (2010), page 486.

<sup>63</sup> USA v. Jacques, Opinion and order re: defendant's motion to strike or modify notice of intent to seek the death penalty. US District Court for the District of Vermont, 4 May 2011.

<sup>64</sup> USA v. Jacques. Opposition of the United States to defendant's motion to strike or modify the notice of intent to seek the death penalty. US District Court for the District of Vermont, 17 May 2010. ALSO SEE: Amnesty International USA, "USA Capital Deficit: A Submission on the Death Penalty to the UN Human Rights Committee, AI Index: AMR 51/062/2013, 1 November 2013, Page 11, available at <http://www.amnestyusa.org/sites/default/files/amr510622013en.pdf>.

<sup>65</sup> Amnesty International USA, *USA Capital Deficit: A Submission on the Death Penalty to the UN Human Rights Committee*, Page 11, AI Index: AMR 51/062/2013, 1 November 2013, available at <http://www.amnestyusa.org/sites/default/files/amr510622013en.pdf>.

<sup>66</sup> USA v. Salad et al, Memorandum order. US District Court, Eastern District of Virginia, 21 November 2012. On 2 August 2013, the jury rejected the death penalty. See Three Somali Pirates Sentenced To Life-In-Prison For Murder Of Four Americans Aboard SV Quest. News release, US Attorney, Eastern District of Virginia, <http://www.justice.gov/usao/vae/news/2013/08/20130802saladnr.html>

<sup>67</sup> UN Economic and Social Council, *Extrajudicial, Summary or Arbitrary Executions*, E/CN.4/1998/68/ADD.3, paras. 64-65, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G98/102/37/PDF/G9810237.pdf?OpenElement>.

<sup>68</sup> UN Doc.: E/CN.4/1998/68/Add.3, paras. 64-65. In 2001, after considering the USA's combined first, second and third periodic reports under this treaty, the Committee for the Elimination of Racial Discrimination noted the "disturbing correlation between race, both of the victim and the defendant, and the imposition of the death penalty" and urged the USA, "to ensure, possibly by imposing a moratorium, that no death penalty is imposed as a result of racial bias on the part of prosecutors, judges, juries and lawyers or as a result of the economically, socially and educationally disadvantaged position of the convicted persons". It has repeated this concern since.

<sup>69</sup> John C. Jeffries Jr, *Justice Lewis F. Powell, Jr.: A biography*. New York: Fordham University Press, (2001).

<sup>70</sup> G. Ben Cohen and Robert J. Smith, The racial geography of the federal death penalty, Washington Law Review, Vol. 85:425 (2010), page 445.

<sup>71</sup> Justin D. Levinson, Robert J. Smith and Danielle M. Young, *Devaluing death: An empirical study of implicit racial bias on jury-eligible citizens in six death penalty states*, 19 February 2013, Pages 6-7, forthcoming in the New York University Law Review, [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2307719](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2307719)

<sup>72</sup> Turner v. Murray, 476 U.S. 28 (1986).

<sup>73</sup> See, for example, USA: Death by discrimination - the continuing role of race in capital cases, AI Index: AMR 51/46/2003, April 2003, <http://www.amnesty.org/en/library/info/AMR51/046/2003/en>

<sup>74</sup> Graczyk, Michael, *Kimberly McCarthy Executed: Texas Carries Out 500th Execution*, The Huffington Post online, 27 June 2013, available at [http://www.huffingtonpost.com/2013/06/26/kimberly-mccarthy-executed-texas-500-execution\\_n\\_3506550.html](http://www.huffingtonpost.com/2013/06/26/kimberly-mccarthy-executed-texas-500-execution_n_3506550.html).

<sup>75</sup> Amnesty International, *USA: A Deadly Distinction: 500th Execution in Texas Looms*, AI Index: AMR 51/041/2013, Page 4, 25 June 2013, available at <http://www.amnesty.org/fr/library/asset/AMR51/041/2013/en/ca30cd48-98f3-4bb5-9216-10232bc31412/amr510412013en.pdf>.

<sup>76</sup> Amnesty International, *USA A Deadly Distinction: 500th Execution in Texas Looms*, AI Index: AMR 51/041/2013Page 4, 25 June 2013.

<sup>77</sup> *Batson v. Kentucky*, 476 U.S. 79 (1986).

