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UNITED STATES OF AMERICA
A Briefing for the UN Committee against Torture

In view of the examination of the USA's initial report on its implementation of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture) by the UN Committee against Torture in May 2000, Amnesty International takes this opportunity to comment on its concerns relating to torture and ill-treatment of detainees, prisoners and others by law enforcement officials in the USA.

1. OVERVIEW: SUMMARY OF CONCERNS

Since the USA ratified the Convention against Torture in October 1994, Amnesty International has reported on numerous instances of ill-treatment of men, women and children by US police or custody officials and on cruel, inhuman or degrading conditions of confinement. Ill-treatment in violation of the Convention has taken place at local, state and federal level and in some cases has amounted to torture. A detailed description of Amnesty International's human rights concerns in the USA, including on torture or ill-treatment, is given in *Rights For All*, published in October 1998, and in subsequent thematic reports.[1] Concerns include:

- beatings, excessive force and unjustified shootings by police officers
- physical and mental abuse of prisoners and detainees by prison guards, including use of electro-shock equipment to inflict torture or ill-treatment, and cruel use of restraints
- sexual abuse of female prisoners by male guards
- prisoners held in cruel conditions in isolation units
- ill-treatment of children in custody
- failure to protect prisoners from abuses by staff or other inmates
- inadequate medical or mental health care and overcrowded and dangerous conditions in some facilities
- racist ill-treatment of ethnic or racial minorities by police or prison guards
- ill-treatment of asylum-seekers held in detention, including in adult jails
- cruel conditions on death row and violations of human rights standards in the application of the death penalty

[1] A list of recent Amnesty International publications, which include reports on the death penalty, police brutality and human rights violations affecting women, children and refugees incarcerated in the USA, is given on the inside cover.

While measures have sometimes been taken to improve conditions or prevent abuses, in particular facilities or jurisdictions following court orders, legislative or other action, ill-treatment of the kind cited above continues to be widely reported and in some significant areas human rights protection for people deprived of their liberty has worsened (see below). Although there are no national statistics on the incidence of torture or ill-treatment, the cases highlighted by Amnesty International represent only a small proportion of the abuses which actually occur.[2]

Adequacy of government measures to prevent torture and ill-treatment

Articles 2, 11 and 16 of the Convention against Torture require each state party to take effective legislative, administrative, judicial or other measures to prevent torture and ill-treatment and to keep under systematic review interrogation rules and practices and arrangements for overseeing the custody and treatment of detainees, in order to prevent acts of torture and other cruel, inhuman or degrading treatment.

In its report to the Committee against Torture, the US government acknowledges that abuses by police and correctional employees take place, and that there are patterns of ill-treatment or bad practices in some cases, although it states that "torture does not occur except in aberrational situations and never as a matter of policy". The report further states that the US Government is aware of various problems and is "working to overcome them" by, for example, promoting compliance with the Convention against Torture through "strong policy guidance and enforcement". The US government also maintains that there are "effective administrative and judicial remedies" for victims of abuse.

It is true that the US system provides a range of remedies for torture or ill-treatment, including the right of victims of abuses to seek compensation or injunctive relief in the courts. The US Justice Department, through its Civil Rights Division, also has the power to bring criminal prosecutions against state or federal officials and to seek to change practices which violate US civil or constitutional rights. However, these measures are effective in a relatively small proportion of cases nationally, and recent legislation has made it more difficult for prisoners to seek redress in the federal courts for violations of their constitutional rights.[3]

There remain serious deficiencies in the system, including a lack of effective, independent oversight bodies in many areas to monitor police departments or jail and prison

[2]Although there are no centralized, national data, some idea of the extent of abuses can be garnered from the 1000s of complaints and tort claims filed with local courts; NGO reports; reports of police complaints bodies, and cases filed with the US Justice Department (some 10,000 complaints of police brutality filed with the Justice Department annually represent only a fraction of those filed nationwide against individual agencies or municipalities).

[3]The 1996 Prison Litigation Reform Act: for Amnesty International's concerns see under Prisons, below.

conditions. There are also no binding national standards or training governing practices which commonly lead to abuses (for example, on the use of restraints, stun weapons or chemical sprays by law enforcement officials). Sanctions against police or prison guards responsible for ill-treatment or excessive force are also frequently inadequate, leading to a climate of impunity in many areas.

Amnesty International is also concerned that the US Government has not done nearly enough to promote international standards in certain key areas. There are laws and practices authorized in the USA which either directly flout international standards or facilitate torture and ill-treatment. Many such practices are on the increase, partly because of more punitive attitudes towards offenders, and partly because of the pressures resulting from the massive increase in the US prison and jail population during the past two decades. Examples are the proliferation of "supermaximum security" facilities deliberately designed to house prisoners in long-term isolation in conditions of extreme deprivation; the increasing use of electro-shock weapons and other cruel methods of restraint; an increase in the number of children incarcerated with adults in inappropriate or abusive conditions; and an increase in the detention of asylum-seekers in punitive conditions in local jails, often far from relatives, their lawyers or monitoring groups. Policies giving male guards unsupervised access to women prisoners in many US facilities also flout international standards and can facilitate abuses.

While many of the above practices take place at state or local level, the US Government has done little to discourage them and, indeed, has actively supported some measures through federal funding or employing similar practices in the federal system.[4]

Another area where the US has been moving steadily backwards in human rights protection is its accelerating resort to judicial execution, often in violation of international standards. One recent example of the US Government's failure to improve this situation was the enactment of the Anti-Terrorism and Effective Death Penalty Act (AEDPA), signed into law by President Clinton in April 1996. The AEDPA severely curtails the powers of federal courts to remedy erroneous decisions by state courts. In his 1998 report on the USA, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions expressed his concern that the AEDPA has "further jeopardized the implementation of the right to a fair trial as provided for in the International Covenant on Civil and Political Rights and other international instruments".

[4]For example, the federal government operates a supermax facility and has funded some state supermax units; it employs electro-shock stun belts in the federal system. Asylum-seekers are under federal jurisdiction even when in local jails or privately operated facilities.

A second illustration of federal government failure concerns the continued use of the death penalty against people who commit crimes when under 18 years old -- child offenders. Such use of capital punishment is a flagrant violation of international law, a violation of which the USA is certainly the leading, and now almost the sole, perpetrator.[5] Whilst child offenders are not eligible for the death penalty under federal capital laws, more than 70 are currently held on death rows in 16 US states.

Michael Domingues, sentenced to death in Nevada for a crime committed when he was 16 years old, has challenged his death sentence as illegal, arguing that it is a violation of US treaty obligations and customary international law. In June 1999, faced with the *Domingues* appeal, the US Supreme Court requested the US Government to give its position on the issue. Far from seizing this opportunity to promote international standards, however, the US Solicitor General submitted an *amicus curiae* brief to the Court arguing in favour of the US status quo and urging the Supreme Court not to consider the issue. In November 1999, the Court denied *certiorari* to Michael Domingues. Since then, three more child offenders have been executed in the USA, bringing the number of child offenders put to death in the USA since January 1998 to seven. As far as Amnesty International is aware, there has only been one other child offender executed anywhere in the world during this period -- in Iran in October 1999.

On 10 December 1998, President Clinton issued an Executive Order on the implementation of Human Rights Treaties, in which he affirmed the US Government's commitment "fully to respect and implement its obligations under international human rights treaties to which it is a party". The Order established a federal Interagency Working Group to look at the implementation of treaties and to ensure that legislation proposed by the Administration and under consideration by Congress was "reviewed for conformity with international human rights obligations". The Working Group was also charged with looking at ways of monitoring the laws and actions of the US states and territories.

However, there is little evidence to date that the US Government has set up effective mechanisms for communicating with states regarding their obligations under the Convention against Torture and other international human rights treaties, or for reviewing existing laws or practices which fall short of international standards. Amnesty International and US human rights groups have urged the government to do more, actively, to promote training and the development of standards based on international standards; to engage with the states for adopting such standards; and to use opportunities such as that presented in *Domingues* (above) to emphasize compliance with international standards.