<sup>78</sup> Amnesty International, *USA A Deadly Distinction: 500th Execution in Texas Looms*, AI Index AMR 51/041/2013, Page 4, 25 June 2013.

<sup>79</sup> *Miller-El v. Dretke*, 545 U.S. 231 (2005). The Supreme Court ruled that the capital trial of Miller-El violated the Fourteenth Amendment as interpreted in *Batson v. Kentucky* when it racially discriminated against black potential jurors, and Miller-El is entitled to habeas corpus relief.

<sup>80</sup> Amnesty International, *USA A Deadly Distinction: 500th Execution in Texas Looms*, AI Index AMR 51/041/2013, page 4, 25 June 2013.

<sup>81</sup> Amnesty International, *USA: He Could Have Been a Good Kid: Texas Set to Execute Third Young Offender in Two Months*, 1 May 2014, AI Index: AMR 51/027/2014, page 20.

<sup>82</sup> See USA: 'He could have been a good kid': Texas set to execute third young offender in two months, 1 May 2014, <http://www.amnesty.org/en/library/info/AMR51/027/2014/en>

<sup>83</sup> Amnesty International, *USA: He Could Have Been a Good Kid: Texas Set to Execute Third Young Offender in Two Months*, 1 May 2014, AI Index: AMR 51/027/2014, page 12.

<sup>84</sup> Amnesty International, *USA: He Could Have Been a Good Kid: Texas Set to Execute Third Young Offender in Two Months*, 1 May 2014, AI Index: AMR 51/027/2014, page 12.

<sup>85</sup> Scott Phillips, Racial disparities in the capital of capital punishment. 45 *Houston Law Review*, 807, 809 (Summer 2008).

<sup>86</sup> Remarks by President Obama and German Chancellor Merkel in Joint Press Conference, White House, 2 May 2014, <http://www.whitehouse.gov/the-press-office/2014/05/02/remarks-president-obama-and-german-chancellor-merkel-joint-press-confere>. See also USA: Time to do something, Mr President: After Oklahoma's 'botched' execution, a call for human rights leadership, AI Index: AMR 51/028/2014, 2 May 2014, available at <http://www.amnesty.org/en/library/info/AMR51/028/2014/en>

<sup>87</sup> Article 6 of the Convention on the Elimination of all Forms of Racial Discrimination states: "States Parties shall assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination."

<sup>88</sup> UN Doc.: CAT/C/GC/3, Committee against Torture, General Comment No. 3 (2012), Implementation of article 14 by States parties. 13 December 2012, para. 42. Article 14 states: "Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the

event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation.”

<sup>89</sup> See UN General Assembly, “Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law”, Resolution A/RES/60/147 (21 March 2006); ICCPR, article 2(3); Human Rights Committee, General Comment no. 31 (2004), paras. 15 & 16; UNCAT, article 14; Committee against Torture, *Dzemajl v Yugoslavia* (161/2000), 21 November 2002, para. 9.6.

<sup>90</sup> Basic Principles on Right to Remedy, G.A. Res. 60/147, para. 11(a).

<sup>91</sup> Basic Principles on Right to Remedy, G.A. Res. 60/147, para. 11(b).

<sup>92</sup> Basic Principles on Right to Remedy, G.A. Res. 60/147, para. 11(c).

<sup>93</sup> Investigator Michael Goldston, Special Project Conclusion Report, Chicago Police Department Office of Professional Standards, 28 September 1990, available at <http://peopleslawoffice.com/wp-content/uploads/2012/02/Goldston-Report-with-11.2.90-Coversheet.pdf>; Amnesty International, *USA: Allegations of Police Torture in Chicago, Illinois*, AMR 51/42/90, December 1990. After years of inaction by the authorities, two special prosecutors were appointed to investigate the cases and produced a report confirming that scores of suspects were tortured under interrogation, including through suffocation and use of electric shocks, but said the cases were too old to warrant prosecutions. AI first reported on the cases in 1990. More details on these and other cases are published in *USA: Summary of Amnesty International’s Concerns on Police Abuse in Chicago*, AI Index AMR 51/168/99, available at <http://web.amnesty.org/library/Index/ENGAMR511681999>.

<sup>94</sup> Investigator Michael Goldston, Special Project Conclusion Report, Chicago Police Department Office of Professional Standards, 28 September 1990, available at <http://peopleslawoffice.com/wp-content/uploads/2012/02/Goldston-Report-with-11.2.90-Coversheet.pdf>.

<sup>95</sup> Amnesty International, *USA: Bringing Human Rights Home: Chicago and Illinois: Torture and Other Ill-Treatment*, 2 April 2014, available at [http://www.amnestyusa.org/sites/default/files/bringinghumanrightshome\\_torture.pdf](http://www.amnestyusa.org/sites/default/files/bringinghumanrightshome_torture.pdf).

<sup>96</sup> Amnesty International, *USA: Bringing Human Rights Home: Chicago and Illinois: Torture and Other Ill-Treatment*, 2 April 2014, available at [http://www.amnestyusa.org/sites/default/files/bringinghumanrightshome\\_torture.pdf](http://www.amnestyusa.org/sites/default/files/bringinghumanrightshome_torture.pdf)., The Goldston Report, Chicago Police Department Office of Professional Standards, 28 September 1990; The Sanders Report, Chicago Police Department Office of Professional Standards, 26 October 1990; Chicago Police Torture: Jon Burge, Chicago Police Torture and Justice for Survivors, The People’s Law Office, available at <http://peopleslawoffice.com/issues-and-cases/chicago-police-torture/>.

<sup>97</sup> Amnesty International, *USA: Bringing Human Rights Home: Chicago and Illinois: Torture and Other Ill-Treatment*, 2 April 2014, available at [http://www.amnestyusa.org/sites/default/files/bringinghumanrightshome\\_torture.pdf](http://www.amnestyusa.org/sites/default/files/bringinghumanrightshome_torture.pdf).

<sup>98</sup> Amnesty International, *USA: Allegations of Police Torture in Chicago, Illinois*, AI Index AMR 51/42/90, December 1990. The State of Illinois abolished the use of the death penalty in 2011 after issuing a moratorium in 2001. All sentences were commuted to life without parole. None of those sentenced to death in relation to the Burge scandal were executed. However Frank Bounds died in prison in 1998.

<sup>99</sup> Amnesty International Interview with Joey Mogul, People’s Law Office, 28 February 2014. See also, *People of the State of Illinois v. Johnnie Plummer and Vincent Wade*, Class Action Petition for Relief Under The Illinois Post-Conviction Hearing Act, available at <http://peopleslawoffice.com/wp-content/uploads/2012/10/Class-Action-Petition-for-the-Still-Incarcerated-Burge-Victims.pdf> , last visited 25 March 2014.

<sup>100</sup> For more information in regards to torture committed in Chicago, see Amnesty International's report, Bringing Human Rights Home, Chicago and Illinois: Torture and other ill-treatment, 2014, available at: [http://www.amnestyusa.org/sites/default/files/bringinghumanrightshome\\_torture.pdf](http://www.amnestyusa.org/sites/default/files/bringinghumanrightshome_torture.pdf)

<sup>101</sup> After the Andrew Wilson case originally brought the police torture allegations to light, an OPS inquiry reviewed more than 50 other cases in 1990 and found that physical abuse at the Area 2 station was "systematic" and included "psychological techniques and planned torture" spanning at least a decade. According to attorneys, the report of this review (the Goldston Report) was initially suppressed but the OPS later said they would look again at cases individually. Through subsequent court proceedings, the People's Law Office learned that the OPS had re-opened detailed investigations into only a few of the cases and that investigators had recommended disciplinary action in several of them, but these recommendations were overruled by the OPS director. Sharon Cohen, Pardoned Death Row Inmate Seeks Justice; Bitterness Lingers in Man Who Lost 17 Years of Life to Prison, Washington Post, December 7, 2003; Amnesty International, "Allegations of Police Torture in Chicago, Illinois," December 1990.

<sup>102</sup> In re Appointment of Special Prosecutor, No. 2001 Misc. 4, 24 April 2002; and see Report of the Special Prosecutor, 19 July 2006 and Supplement to the report of the Special Prosecutor, October 17, 2007.

<sup>103</sup> United States v. Jon Burge, Case 1:08-cr-00846, Opinion and Order, 2009, available at [http://www.chicagojustice.org/foi/relevant-documents-of-interest/jon-burge-federal-criminal-prosecution-documents/Memorandum\\_opinion\\_and\\_order\\_doc138.pdf](http://www.chicagojustice.org/foi/relevant-documents-of-interest/jon-burge-federal-criminal-prosecution-documents/Memorandum_opinion_and_order_doc138.pdf).