[5] US authorities continue to assert that they are within their right to execute child offenders because of the reservation the US Government made to article 6 of the ICCPR when it ratified it in 1992. The Human Rights Committee has said that the reservation contravenes the object and purpose of the treaty and should be withdrawn, and the Special Rapporteur on extrajudicial, summary or arbitrary executions said in 1998 that the US reservation should be considered void.

US obstacles to full implementation of the Convention

Amnesty International is also concerned that the USA, as with other international instruments, has entered a number of "reservations, declarations or understandings" to its ratification of the Convention, the effect of which is to limit the application of the treaty by ensuring that it offers no greater protection than already exists under US law. This severely undermines the Convention as a means of strengthening human rights protection in the USA, and indicates that the US is not prepared to look beyond its own constitution.

Amnesty International is particularly concerned by the US reservation to Article 16 (prohibition of cruel, inhuman or degrading treatment), in which the US considers itself bound "only insofar as the term "cruel, inhuman or degrading treatment or punishment" means the cruel, unusual and inhumane treatment or punishment prohibited by the ... Constitution of the United States".

The US reservation to Article 16 was made explicitly with reference to the continued use of the death penalty under US state and federal law, aspects of which the US Government acknowledged in its report to the Committee against Torture could be considered in some quarters to constitute "cruel and inhuman" treatment or punishment but which it wished to leave to the US "domestic political, legislative, and judicial processes" to decide. The reservation has far-reaching implications and can apply to any US laws or practices which may breach international standards for humane treatment but are allowed under the US Constitution, for example, prolonged isolation or the use of electro-shock weapons. The US entered an identical reservation to Article 7 of the International Covenant on Civil and Political Rights (ICCPR), which the Human Rights Committee has firmly stated is "contrary to the object and purpose of the treaty" and which it has urged the US to withdraw.[6]

The USA has also entered an "understanding" regarding the definition of torture which is arguably narrower than the broad definition given under Article 1 of the Convention.[7] Amnesty International believes that the definition of torture in Article 1, which has been internationally negotiated, should be accepted as such. It should be left to the Committee against Torture, rather than individual states, to interpret the provisions of the Convention, in order to provide a uniform standard for all States parties.

[6] When entering its reservation to Article 7 of the ICCPR, the US Government specifically acknowledged that the scope of the US Constitution was narrower in some respects than the scope of Article 7, and it cited the view adopted by the Human Rights Committee that prolonged judicial proceedings in cases involving capital punishment and conditions on death row might constitute cruel, inhuman or degrading treatment in contravention of this standard. The Human Rights Committee has also indicated that the definition of "cruel, inhuman or degrading treatment" may extend to such other practices as corporal punishment and solitary confinement.

[7] The Government of the Netherlands entered an objection on 26 February 1996 objecting, among other things, to the US understanding on the ground that "it appears to restrict the scope of the definition of torture under article 1 of the Convention".

The USA has also entered an "understanding" under Article 3 (refoulement) which places a higher burden of proof on someone seeking not to be returned to a country where he or she faces the risk of torture than is intended under the treaty (see Treatment of Asylum-seekers, below).

Amnesty International is further concerned that the USA has not recognized the jurisdiction of the Committee against Torture or the Human Rights Committee to hear individual complaints from people under US jurisdiction that their rights have been violated under the Convention against Torture and the ICCPR.[8] As the US has also declared both treaties to be "non-self executing" (meaning that, without specific implementing legislation, individuals cannot seek to enforce the treaties through private litigation directly in the US courts), individuals under US jurisdiction cannot take cases to their own domestic courts or to the international protection bodies set up under the treaties - thereby removing some of the essential guarantees offered by these treaties.[9]

Criminalizing torture under domestic law

Article 4 of the Convention provides that each State Party shall ensure that all acts of torture, attempts to commit torture or complicity in torture are offences under its criminal law, and that these offences should be made punishable by appropriate penalties which take into account their grave nature.

Despite this provision, the US Government has not made torture a distinct crime under federal law (except with regard to acts committed outside US territory) on the ground that existing federal and state laws already outlaw any act falling within the Convention's definition of torture.

Amnesty International recognizes that there are offences under existing US law (ranging from assault to murder, including specific offences applying to officials who deprive people of protected rights while acting "under color of law") which can be used to punish acts of ill-treatment or torture, some of which carry severe maximum penalties. However, there are instances in which law enforcement officers accused of gross abuses have been charged

[8]In contrast, 41 states allow individual complaints to CAT and 94 to the Human Rights Committee.

[9]The Human Rights Committee has commented that, when states ratify the ICCPR with reservations ensuring no change in existing national law and "when there is an absence of provisions to ensure that the Covenant rights may be sued on in the domestic courts, and, further, a failure to allow individual complaints to be brought to the Committee under the First Optional Protocol, all the essential elements of the Covenant guarantees have been removed" (General Comment 24). The same principle applies to the USA's self imposed limitations under the Convention against Torture.

with offences that do not match the gravity of the acts involved. Amnesty International believes that greater protection would exist were US laws (at state and federal level) to be amended explicitly to outlaw torture. This would send a clear message at all levels that acts falling within the definition of Article 1 of the Convention will not be tolerated or prosecuted under the guise of a lesser offence, and would serve to strengthen the deterrence as well as punishment of such crimes.

A summary of Amnesty International's concerns on torture and ill-treatment, with recent case examples, is given below.

2. POLICE BRUTALITY AND EXCESSIVE FORCE

In *Rights for All* and subsequent reports, Amnesty International has documented patterns of police ill-treatment across the USA, including police beatings, unjustified shootings and the use of dangerous restraint techniques to subdue suspects.[10] Many reports of ill-treatment involve patrol officers on the street. There are also reports of torture or ill-treatment in police stations. There is evidence that racial minorities are disproportionately the victims of police ill-treatment, including false arrest and harassment as well as physical and verbal abuse. In many areas it is alleged that black people and other minorities (especially young males) are unfairly targeted on account of their race and subjected to unjustified police stops and searches as well as use of excessive force resulting in ill-treatment.[11] Mentally ill and homeless people are also frequently the victims of police abuse. Gays and lesbians have been subjected to harassment or brutality in some areas. Some police departments have undertaken reforms in recent years, but many still fail to adequately monitor or discipline officers involved in repeated abuses.

[10]In addition to *Rights for All*, see recent Amnesty International reports: *USA: Race Rights and Police Brutality* (AI Index AMR 51/147/99); *California: Update on Police Brutality* (AI Index: AMR/150/99) and *Summary of Amnesty International's concerns on police abuse in Chicago* (AI Index: AMR 51/168/99). See also *Police Brutality and Excessive Force in the New York City Police Department*, June 1996 (AI Index: AMR 51/36/96).

[11]Amnesty International concerns about the impact of race on police brutality are dealt with in *Rights for All* pages 37-40 and in *Race, Rights and Police Brutality*, ibid.

Although the scale of police misconduct is difficult to measure,[12] widespread, systematic abuses have been uncovered in several of the nation's largest police departments in recent years, with patrol officers in certain neighbourhoods found guilty of rampant brutality, corruption and cover-ups. A major inquiry is currently underway into serious human rights abuses by Los Angeles Police Department (LADP) officers from Rampart Division and at least two other inner-city precincts, where it is alleged that officers beat and shot unarmed suspects, falsified arrests and lied to cover up their actions. The scandal, which came to light through the testimony of an officer arrested on unrelated charges in September 1999, raises concern about the adequacy of the LAPD's oversight procedures, despite some reforms put in place since the Christopher Commission inquiry in 1992.[13] Similar patterns of police corruption and brutality have been exposed in other cities, including New York, New Orleans, Philadelphia and Pittsburgh.[14]

Shootings

Amnesty International has received reports of dozens of US police shootings which appear to contravene international standards on the use of force and firearms.[15] They include cases in which unarmed suspects have been shot during routine traffic stops, while fleeing minor crime scenes, or after being cornered at the end of pursuits when they posed no threat. Mentally ill or emotionally disturbed individuals have also been shot in circumstances suggesting that they could have been subdued by non-lethal means. In a disproportionate number of cases, the victims of such shootings have been African American or other minorities, including children.