<sup>104</sup> More details on these and other cases are published in USA: Summary of Amnesty International's Concerns on Police Abuse in Chicago, Amnesty International, AI Index AMR 51/168/99, available at <http://www.amnesty.org/en/library/asset/AMR51/168/1999/en/6911d657-e013-11dd-adf6-a1bae6c1ea26/amr511681999en.pdf>.

<sup>105</sup> See Center for Disease Control, Table 2, page 19, Assault (Homicide) by discharge of firearms for 2011 (preliminary) and 2010, [http://www.cdc.gov/nchs/data/nvsr/nvsr61/nvsr61\\_06.pdf](http://www.cdc.gov/nchs/data/nvsr/nvsr61/nvsr61_06.pdf)

<sup>106</sup> Centers for Disease Control and Prevention, "Fatal Injury Reports, National and Regional, 1999-2011," available at [http://webappa.cdc.gov/sasweb/ncipc/mortrate10\\_us.html](http://webappa.cdc.gov/sasweb/ncipc/mortrate10_us.html)

<sup>107</sup> 1 J. Lemaire, "The Cost of Firearm Deaths in the United States: Reduced Life Expectancies and Increased Insurance Costs", Journal of Risk and Insurance, 2005, Vol 72, No. 3, 359-374, available at <http://www.fox.temple.edu/cms/wp-content/uploads/2012/06/JeanLemaire.pdf>

<sup>108</sup> Kenneth D. Kochanek et. al., "How Did Cause of Death Contribute to Racial Differences in Life Expectancy in the United States in 2010", NCHS Data Brief No. 125 (July 2013), available at <http://www.cdc.gov/nchs/data/databriefs/db125.pdf>

<sup>109</sup> Centers for Disease Control and Prevention, "Fatal Injury Reports, National and Regional, 1999-2011," available at [http://webappa.cdc.gov/sasweb/ncipc/mortrate10\\_us.html](http://webappa.cdc.gov/sasweb/ncipc/mortrate10_us.html)

<sup>110</sup> Centers for Disease Control and Prevention, "Nonfatal Injury Reports, 2001-2012," available at <http://webappa.cdc.gov/sasweb/ncipc/nfirates2001.html>

<sup>111</sup> See City of Chicago Data Portal, Crimes – 2001 to present, available at <https://data.cityofchicago.org/Public-Safety/Crimes-2001-to-present/ijzp-q8t2> last visited 22 March 2014. For gun related homicides in Chicago, see documentation created by redevchicago.com, available at: <http://homicides.redevchicago.com/> with 2013 statistics available at: <https://spreadsheets.google.com/pub?key=0Ak3IlavLYTovdHYxbDItQ255eWh1NzBiQXp5cmxRdmc&output=html>

<sup>112</sup> J Sanburn, "Murders in U.S. cities reach record lows again," Time.com, 2 January 2014, available at <http://nation.time.com/2014/01/02/murders-in-u-s-cities-again-at-record-lows/>.

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- <sup>120</sup> Cheng, Cheng, and Mark Hoekstra, "Does Strengthening self-defense Law Deter Crime or Escalate Violence? Evidence from Expansions to Castle Doctrine", *Texas A&M University Journal of Human Resources*, 2012, p 27, publicly available at [http://econweb.tamu.edu/mhoekstra/castle\\_doctrine.pdf](http://econweb.tamu.edu/mhoekstra/castle_doctrine.pdf).
- <sup>121</sup> Roman, John K., "Race, Justifiable Homicide, and Stand Your Ground Laws: Analysis of FBI Supplementary Homicide report Data", Urban Institute, July 2013, p. 7, available at <http://www.urban.org/UploadedPDF/412873-stand-your-ground.pdf>.
- <sup>122</sup> Noreen S. Ahmed-Ullah, John Chase and Bob Sector, *CPS Approves Largest School Closure in Chicago's History*, The Chicago Tribune, 23 May 2013, available at [http://articles.chicagotribune.com/2013-05-23/news/chi-chicago-school-closings-20130522\\_1\\_chicago-teachers-union-byrd-bennett-one-high-school-program](http://articles.chicagotribune.com/2013-05-23/news/chi-chicago-school-closings-20130522_1_chicago-teachers-union-byrd-bennett-one-high-school-program).
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<sup>145</sup> Officers **may** fill out a card if approached by a civilian and the officer lacks reasonable suspicion or when the officer approaches someone with reasonable suspicion and proceeds to arrest the individual. In addition to personal information the cards include the clothing, physical description, tattoos and known associates. Chicago Police Department, "Contact Information System- Special Order S04-13-09, accessed 30 July 2014, available: <http://directives.chicagopolice.org/directives/data/a7a57be2-12a864e6-91c12-a864-e985efd125ff521f.html>, See Also Exhibits 1 and 6, ACLU, "CPD Monitoring of Sidewalk Stop-and-Frisks," available at <http://www.aclu-il.org/wp-content/uploads/2013/01/Letter-to-Emanuel-Patton-McCarthy-1-15-13.pdf>.