Although US police guidelines stipulate that officers may fire their weapons only when their lives or the lives of others are in direct danger, officers involved in controversial shootings are frequently exonerated or receive only minor discipline. Often, officers involved in such shootings or other use of excessive force have been found to have a history of prior shootings or complaints against them but have not been adequately monitored. There is also concern that the introduction by US police forces of powerful semi-automatic weapons, which fire many rounds in rapid succession, may increase the risk of unjustified shootings or death

[12]There are no reliable national statistics on police use of excessive force or deaths in custody, as acknowledged in the US report to the Committee against Torture. Although surveys show that most police encounters with the public do not result in the use of force, many thousands of complaints of brutality are filed annually against local departments or with the US Justice Department.

[13] The wide-ranging inquiry instituted after the LAPD beating of black motorist Rodney King in March 1992.

[14]See *Rights for All*, pages 21-24.

[15] Standards laid down in the UN Code of Conduct for Law Enforcement Officials and the Basic Principles on the Use of Force and Firearms require that force should be used only when strictly necessary and designed to minimize damage and injury, and that deadly force should be used only when unavoidable to protect life.

from multiple gunfire. Amnesty International believes there is a need for thorough investigations and independent review of police shooting incidents, and for better safeguards and training to minimize the risk of unnecessary deaths or injuries from police firearms. Examples of police shootings include:

California: Margaret Mitchell -- a frail, mentally ill, homeless, African American woman in her 50s -- was shot dead by a LAPD officer in June 1999 after she threatened officers with a screwdriver as they questioned her about a shopping cart containing her belongings. In January 2000 a civilian review panel concluded that the shooting violated departmental policy, contradicting the findings of an earlier internal police inquiry which had cleared the officers of breaching policy.
Connecticut: In April 1999, 14-year-old unarmed African American Aquan Salmon, a suspect in an attempted street robbery, was fatally shot in the back by a police officer as he tried to run away. The officer was cleared of wrongdoing.

New York: In February 1999, Amadou Diallo, an unarmed African immigrant, was shot dead outside his apartment building by four white NYPD officers who claimed they mistook the wallet he was holding for a gun. The officers opened fire 41 times, striking Diallo 19 times. In February 2000, all four officers were acquitted of criminal charges in the case. The case is one of a series of controversial police shootings of unarmed minorities by the NYPD - including at least two more since the Diallo verdict - which have caused outcry in the community. Amnesty International has called for a full public inquiry into NYPD police shootings and police tactics and training.[16]

Philadelphia: In October 1998, a police officer fatally shot 18-year-old unarmed black teenager Donta Dawson in the head as he sat in his stationary car. The officer - who had 11 prior complaints of excessive force and other misconduct against him - said he opened fire after seeing Dawson lean forward suddenly. The family were later awarded more than $700,000 in damages.

Abuses involving non-lethal weapons

US law enforcement agencies deploy a variety of so-called "non-lethal" weapons to subdue resisting suspects, including electro-shock weapons, batons and chemical sprays. International standards encourage the development of non-lethal incapacitating weapons, in order to decrease the risk of death or injury. However, the standards also state that these should be "carefully evaluated" and that "the use of such weapons should be carefully controlled".[17]

[16]In *USA: Police brutality and excessive force in the New York City Police Department*, published in June 1996 (AI Index: AMR 51/36/96), Amnesty International raised concern, among other things, about more than 30 cases of questionable shootings by NYPD officers over several years, nearly all of racial minorities, and it called for a full inquiry: no such inquiry has been carried out to date.

[17]Principles 2 and 3 of the UN Basic Principles on the Use of Force and Firearms

However, there is inadequate monitoring of the deployment of non-lethal weapons in the USA, particularly pepper spray and stun devices which are increasingly used and which have been associated with deaths, torture and ill-treatment.

Electro-shock stun devices

Some police departments authorize the use of tasers and stun guns to subdue suspects and several deaths have occurred following use of stun weapons.[18] Portable, easy to use, and with the potential to inflict severe pain without leaving substantial visible marks on the human body, electro-shock stun equipment is, Amnesty International believes, particularly open to abuse by unscrupulous law enforcement officials. Of concern also is evidence which suggests that electro-shock devices may produce harmful or even fatal effects, particularly in the case of persons suffering from heart disease, neurological disorders or who are under the influence of drugs.

A growing number of US law enforcement agencies are also using remote-controlled electro-shock stun belts to restrain prisoners (mainly during transportation and in courtrooms). The belts are designed to inflict severe pain and instant incapacitation at the push of a button, through a 50,000 volt electrical charge which passes through the wearer's kidney. Amnesty International believes that the use of stun belts, even without their activation, is inherently cruel and degrading, and it has called for them to be banned. However, they continue to be used in more than 100 US jurisdictions, including in the US Marshal's Service (a federal police agency).

In January 1999, a federal judge issued a preliminary injunction barring the stun belt from use in courtrooms in Los Angeles County after one was activated against defendant Ronnie Hawkins on the order of a judge whom he had repeatedly interrupted during his sentencing hearing. The federal judge noted that "the stun belt, even if not activated, has the potential of compromising the defense. It has a chilling effect... An individual wearing a stun belt may not engage in permissible conduct because of the fear of being subjected to the pain of a 50,000 volt jolt of electricity". Amnesty International submitted an *amicus* brief to the court in support of Hawkins' claim that activation of the belt in his case constituted torture or cruel, inhuman or degrading treatment in violation of international law. The federal government, itself a user of the stun belt, filed its own *amicus* brief in support of Los Angeles County's appeal against the ban. The case was still pending as of mid-April 2000.

In June 1999, severely mentally ill Arizona death row inmate Claude Maturana suffered a seizure in the back of a Department of Corrections van as he was being transported from Arizona State Hospital to a court hearing. According to available records, he has never had such a seizure before or since, despite his long-term illness. At the time of the seizure he was shackled, handcuffed and wearing a stun belt. Maturana alleged that he had been

[18]See, for example, pages 30 and 37 of *USA: Rights for All*, ibid

electro-shocked by the stun belt, a claim reportedly endorsed by a doctor who examined him following the incident. The state has denied the allegation. It is now well-nigh impossible to prove whether the stun belt was activated or not, and illustrates one of Amnesty International's concerns about stun weapons -- namely that when there are no witnesses, such as during transportation, electro-shock stun weapons are open to abuse.

Stun belts and other weapons such as stun shields and stun guns are being increasingly used in US jails and prisons and there are many reports of torture and ill-treatment involving such equipment (see below).[19]

The Special Rapporteur on torture has stated his concern "at the use of practices such as chain gangs, of instruments of restraint in court and of stun belts and stun guns, some of which can only be intended to be afflictive and degrading, others of which have the same effect." He urged that the US Government "use all means, including judicial ones, to review the compatibility of such measures with the affected persons' civil rights".[20]

Amnesty International has urged the federal, state and local authorities to ban the use of stun belts by law enforcement and correctional agencies, and prohibit their manufacture, use, promotion and transfer. It has also called for all other electro-shock equipment to be suspended, pending the outcome of rigorous, independent inquiry into their use. No such inquiry has taken place to date.

OC (pepper) and other chemical sprays

Most US police agencies are reported to authorize the use of Oleoresin Capsicum (OC) spray (also known as "pepper spray") - an inflammatory agent derived from cayenne peppers. OC spray inflames the mucous membranes, causing coughing, gagging, choking, shortness of breath and an acute burning sensation on the skin and other exposed areas.

Although OC spray has been promoted as a safer and more effective alternative to chemical mace or impact weapons when dealing with violently resisting suspects, a number of studies have warned of the risk of severe adverse health effects from the spray, particularly in the case of people who are agitated or under the influence of drugs, or who suffer from respiratory problems such as asthma or heart disease.[21] Since the early 1990s, more than 90 people in the USA are reported to have died in police custody after being exposed to OC spray. While most deaths have been attributed by coroners to other causes, such as drug intoxication or positional asphyxia, or are unexplained, there is concern that OC spray could be a factor in some cases.