<sup>146</sup> Jeremy Gorner, *Police Stops Raise Suspicions*, Chicago Tribune, November 5, 2013, available at: [http://articles.chicagotribune.com/2013-11-05/news/ct-met-contact-cards-20131105\\_1\\_chicago-police-cards-officers](http://articles.chicagotribune.com/2013-11-05/news/ct-met-contact-cards-20131105_1_chicago-police-cards-officers)

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<sup>148</sup> Illinois General Assembly, "Racial Profiling Prevention and Data Oversight Act," 20 ILCS 2715, available at: <http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=2811&ChapterID=5>; See Also: Dunn, Jamey "State of the State," Illinois Issues September 2012, available at: <http://illinoisissues.uis.edu/archives/2012/09/state.html>

<sup>149</sup> Illinois General Assembly, "HB 4442," an act amending the Illinois Vehicle Code, available at: <http://www.ilga.gov/legislation/98/HB/09800HB4442.htm>.

<sup>150</sup> Grossman, Harvey, "Chicago Sun-Times Editorial: Illinois State Troopers Unfairly Single Out Black, Latino Drivers for Consent Searches," ACLU, 3 September 2013, available: <http://www.aclu-il.org/chicago-sun-times-editorial-illinois-state-troopers-unfairly-single-out-black-latino-drivers-for-consent-searches/>

<sup>151</sup> The rate of consent search for white was 0.76, African American 1.2, and Hispanic 1.7. The rate of contraband found in consent searches for white was 20.7%, African American 19.1%, and Hispanic 9%. Illinois' Department of Traffic, "Illinois Traffic Stop Study, 2012," page 387, available at: <http://www.dot.il.gov/travelstats/2012%20TSS%20Statewide%20and%20Agency%20Reports.pdf>

<sup>152</sup> See, for example In Hostile Terrain: Human Rights Violations in Immigration Enforcement in the US Southwest, AMR 51//018/2012, page 39, available at: [http://www.amnestyusa.org/sites/default/files/ai\\_inhostileterrain\\_final031412.pdf](http://www.amnestyusa.org/sites/default/files/ai_inhostileterrain_final031412.pdf); See further, M. Totman, An analysis of racial profiling data in Texas, ACLU, 2006 available at <http://www.aclutx.org/reports/2006racialprofilingreport.pdf>; ACLU of Arizona, Driving while black or brown: An analysis of racial profiling in Arizona, 2008, p3, available at <http://www.acluaz.org/sites/default/files/documents/DrivingWhileBlackorBrown.pdf>.



<sup>153</sup> M. Capps, Delegation and divergence, pp36–7; Rights Working Group, Faces of Racial Profiling: A Report from communities across America, 2010, pp35–6, <http://www.rightsworkinggroup.org/sites/default/files/ReportText.pdf>; American Civil Liberties Union & Immigration and Human Rights Policy Clinic, The policies and politics of local immigration enforcement laws: 287(g) program in North Carolina, February 2009, pp28–9, 44–5, available at [http://www.acluofnorthcarolina.org/files/287gpolicyreview\\_0.pdf](http://www.acluofnorthcarolina.org/files/287gpolicyreview_0.pdf); A. Shahani and J. Greene, “Local democracy on Ice: Why state and local governments have no business in federal immigration law enforcement”, Justice Strategies, February 2009, p39, available at <http://www.justicestrategies.org/sites/default/files/JS-Democracy-On-Ice.pdf>.