[19] See *Cruelty in Control? The Stun Belt and other Electro-Shock equipment in Law Enforcement* (AMR 51/54/99, June 1999).

[20] UN Doc. E/CN.4/1998/38, 24 December 1997, paragraph 203.

[21] See *Rights for All*, pp 35 (note 32).

There are also frequent reports of police ill-treatment involving OC spray, including reports of officers dousing suspects with spray as a form of "street justice" after they had already been restrained; people being subjected to repeated bouts of OC spray, despite manufacturers' warnings of the health risks from more than one or two second bursts, or being sprayed at very close range or in an enclosed space without having it washed off. In April 1999 Earl Faison (black, a suspect in a police shooting) died in police custody in New Jersey after allegedly being punched and doused in the nose and mouth with pepper spray while handcuffed in police headquarters. In May 1999, Lewis Rivera, a homeless man arrested for loitering in a shopping mall, died in police custody in Miami, Florida, after being sprayed with pepper spray, kicked, beaten and shackled and left in a police cell.[22] James Earl Livingston died in July 1999 in Tarrant County Texas, after being pepper-sprayed and placed in a restraint chair.[23]

OC spray has also been used in a deliberately cruel manner against non-violent protesters. For example, in October 1997 sheriff's deputies in Humboldt County, California, swabbed liquid OC spray directly into the eyes of non-violent anti-logging protesters who had locked themselves together, action which Amnesty International condemned as "tantamount to torture". A federal judge refused to grant an injunction to end the practice on the ground that it caused only "transient pain", and OC spray has reportedly been applied directly to the eyes in other cases, including in the cases of World Trade Organization (WTO) protesters in Seattle in December 1999. For example, some non-violent protesters who refused to leave police buses on arrival at Seattle detention centres alleged that police officers pulled back their eyelids and put pepper spray or gel into their eyes, nose and mouth. Another protester alleged that he had pepper foam deliberately rubbed into his eyes with a cloth after being strapped into a restraint chair in King County jail.[24]

There have also been allegations of the indiscriminate spraying of OC spray and other chemical gases into large crowds or enclosed spaces, where the risk to health of those present are not taken into account. In December 1999, Amnesty International wrote to the Seattle authorities to express concern about reports of police spraying large quantities of OC spray and tear-gas indiscriminately against non-violent protesters, residents and bystanders during the WTO demonstrations (above); the victims included the elderly and children and some people were sprayed repeatedly while lying on the ground. During a 51-day stand-off with members of an armed religious sect in Waco, Texas, in 1993, federal agents pumped huge quantities of CS gas for hours indiscriminately into a compound known to hold children as well as adults. The siege ended when fire engulfed the compound, killing over 70 men,

[22]Both cases cited in *Race Rights and Police Brutality*.

[23]Article by Anne-Marie Cusac in *The Progressive*, April 2000

[24]These and other allegations of ill-treatment during the WTO protests are the subject of several pending civil lawsuits.

women and children. Abusive and indiscriminate use of OC spray and tear-gas has also been reported in US prisons.

Despite the above concerns, there is no consistent monitoring of the use of OC spray or other chemical weapons in the USA, and there is wide variation in the guidelines and practice of different agencies. Some authorities authorize OC spray, for example, only in the case of violently resisting suspects; others, as shown above, authorize its use against passive resisters who refuse to comply with orders. Policies also vary regarding how, and in what quantities, chemicals may be used.

Amnesty International has called on the federal authorities to establish an independent nationwide review of the use of OC spray by law enforcement and correctional agencies and it has urged all agencies to either cease using OC spray or to introduce strict guidelines and limitations on its use, with clear monitoring procedures. To Amnesty International's knowledge no such review has yet taken place and monitoring continues to be inadequate.[25]

Dangerous restraint holds

During the past decade many suspects in US police custody have died from "positional asphyxia" after being placed in dangerous restraint holds such as "hogtying" (where the subject is trussed up from behind with their ankles shackled to their wrists) or chokeholds (application of pressure to the neck). Although the National Institute of Justice has issued guidelines warning of the dangers of hogtying, and advise against placing a suspect in a prone position while in restraints, there is no directive urging that the procedure be discontinued altogether. Although a number of US police departments have banned hogtying or chokeholds, others still authorize these procedures and deaths continue to be reported. For example, Dwayne Nelson died after being placed in a Total Appendage Restraint Procedure (TARP), a form of hogtie, by Los Angeles County Sheriff's Deputies while being transported to jail in September 1998: he lost consciousness in the patrol car and died in hospital less than two hours later. In January 1999, Michael Labmeier died in Kenton County Jail, Kentucky, after being pepper sprayed (possibly electro-shocked with a stun shield) and placed in a hogtie.[26] In October 1999 Demetrius J Brown died after being placed in a neck-hold while guards tried to strap him into a restraint chair in Duval County jail in Jacksonville, Florida;

[25]The International Association of Chiefs of Police (IACP) and the National Institute of Justice conducted a joint study of OC spray in 1995, based on its use by the Baltimore Police Department (Maryland), and the IACP subsequently issued a training paper setting out its own recommended guidelines (including maintaining a distance of 2-10 feet between officers and the subject and a general recommended limit of a single one-to-three second burst of the spray). However, these guidelines have not been uniformly adopted by law enforcement agencies and, to Amnesty International's knowledge, there has been no detailed survey or monitoring of practice by different agencies or of recent deaths following use of the spray.

[26]These and other deaths are cited in *Race Rights and Police Brutality* pages 18-20.

his was the second chokehold death in the same jail in 16 months, and led to an eventual ban on the procedure in that jail.

Amnesty International believes that hogtying and other dangerous restraint holds constitute cruel, inhuman or degrading treatment and violate international standards which require law enforcement officers, when force is unavoidable, to exercise restraint in its use and "minimize damage and injury, and respect and preserve human life".[27]

Ill-treatment in police stations

Suspects have been tortured or ill-treated inside police stations. In December 1999 a NYPD officer was sentenced to 30 years' imprisonment after pleading guilty to the 1997 torture of Haitian immigrant Abner Louima by assaulting him and ramming a stick into his rectum in a station bathroom, causing severe internal injuries. The officer had originally denied torturing Louima, but changed his plea to guilty after another officer broke the "code of silence" and testified against him. Three other officers were convicted in March 2000 of conspiring to cover up the attack. Amnesty International has received other reports of the torture or ill-treatment of people in custody in New York and other jurisdictions but criminal convictions have been rare.

US constitutional law provides a number of procedural safeguards ("Miranda" rules) for suspects under arrest or interrogation including the right to remain silent and to have access to an attorney. A suspect's statement/confession cannot be used at trial unless he or she was informed of these rights, understood them, and gave the statement "voluntarily".[28] However, there have been allegations of coerced confessions while suspects have been held for questioning without their attorneys present. Ten men on death row in Illinois, who allege they were tortured under interrogation at a Chicago police station in the 1980s, some of whom signed confessions, are currently seeking a retrial or review of their cases. The station area's commander was fired in 1993, following allegations of the torture of more than 60 suspects under his command, spanning a 20-year period, but no other officers in the case were disciplined and several were promoted or allowed to retire on full benefits.

Brian Keith Baldwin, African American, was executed in Alabama's electric chair on 18 June 1999. The main evidence at his trial in 1977, which lasted a day and a half and was marked by racism, was his confession which he alleged was extracted under beatings, actual

[27] Basic Principles on the Use of Force and Firearms, 5(b)

[28] The *Miranda* rules (*Miranda v Arizona*, 1966) are under attack from some quarters. In 1999, the Fourth Circuit Court of Appeals ruled (*Dickerson v USA*) that federal law enforcement officials are not bound by Miranda because of a little-known law enacted by Congress in 1968 (USC 3501). At the time of writing, the US Supreme Court was due to hear arguments in the Dickerson appeal on 19 April 2000. The US Justice Department favours retention of the Miranda rules. Among those seeking their reversal are reported to be the National Association of Police Organizations, the Federal Bureau of Investigation Agents Association, and the National District Attorneys Association.

or threatened torture with an electric cattle prod, and death threats. Shortly before his execution over two decades later a former police officer stated that Baldwin had been "beaten and physically mistreated" during interrogation. See also children (below).