<sup>154</sup> Ryan Gabrielson & Paul Gibling, “Reasonable Doubt”, East Valley Tribune, July 8, 2008, available at [http://www.eastvalleytribune.com/page/reasonable\\_doubt](http://www.eastvalleytribune.com/page/reasonable_doubt).

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<sup>156</sup> R. Capps et al, Delegation and divergence, p1.

<sup>157</sup> U.S. Immigration and Customs Enforcement, “Fact Sheets: Section 287(g) of the Immigration and Nationality Act,” 6 September 2007, page 5, available at <http://www.justicestrategies.org/sites/default/files/ICE-287gMemo-09062007.pdf>.

<sup>158</sup> ICE, “Delegation and Immigration Authority, Section 287(g), Immigration and Nationality Act” (factsheet, 6 September 2007). On file with Amnesty International; see also, ICE, Fact Sheet: Delegation of Immigration Authority Section 287(g) Immigration and Nationality Act, available at <http://www.ice.gov/news/library/factsheets/287g.htm>.

<sup>159</sup> “United States’ Investigation of the Maricopa County Sheriff’s Office”, US Department of Justice, Civil Rights Division, 15 December 2011, available at [http://www.justice.gov/crt/about/spl/documents/mcso\\_findletter\\_12-15-11.pdf](http://www.justice.gov/crt/about/spl/documents/mcso_findletter_12-15-11.pdf).

<sup>160</sup> United States’ Investigation of the Maricopa County Sheriff’s Office”, US Department of Justice, Civil Rights Division, 15 December 2011, available at [http://www.justice.gov/crt/about/spl/documents/mcso\\_findletter\\_12-15-11.pdf](http://www.justice.gov/crt/about/spl/documents/mcso_findletter_12-15-11.pdf).

<sup>161</sup> Letter to Bill Montgomery, Maricopa County Attorney, from John Morton, US ICE, 15 December 2011, on file with Amnesty International, see also, “Statement by Secretary Napolitano on DOJ’s Findings of Discriminatory Policing by Maricopa County,” US Department of Homeland Security, Press Release, 15 December 2011, available at <http://www.dhs.gov/ynews/releases/20111215-napolitano-statement-doj-maricopa-county.shtm>.

<sup>162</sup> The Task Force Model is the component of Section 287 (g) where deputized (state or local) officers make determinations on immigration status in the field.

<sup>163</sup> See ICE Fact Sheet: Delegation of Immigration Authority Section 287(g) Immigration and Nationality Act, available at: <http://www.ice.gov/news/library/factsheets/287g.htm>.

<sup>164</sup> Amnesty International Interview with anonymous official, 15 April 2011.

<sup>165</sup> Amnesty International Interview with anonymous official, 15 April 2011.

<sup>166</sup> Amnesty International Interview with Maria Jimenez, CRECEN, 27 September 2010.

<sup>167</sup> Driving While Brown takes place when law enforcement officers target certain individuals who look Mexican for the purpose of arrests, detentions, traffic stops, interrogations, and searches that are not based on any evidence of criminal activity. Such practices are resorted to based on the person’s perceived race, ethnicity, or nationality. In recent times, the phrase is also used to refer to the practice of police or immigration officers who illegally pull over individuals who look Mexican in order to

determine if they are legally in the U.S.

<sup>168</sup> Immigration and Customs Enforcement, *Secure Communities: Activated Jurisdictions*, available at <http://www.ice.gov/doclib/secure-communities/pdf/sc-activated.pdf>, last visited 28 August 2013.

<sup>169</sup> T. Gardner and K. Aarti, *"The C.A.P. effect": Racial Profiling in the ICE Criminal Alien Program*, The Chief Justice Earl Warren Institute on race, Ethnicity and Diversity, University of California, Berkeley Law School, Policy Brief, September 2009, available at [http://www.law.berkeley.edu/files/policybrief\\_irving\\_FINAL.pdf](http://www.law.berkeley.edu/files/policybrief_irving_FINAL.pdf). See also, I. Menashe and D. Varma, *We're not feeling any safer*, California Immigrant Policy Center, Summer 2010, available at <http://www.caimmigrant.org/enforcement.html>.