There have also been reports of suspects being interrogated while strapped into four-point restraint chairs which have been linked to torture and abuse (see below). In August 1999 a Knox County, Tennessee judge ruled that the confession of robbery suspect E.B. Collier was involuntary and thus unlawful because it was made while he was confined in a restraint chair during his five-hour interrogation.[29]

Interrogation of children

There have been disturbing cases in which children have been held in police custody and questioned about serious crimes without access to their parents or other representatives. Some children have been sentenced to death after trials at which their confessions, taken under coercive circumstances by police, were used as evidence against them. On 8 July 1999, the Florida Supreme Court granted death row prisoner Nathan Joe Ramirez a new trial on the grounds that the police had violated his constitutional rights in obtaining a confession. One of the judges stated that the police had engaged in "a carefully orchestrated trap" and a "purposeful sleight-of-hand" in order to overcome Ramirez' *Miranda* protections. The judge noted that this police violation was "even more egregious here because the accused was a minor".[30] Ramirez was 17 at the time.

Douglas Christopher Thomas was executed in Virginia on 10 January 2000 for a crime committed when he was 17. In November 1990, without a lawyer or an adult present, while still under the effects of alcohol and drugs, and having slept for only two hours in the past 40, he had confessed to shooting both parents of his 14-year-old girlfriend. He later partially retracted the confession, but the full statement was admitted into evidence. Post-conviction evidence indicates that he may have been telling the truth when he stated that he had not fired the second, fatal shot at the mother -- the murder for which he was sentenced to die.[31]

In April 1999, an appeals court overturned the conviction of 14-year-old African American girl Lacresha Murray, sentenced in Texas to 25 years imprisonment for the beating to death of two-year-old Jayla Belton in May 1996. Five days after the death, Lacresha Murray, then 11 years old, was interrogated by members of the Austin Police Department for two and a half hours without a break, without a lawyer present, and without her parents or guardians being informed. She denied killing Jayla Belton numerous times during the

[29] Reported by Anne-Marie Cusac in *The Progressive,* April,2000

[30] Ramirez v State, 8 July 1999

[31] See Shame in the 21st Century: Three child offenders scheduled for execution in January 2000 (AMR 51/189/99, December 1999).

interrogation, but signed an incriminating police-written statement saying that she may have dropped and kicked the toddler. The 3rd District Court of Appeals overturned her conviction saying that this signed "confession" was illegal because she was alone when she gave it and may have been the product of fear or despair on her part.

In August 1998, two African American boys, aged seven and eight, were charged with first-degree murder on the basis of alleged statements they made to Chicago police while being questioned for hours without their parents, attorney or a youth officer being present. The charges were later dropped after discovery of evidence pointing to an adult culprit. Following concern about this case, the Chicago police chief issued a directive requiring officers to make "every reasonable effort" to have parents present when questioning suspects under the age of 13.[32] Juvenile justice advocates have criticized this measure because it places no absolute obligation on the police to locate a child's parent or guardian before an interrogation and there is no exclusionary rule making such statements inadmissible if the child is questioned alone. It also excludes children over 12.[33]

The practices described above are inconsistent with international standards which recognize the need for special protection for children in the justice system, including the right of children to counsel and to the presence of a parent or guardian at all stages of the proceedings.[34]

Adequacy of remedies for police abuse

In *Rights for All* (pages 43-51) Amnesty International describes the remedies available to deal with police abuse in the USA, and its concerns regarding the adequacy of some of these mechanisms. Amnesty International's concerns include:

- Although some officers have been convicted of using excessive force - usually in high profile cases - successful prosecutions of police officers for ill-treatment are rare, despite a range of state and federal laws punishing offences from assault to murder. The "code of silence", in which officers refuse to testify against each other or cover up evidence, can hamper investigations, particularly if there are no independent witnesses. Civil rights lobbyists claim that local prosecutors are often less diligent in

[32]There have been several cases in Chicago in which minors under 18 have been held without access to parents or attorneys and subsequently charged with serious crimes. In one case, 13-year-old Marcus Wiggins, who alleged he was subjected to electro-shock torture while in custody in 1991, had the charges against him dropped and the city later agreed to settle a civil lawsuit for $100,000.

[33]For more information on these and other cases in Chicago, see *USA: Summary of Amnesty International's Concerns in Chicago*, October 1999 (AI Index AMR 51/168/99)

[34] *UN Standard Minimum Rules for the Administration of Juvenile Justice*. The rules also states that the same principles should guide the treatment of children in the adult criminal justice system.

pursuing criminal cases against police officers because they rely on police cooperation in other cases.

- The US Justice Department may bring federal criminal civil rights charges against state, local or federal officials who violate the rights of others while acting under "color of law". However, only a very small proportion of the cases investigated by the Justice Department result in prosecutions. This is partly due to the difficulties cited above as well as a lack of resources. Federal rules of evidence in such cases are particularly stringent, with a requirement to prove beyond reasonable doubt that the officer in question acted with specific intent to violate a federally protected right.

- Police internal investigations into police misconduct have often been criticized as inadequate and lacking in thoroughness and openness. Many departments have failed to impose adequate discipline even when complaints have been upheld.

- Although civil lawsuits provide financial compensation to individual victims of police brutality, they rarely serve to hold either police departments or individual officers accountable or to change underlying practices. In most cases the money is paid out of a general city or county fund.

- Several police agencies have introduced detailed monitoring systems to enable them to identify officers involved in repeated complaints and to root out systemic problems such as racism. However, many departments still fail to operate adequate tracking systems and some do not even monitor officers named in civil lawsuits.

- A growing number of US police departments are now subject to some form of external oversight, but the mechanisms in place vary considerably in their effectiveness. Many review boards lack sufficient funding or powers to perform their duties effectively or are hampered by a lack of police cooperation.

Role of federal government in bringing pattern and practice cases

Legislation passed by Congress in 1994 gave the US Justice Department the power to bring civil actions in the federal courts against police departments accused of engaging in a "pattern or practice" of civil rights violations.[35] This is an important new remedy which has led to significant reform programs being drawn up in several police departments since 1997. In most cases the Justice Department has tried to secure court-approved agreements ("consent decrees") with the agencies concerned to change their practices without the need to proceed to a full trial.

[35]Title XXI, section 210401 of the Violent Crime Control and Law Enforcement Act, 1994 (Crime Control Act).

However, the process is lengthy and expensive. Since the legislation was enacted, the Justice Department has completed investigations and obtained consent decrees in only three departments nationwide: Pittsburgh (1997); Steubenville, Ohio (1998) and Columbus, Ohio (1999).[36] Amnesty International and other human rights groups have called on Congress to provide greater funding to enable the Justice Department to pursue more investigations.

Lack of national data on police use of force

Civil rights organizations and independent police experts have long expressed concern at the lack of accurate national data on police use of force in the USA, including questionable shootings and other deaths or injuries in police custody.

A clause was entered into the 1994 Crime Control Act, which required the Attorney General to acquire national data about the use of excessive force by police officers for research and statistical purposes and to publish an annual report. However, Congress, while passing the legislation, has failed to fund the measure. Amnesty International believes that such data is essential for the authorities to be able to review practice, take remedial action where there are patterns of concern, and to hold the police publicly accountable.

3. TORTURE AND ILL-TREATMENT IN PRISONS AND JAILS

In *Rights for All* (chapter 4) Amnesty International documented widespread brutality and inhumane conditions in US jails and prisons. The unprecedented increase in the numbers of people incarcerated, and a greater focus on punishment rather than rehabilitation, has led to cuts in facilities in many prisons and to methods of control that can be cruel and degrading.[37] There are increasing reports of prisoners being tortured and ill-treated with electro-shock devices such as stun guns, stun shields or stun belts. Prisoners have died or been injured through the cruel use of mechanical restraints or chemical sprays. A growing number of prisoners - many of them mentally ill or disturbed - are being confined to long-term or indefinite isolation in acutely deprived conditions in supermaximum security units which the UN Human Rights Committee has indicated is incompatible with human rights standards (see below).

Despite massive prison building programs, the demand for space has outstripped funding in many areas, with jail and prison systems suffering from acute overcrowding, cuts

[36] As of March, 2000. It has also filed a lawsuit against the New Jersey State Police and several other investigations are pending.

[37] In February 2000 the number of people incarcerated in US jails and prisons reached just over 2 million, a quarter of the world's officially recorded prison population, and more than three times the number incarcerated in 1980 (it also marked a 70% rise in the last 10 years). The increase is due largely to policies mandating longer sentences - particularly for drugs offences - and abolishing parole, than to an increase in the crime rate (which has been falling over the past few years while the inmate population has continued to rise). Two-thirds of the US prison population are serving sentences for non-violent offences.

in amenities and inadequate medical or mental health care. Overcrowding and lack of supervision has also meant that vulnerable inmates (such as the young, weak or mentally ill) are often at increased risk of abuses (including beatings, extortion and rape) from predatory inmates. The hiring of untrained and inexperienced staff to cope with rising numbers of inmates has also contributed to an increase in guard abuses in some jurisdictions, including in privately run jails or prisons. Some institutions lack clear policies regulating the use of force or restraints.

Reports of ill-treatment received by Amnesty International during the past year include deaths in custody from alleged guard beatings and racist abuse (over 60% of US prisoners are racial minorities). As in previous years, many reported abuses have taken place in isolation units in high security prisons. Ill-treatment and excessive force is frequently reported to take place during "cell extractions": a procedure in which uncooperative prisoners are forcibly removed from their cells by teams of guards dressed in protective suits and armed with weapons such as batons, pepper spray and stun shields. Cases in which Amnesty International has raised concern include the following:

Florida: Federal and state investigations opened into allegations of systematic beatings by guards of prisoners in X-Wing, a punitive isolation unit in Florida State Prison, after prisoner Frank Valdes died of injuries sustained while he was being "extracted" from his cell on 17 July 1999; all his ribs were broken and his body showed imprints of boot marks. Earlier beatings, which guards had tried to cover up, came to light after prisoners wrote to a newspaper about their plight. Five corrections officers charged in connection with Valdes' death have pleaded not guilty of any wrongdoing. Their trial was still pending as of April 2000.

New York: Thomas Pizzuto, who was serving a 90-day jail sentence for traffic violations, died of a ruptured spleen and other injuries after two guards allegedly beat him in his cell at the Nassau County Jail, New York, in January 1999. The guards reportedly became angry when Pizzuto, a recovering heroin addict, repeatedly called for a methodone prescription. After his death, it emerged that local prosecutors had received more than 100 complaints of brutality from former jail inmates over a period of years but took no action. Two guards have since been indicted on federal murder charges for their role in Pizzuto's death; a third pleaded guilty to acting as a look-out while Pizzuto was being beaten; and a fourth was charged with filing a false report to cover up the incident.

Virginia: There have been widespread allegations of ill-treatment, including racist abuse and misuse of electro-shock weapons, in Red Onion and Wallens Ridge state prisons, two new supermaximum security facilities in Virginia. Both prisons are situated in a remote rural area and are staffed mainly by white guards; most inmates are from racial minorities, many from other jurisdictions, including urban areas such as Washington DC.

Abuses in Red Onion State Prison include allegations that shackled inmates, most of whom are black, are routinely made to wear stun belts and have been arbitrarily shocked with electro-shock weapons; have had painful rubber pellets fired at them; and have been subjected to racist slurs.[38]

In November 1999, Amnesty International called for an investigation into allegations that prisoners transferred to Wallen Ridge from New Mexico were subjected to physical and psychological abuse including random night beatings, being tortured with electro-shock stun guns and deprived of sleep and medical care. The FBI were reported to be looking into the allegations in March 2000. Amnesty International has also written to the authorities about an alleged shooting with rubber bullets in Wallens Ridge on 7 March 2000, and is concerned by reports of another such shooting against Connecticut prisoners held in the prison on 27 March, and of the alleged suicide of a Connecticut prisoner on 5 April.

Amnesty International has called for an immediate ban on use of electro-shock weapons
in Virginia prisons, but no action has been taken by the authorities.

California: In 1997 guards at Calipatria prison allegedly incited a white supremacist inmate gang to beat up two openly gay prisoners (Eugene McCann and Jeffery McKilligan), according to a lawsuit filed in April 2000. The lawsuit alleges that prison officials subsequently conspired to cover up the guards' role in the attack. The case is one of a series of incidents in California prisons in which guards have been accused of failing to protect prisoners or deliberately setting them up for attack. In August 1999, Amnesty International wrote to the California authorities about guards' failure to protect a gay prisoner who in July 1999 was strangled to death by another inmate known to be dangerous, after he was left alone with him for over an hour in the exercise yard of the Corcoran SHU. In April 2000 the trial opened in the case of eight guards indicted on federal charges of having incited violence by staging "gladiator style" fights among prisoners in Corcoran Prison's High Security Unit between 1988 and 1994: incidents during which guards shot dozens of unarmed prisoners, seven fatally. Two prison guards who eventually became "whistle blowers" and reported the abuse were subsequently threatened, ostracised and lost their jobs. State legislative hearings in 1998 criticized the Department of Corrections for failing to investigate or prevent abuses in prisons and for inadequate discipline and oversight.

Cruel Use of Mechanical Restraints

Amnesty International continues to receive reports of the cruel and unnecessary use of shackles and other forms of mechanical restraints in US jails and prisons.

[38]Human Rights Watch also reported on abuses in Red Onion State Prison, in April 1999.

For example, in December 1999 Amnesty International received reports of the punitive use of restraints in La Plata County Jail, Colorado. Allegations included inmates being handcuffed to rings set in walls or on the floor of isolation cells for hours at a time as punishment or being held face-down on the floor of cells in four-point restraint, with their ankles secured by leg-irons and their hands cuffed to wall or floor rings. In at least one incident, a stun gun was allegedly used to electro-shock a prisoner handcuffed to the wall, as punishment for verbal aggression. Amnesty International is concerned that when the prisoner filed a complaint, the investigating officer allegedly responded that the use of the stun gun in this way had been an act of "calm professionalism". Amnesty International believes that such a response can only encourage misuse of electro-shock weapons in the jail. Amnesty International called for a full investigation into the allegations and urged that the use of stun weapons in the jail be suspended.

In February 2000, a lawsuit was filed alleging widespread abuse at a juvenile detention facility in Plankinton, South Dakota. The allegations included children being placed in punitive handcuffs and shackles, causing injury and discomfort: some were forced to lie on their backs spread-eagled in four-point restraints for hours at a time, including overnight. It was also alleged that girls were forcibly stripped by male staff while held in four-point restraint.

Practices such as those described above constitute cruel, inhuman or degrading treatment and violate international standards on the use of restraints. The UN Standard Minimum Rules for the Treatment of Prisoners (Standard Minimum Rules) state that restraints should be used only for so long as is "strictly necessary" to prevent damage or injury or as a precaution against escape, and should never be imposed as punishment. The rules also state that "chains or irons shall not be used as restraints". These standards are routinely ignored in the USA, where prisoners - including young children[39] - are commonly shackled in waist chains and leg-irons during transportation, and even when moving within prisons. Amnesty International is also concerned by the routine shackling of pregnant women prisoners before, during or immediately after giving birth, which it considers to be cruel, inhuman and degrading treatment (see below).

Several jurisdictions have re-introduced "chain gangs": prison work crews where prisoners are made to labour while shackled together - a practice which Amnesty International has condemned as cruel, inhuman or degrading.