<sup>170</sup> T. Gardner and K. Aarti, *"The C.A.P. effect": Racial Profiling in the ICE Criminal Alien Program*, The Chief Justice Earl Warren Institute on race, Ethnicity and Diversity, University of California, Berkeley Law School, Policy Brief, September 2009, available at [http://www.law.berkeley.edu/files/policybrief\\_irving\\_FINAL.pdf](http://www.law.berkeley.edu/files/policybrief_irving_FINAL.pdf). See also, I. Menashe and D. Varma, *We're not feeling any safer*, California Immigrant Policy Center, Summer 2010, available at <http://www.caimmigrant.org/enforcement.html>.

<sup>171</sup> T. Gardner and K. Aarti, *"The C.A.P. effect": Racial Profiling in the ICE Criminal Alien Program*, The Chief Justice Earl Warren Institute on race, Ethnicity and Diversity, University of California, Berkeley Law School, Policy Brief, September 2009, available at [http://www.law.berkeley.edu/files/policybrief\\_irving\\_FINAL.pdf](http://www.law.berkeley.edu/files/policybrief_irving_FINAL.pdf). See also, I. Menashe and D. Varma, *We're not feeling any safer*, California Immigrant Policy Center, Summer 2010, available at <http://www.caimmigrant.org/enforcement.html>.

<sup>172</sup> T. Gardner and K. Aarti, *"The C.A.P. effect": Racial Profiling in the ICE Criminal Alien Program*, The Chief Justice Earl Warren Institute on race, Ethnicity and Diversity, University of California, Berkeley Law School, Policy Brief, September 2009, available at [http://www.law.berkeley.edu/files/policybrief\\_irving\\_FINAL.pdf](http://www.law.berkeley.edu/files/policybrief_irving_FINAL.pdf). See also, I. Menashe and D. Varma, *We're not feeling any safer*, California Immigrant Policy Center, Summer 2010, available at <http://www.caimmigrant.org/enforcement.html>.

<sup>173</sup> T. Gardner and K. Aarti, *"The C.A.P. effect": Racial Profiling in the ICE Criminal Alien Program*, The Chief Justice Earl Warren Institute on race, Ethnicity and Diversity, University of California, Berkeley Law School, Policy Brief, September 2009, available at [http://www.law.berkeley.edu/files/policybrief\\_irving\\_FINAL.pdf](http://www.law.berkeley.edu/files/policybrief_irving_FINAL.pdf). See also, I. Menashe and D. Varma, *We're not feeling any safer*, California Immigrant Policy Center, Summer 2010, available at <http://www.caimmigrant.org/enforcement.html>.

<sup>174</sup> D. M. Weissman and R. C. Headen, *The policies and politics of local immigration enforcement law: 287(g) program in North Carolina*, ACLU of North Carolina Legal Foundation and Immigration and Human Rights Policy Clinic University of North Carolina at Chapel Hill, February 2009, p41; R. Gabrielson and P. Gibling, "Reasonable doubt", *East Valley Tribune*, 8 July 2008, available at [http://www.eastvalleytribune.com/page/reasonable\\_doubt](http://www.eastvalleytribune.com/page/reasonable_doubt); R.L. Skinner, *The Performance of 287g Agreements*, DHS, OIG, March 2010, pp.14-15, 20, 25-29, available at [http://www.oig.dhs.gov/assets/Mgmt/OIG\\_10-63\\_Mar10.pdf](http://www.oig.dhs.gov/assets/Mgmt/OIG_10-63_Mar10.pdf).

<sup>175</sup> D. M. Weissman and R. C. Headen, *The policies and politics of local immigration enforcement law: 287(g) program in North Carolina*, ACLU of North Carolina Legal Foundation and Immigration and Human Rights Policy Clinic University of North Carolina at Chapel Hill, February 2009, p41; R. Gabrielson and P. Gibling, "Reasonable doubt", *East Valley Tribune*, 8 July 2008, available at [http://www.eastvalleytribune.com/page/reasonable\\_doubt](http://www.eastvalleytribune.com/page/reasonable_doubt); R.L. Skinner, *The Performance of 287g Agreements*, DHS, OIG, March 2010, pp.14-15, 20, 25-29, available at [http://www.oig.dhs.gov/assets/Mgmt/OIG\\_10-63\\_Mar10.pdf](http://www.oig.dhs.gov/assets/Mgmt/OIG_10-63_Mar10.pdf).