[39] For example, authorities in Jefferson County, Colorado, used handcuffs and leg shackles against 10-year-old Raoul W. (variously described as "slight" and "small for his age") after he was taken into custody on 30 August 1999. According to the Jefferson County Sheriff's Office this is standard procedure. Any time someone is taken into custody, "irrespective of gender or age" they are handcuffed. Leg shackles are used on children when more than one are brought to court. Amnesty International believes that the use of handcuffs and leg shackles against Raoul W. amounted to ill-treatment, and that the use of such restraints without taking into account the detainee's age or size contravenes international standards relating to children.

Although the American Correctional Association and correctional health care bodies have standards on the use of restraints, these are not binding and policies and practice vary among jurisdictions. Monitoring for abuses is inadequate in many areas.

Torture and ill-treatment involving restraint chairs

In *Rights for All* (pages 67-70), Amnesty International documented torture and ill-treatment involving the use of restraint chairs (a metal-framed chair which allows prisoners to be immoblized with four-point restraints securing both arms and legs, and straps across the chest). Prisoners strapped into the chair for minor acts of non-compliance have been tortured and hooded; stripped naked and left for hours in the chair in their own waste; shocked with stun guns or pepper sprayed while in the chair. In Sacramento County Jail, California, in 1997 and 1996, the chair was frequently used to torture and ill-treat inmates: prisoners were threatened with electrocution while strapped into the chair and one woman was left naked in the chair for hours in full view of male guards and subjected to sexual taunts. Children in custody have also been ill-treated with restraint chairs.[40] Some people have been interrogated while in the chair (see above).

A recent article appearing in the US journal *The Progressive*, reports that at least 11 people have died in the USA after being placed in restraint chairs.[41] They include several cases described by Amnesty International in *Rights for All* (including the case of Michael Valent, a mentally ill man who died from a blood clot after spending 17 hours in a restraint chair in Utah State Prison in 1997; and Scott Norberg who died of asphyxia in Maricopa County Jail, Arizona, while being forced into a restraint chair with a towel round his face after being shocked more than 20 times with a stun gun). Other recent cases cited in the article include Demetrius Brown, a 20-year-old mentally ill man who died in Jacksonville, Florida in October 1999 (see page 13 above). James Earl Livingston, also mentally ill, died in Tarrant County, Texas, in July 1999, allegedly after being pepper sprayed by sheriff's officers and left in a restraint chair.

The chair has been banned for use in at least two jails because of abuses. The Iberia Parish Jail, Louisiana, agreed to stop using the chair in 1996 in settlement of a lawsuit filed by the Justice Department - the Justice Department had found the jail had routinely subjected detainees to "cruel and unusual punishment and physical and mental torture" by leaving them for hours in chairs, hooded with their hands and legs shackled behind them. In November 1999, a judge in Ventura County, California, issued a preliminary injunction banning the chair in the county jail, after a lawsuit was filed alleging widespread abuse. The county has appealed against the ruling.

[40]These and other cases cited are documented in *Rights for All* and other Amnesty International publications including *Not Part of My Sentence* and *Betraying the Young*.

[41]Article by Anne-Marie Cusac in *The Progressive*, April 2000 (op cit)

Despite the growing catalogue of abuses, the chairs continue to be purchased and used by an increasing number of US detention facilities, particularly local jails. They are also used in Immigration and Naturalization Service (INS) facilities and federal prisons as well as in juvenile detention centres. Although the chair has been promoted by its manufacturers as a safer alternative to other forms of four-point restraint as the subject remains upright, there appears to have been no independent testing as to its safety. Amnesty International believes that the chairs are particularly prone to abuse, partly because they are so mobile and easy to use and because their use is virtually unregulated. Contrary to international standards (and US professional guidelines), the chairs are routinely used in some facilities to punish or control prisoners who are simply disruptive but not a danger to themselves or others. In the intake sections of jails they are often used against people arrested for minor disorderly conduct, who are intoxicated or mentally disturbed.

Amnesty International has called on the federal government to hold an urgent national inquiry into the use of restraint chairs, but no such action has been taken to Amnesty International's knowledge.

Supermaximum security prisons

More than 20,000 prisoners in the USA, many of them mentally ill, are being held in long-term isolation in "supermaximum security" (supermax) facilities. At least 38 states and the federal government currently operate more than 60 such facilities which include entire prisons or units within prisons. More are under construction.

While prison authorities have always been able to segregate some prisoners who are a danger to themselves or others, or to impose fixed terms of segregation as a penalty for disciplinary offences, supermax facilities differ in that they are designed to house large numbers of prisoners in long-term, or even indefinite, isolation as an administrative "control" measure. Prisoners in the most restrictive units are typically confined for 23-24 hours a day in small, sometimes windowless, solitary cells with solid doors, with no work, training or other programs and no daily exercise. The facilities are designed to minimize contact between staff and inmates, and prisoners are often subjected to regimes of extreme social isolation and reduced sensory stimulation. The length of time inmates are assigned to supermax facilities varies, but many spend years, and some their whole sentence, in such units.

Amnesty International believes that conditions in many US supermax facilities are far more punitive than is required for legitimate security purposes and constitute cruel, inhuman and degrading treatment in violation of international standards.[42] Many units breach specific

[42]Principle 6 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment re-asserts the international prohibition of torture or cruel, inhuman or degrading treatment and states that "The term 'cruel, inhuman or degrading treatment' should be interpreted so as to extend the widest possible protection against abuses, whether physical or mental, including the holding of a

standards contained in the Standard Minimum Rules for the Treatment of Prisoners: for example those specifying the need for windows, natural light, fresh air and daily outdoor exercise.[43] The absence of rehabilitation programs also breach international standards for the treatment of prisoners. Many supermax cells are also smaller than the 80 square feet (7.4sq m) minimum recommended under American Correctional Association (ACA) standards for prisoners who spend more than 10 hours a day confined to their cells (some prisons with supermax units which breach these standards have nevertheless been accredited by the ACA).

Studies have shown that prolonged isolation in conditions of reduced sensory stimulation can cause severe physical and psychological damage. However, mentally ill or disturbed prisoners continue to be held in supermax facilities in some states, without adequate treatment or monitoring. In March 1999 a federal district judge ruled that the stark conditions in administrative segregation units in Texas "deprive inmates of the minimal necessities of civilized life" and were "virtual incubators of psychoses-seeding illness in otherwise healthy inmates and exacerbating illness in those already suffering from mental infirmities". Court-appointed experts who had visited the units, described an environment in which "smeared faeces, self mutilation and incessant babbling and shrieking, are almost everyday occurrences".[44]

In November 1998 an Amnesty International delegation visited the supermaximum Security Housing Unit (SHU) in Valley State Prison for Women, California, and found that many of the 40 women on the unit had histories of mental illness and some were in visible distress; they were held in harsh and punitive isolation; were shackled whenever they left their cells and were exposed to the view of (predominantly male) guards at all times, including while dressing or showering. Conditions in the unit reportedly remain unchanged.

detained or imprisoned person in conditions which deprive him, temporarily or permanently, of the use of any of his natural senses, such as sight or hearing, or his awareness of place or the passing of time."

[43]Some supermax facilities allow prisoners as little as three hours a week exercise outside the cell; in some prisons - e.g. Colorado State Penitentiary - no outdoor exercise at all is provided at the most restrictive custody levels.

[44]US District Court for the Southern District of Texas ruling in David Ruiz et al v Gary Johnson, Director TDCJ et al, 1 March 1999. An appeal by the state against the ruling (which dealt with a range of alleged abuses in the Texas prison system) was pending at the time of writing.

The US authorities justify the use of supermax units as necessary to contain dangerous or disruptive prisoners who cannot be managed in a less secure setting. In its report to the Committee against Torture, the US Government acknowledges that there are problems in some facilities, but states that "only in limited circumstances may convicted prisoners be subjected to special security measures such as segregation or separation from the general prison population in specially constructed cells". However, Amnesty International believes that this statement does not present an accurate picture of the operation of supermax units in the USA. The evidence suggests that many prisoners are assigned to supermax facilities who do not warrant such a restrictive regime. For example, prisoners have been assigned to supermax facilities, or have had their stay there extended, for relatively minor disciplinary infractions.[45] Others have reportedly been moved to supermax prisons because of lack of space elsewhere. Some states have transferred their whole death row populations to supermax units, regardless of their disciplinary records, where their treatment exacerbates the cruelty inherent in being under sentence of death (see page 37). Many systems appear to use vague or arbitrary criteria for transferring inmates to or from supermax confinement, with inadequate review.