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- <sup>183</sup> U.S. Department of Justice Indian Country Investigations and Prosecutions, 2011-2012, pages 46-49, available at <http://www.justice.gov/tribal/tloa-report-cy-2011-2012.pdf>
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- <sup>191</sup> Periodic Report of the United States to the United Nations Committee on the Elimination of Racial Discrimination, 12 June 2013, page 44, para 78.
- <sup>192</sup> General Comment no 8, para 2 (1982) (...“delays must not exceed a few days”).
- <sup>193</sup> Boumediene v. Bush, 553 U.S. 723 (2008).
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<sup>196</sup> While the USA's "understandings" stated at the time of ratification of the International Covenant on Civil and Political Rights noted its view that not all "distinctions" necessarily constitute "discrimination" if they are "at minimum, rationally related to a legitimate governmental objective", and the Human Rights Committee has noted that "not every differentiation of treatment will constitute discrimination, if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the Covenant" (General Comments 18 (1989) on Non-discrimination, and 32 on Right to equality before courts and tribunals and to a fair trial (2007), the distinctions and differentiation in this instance fall well outside any such reasoning.

<sup>197</sup> Committee on the Elimination of Racial Discrimination, General Recommendation 30, Discrimination against Non-Citizens, para. 18, U.N. Doc. CERD/C/64/Misc.11/rev.3 (2004). The Committee also stressed that although Article 1.2 provides for the possibility of differentiating between citizens and non-citizens, that article should not be interpreted to undermine the "basic prohibition on discrimination" or to "detract in any way from the rights and freedoms enshrined in international human rights law, including the ICCPR." *Id.* para. 2.

<sup>198</sup> International Convention on the Elimination Of all Forms of Racial Discrimination, Concluding observations of the Committee on the Elimination of Racial Discrimination: United States of America, para. 24, UN Doc.: CERD/C/USA/CO/6 (2008).

<sup>199</sup> See: USA: Trials in error. Third go at misconceived military commission experiment, July 2009, <http://www.amnesty.org/en/library/info/AMR51/083/2009/en>.

<sup>200</sup> Offer for Pretrial Agreement, United States v. Ahmed Mohammed Ahmed Haza, para. 11 (Military Comm'n, Guantánamo Bay, Cuba, 20 Dec. 2013), *available at* <http://www.documentcloud.org/documents/1020430-al-darbi-ii-ae010.html>.

<sup>201</sup> See USA: 12 years of Guantánamo detentions, 12 years of double standards, AI Index: AMR 51/001/2014, 9 January 2014, <http://www.amnesty.org/en/library/info/AMR51/001/2014/en>

<sup>202</sup> USA: Capital Deficit: A submission on the death penalty to the UN Human Rights Committee, AI Index: AMR 51/062/2013, 16 September 2013, <http://www.amnesty.org/en/library/info/AMR51/062/2013/en>

<sup>203</sup> Remarks by Richard B. Cheney, as prepared for delivery, American Enterprise Institute, 21 May 2009, <http://www.aei.org/speech/foreign-and-defense-policy/regional/india-pakistan-afghanistan/remarks-by-richard-b-cheney/>

<sup>204</sup> Hamdan v. Rumsfeld, 548 U.S. 557 (2006).

<sup>205</sup> US Department of Justice press conference transcript, <http://www.justice.gov/opa/pr/2009/ag-prconf-2009-11-13.pdf>

<sup>206</sup> Charlie Savage, 'In a Reversal, Military Trials for 9/11 Cases', The New York Times, 4 April 2011, *available at* <http://www.nytimes.com/2011/04/05/us/05gitmo.html?adxnnl=1&ref=opinion&adxnnlx=1406566910-ChEVNG8SKfvJzGtVuBCetQ>.

<sup>207</sup> UN Basic Principles on the Independence of the Judiciary, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 Nov. 1985 and 40/146 of 13 December 1985, Principles 5, *available at* <http://www.ohchr.org/EN/ProfessionalInterest/Pages/IndependenceJudiciary.aspx>.

<sup>208</sup> UN Human Rights Committee, General Comment No 32, Article 14: Right to equality before the courts and tribunals and to a fair trial, UN Doc CCPR/C/GG/32, 23 August 2007, para. 22.

<sup>209</sup> UN Human Rights Committee, General Comment No 32, Article 14: Right to equality before the

courts and tribunals and to a fair trial, UN Doc CCPR/C/GG/32, 23 August 2007, para. 22.