Although a few courts have ordered changes to some aspects of the operation of some units, no court to date has found that long-term supermax confinement *per se* violates the US Constitution. In general the US courts have given broad leeway to states to impose harsh conditions of segregated custody on security grounds.

[45]In Valley State Prison, for example, women had their SHU terms extended for long periods for verbally insulting a guard, throwing water at (and missing) a guard, covering up cell window while washing. Human Rights Watch (HRW) cites examples of prisoners being sent to supermax units in Indiana for a series of relatively minor disciplinary offences (*Cold Storage, Super-maximum Security Confinement in Indiana*, HRW, October 1997).

Conditions in US supermax units have, however, been criticized by international bodies, including the UN Special Rapporteur on Torture and the Human Rights Committee.[46] Similar conditions elsewhere have also been found to violate the international prohibition of torture or ill-treatment. [47] In its concluding observations on the initial report of the USA under the ICCPR in March 1995, the Human Rights Committee recommended that the US Government should scrutinize conditions in maximum security prisons "with a view to guaranteeing that persons deprived of their liberty be treated with humanity and with respect for the inherent dignity of the human person, and implementing the UN Standard Minimum Rules...". [48] However, no such scrutiny has taken place, and the federal government has continued to operate units in the federal system and fund the building of some state supermax facilities.[49]

Ill-treatment in private facilities

There have been reports of ill-treatment of prisoners held in privately run correctional facilities in the USA.[50] Many penal experts have expressed concern that private for-profit companies have a particular interest in cutting costs which can lead to low investment in staffing, training, health care and rehabilitation programs - all of which can lead to poor conditions or ill-treatment. There is concern about a lack of adequate regulation and oversight of private detention facilities in some states.

[46]E/CN.4/1999/61 Report of the SR on torture, 12.01.99.United States of America, 739, 740; and CCPR/C/79/Add 50: "..The Committee is particularly concerned at the conditions of detention in certain maximum security prisons which are incompatible with article 10 of the Covenant ..".

[47]There is not a large body of international case law on conditions directly analogous to US supermax facilities, mainly because the USA is virtually unique in housing prisoners on such a scale in such units. However, the Human Rights Committee found violations of Article 10(1) of the ICCPR (right to be treated with human dignity) in several Uruguayan cases in the 1980s in which prisoners were held in conditions which combined isolation with constant non-contact surveillance, a lack of access to natural light and exercise, together with other cruel treatment. The European Committee for the Prevention of Torture has also found conditions in several isolation units in Europe to be incompatible with international standards for humane treatment.

[48]ICCPR/CC/97/Add 50 op cit

[49]The Justice Department's prison litigation section has investigated conditions in only one US supermax facility to Amnesty International's knowledge: Maryland in 1996. There have been very broad surveys by the National Institute of Corrections but no detailed national study of conditions in US supermax prisons; and no review of international standards in relation to such units.

[50] As of 1997, more than 70,000 prisoners were held in privately-run jails and prisons companies in 19 US states, a 34% growth over five years (Prison Legal News 1997, citing Investor's Business Daily and The Nation, 5 Jan 1998). There are also thousands more held in privately-run juvenile and immigration detention facilities.

For example, in January 2000, a state-appointed inquiry published findings which strongly criticized the operation of two private prisons in New Mexico: the Lea County Correctional Facility (LCCF) and the Guadalupe County Correctional Facility (GCCF), both owned by Wackenhut Corrections Corporation, one of the largest private prison operators in the USA. The inquiry was commissioned following a serious riot in GCCF in August 1999. It found that plant deficiencies, inadequate vetting and training of staff, and lack of staff had contributed to abuses, including serious inmate-on-inmate violence. It also found that the state had failed adequately to monitor the facilities. A separate class-action lawsuit against both prisons was filed also in January, alleging that mentally ill prisoners were denied adequate psychiatric care; held for long periods in punitive solitary confinement; and subjected to assaults by other inmates as well as to excessive force through guard beatings and tear-gassing.

In July 1998 four jailers were indicted for violating inmates' civil rights at the Brazoria County Jail in Texas, a private facility run by Capital Correctional Resources Inc. (CCRI). An investigation began after a news station obtained a training video showing prisoners being hit and kicked by guards, shocked with stun guns and bitten by dogs. One of the indicted guards had been hired by CCRI despite a criminal record for beating prisoners while employed by the Texas prison system.

There have also been reports of torture and ill-treatment in several facilities run by Corrections Corporation of America (CCA), the largest private prison operator in the USA. In August 1998, up to 20 Wisconsin inmates in CCA-run Whiteville Correctional Facility in Tennessee, were allegedly ill-treated by a Special Operations and Response Team (SORT) following an attack on a guard: the treatment reported included prisoners being kicked, slammed into walls, subjected to racist abuse and electro-shocked by stun guns and stun shields. One prisoner said that he was handcuffed, stripped, forced to kneel on the floor, sexually assaulted with a shampoo bottle by a guard and shocked with a stun gun; another inmate reported being stripped, kicked and shocked in the stomach and testicles with a stun gun. Other cases included the misuse of stun shields during cell searches by SORT teams in the Northeast Ohio Correctional Center in Youngstown, Ohio; and allegations of excessive force, including the use of stun shields, against Alaska prisoners in the Central Arizona Detention Center in Florence, Arizona, in August 1998.[51] Amnesty International is seeking information on CCA company policy regarding electro-shock stun weapons and has urged that the company suspend their use in the facilities under its control.

Although only a minority of juvenile detention facilities are privately run, there have been shocking allegations of abuses in a number of them. In March this year, the US Justice Department sought an emergency court order to stop ill-treatment at the Jena juvenile

[51] An investigation into the abuses at Whiteville, conducted by the Wisconsin Department of Corrections concluded inmates had been abused and CCA employees had attempted to cover them up. A 1999 Justice Department report confirmed abuses in the North-East Ohio Correctional Center.

detention centre in Louisiana -- also run by Wackenhut (see above) -- which included children being regularly beaten with batons; tear-gassed in crowded dormitories; made to spend months in solitary confinement and deprived of shoes, blankets and medical care. A federal judge ordered the immediate removal of several boys from the centre who had been severely ill-treated, including a 15-year-old who had repeatedly attempted suicide.

Ill-treatment of incarcerated women

There are more than 148,000 women currently in US prisons and jails, more than three times the number of women who were incarcerated in 1985. In March 1999, Amnesty International published a report: *USA: "Not Part of My Sentence", Violations of the Human Rights of Women in Custody* in which it described widespread human rights violations against incarcerated women. Violations documented in the report include rape and other forms of sexual abuse; the cruel, inhuman and degrading use of restraints on incarcerated women who are pregnant or seriously ill; inadequate access to treatment for physical and mental health needs; and cruel conditions in isolation units.

Allegations of sexual abuse of women prisoners in the USA nearly always involve male staff who, contrary to international standards, are allowed unsupervised access to female jail and prison inmates in many jurisdictions.[52] In addition to rape, which is a form of torture, other types of sexual abuse commonly include sexually offensive language; male staff touching female prisoners' breasts and genitals while conducting searches and male staff watching women while they are naked. While crimes such as rape and sexual assault are offences under US law, many women have been afraid to report abuses through fear of reprisals.[53] There are also practices which Amnesty International believes are inherently cruel and degrading or are open to abuse, but which are allowed in the USA, for example, allowing male staff to conduct pat down searches of clothed women prisoners for contraband; allowing male staff to patrol areas where women may be viewed in their cells while dressing or washing, or when taking showers.

Some states have taken steps to prevent sexual abuse and to improve their investigation of sexual misconduct complaints in women's prisons. Forty-four states also now criminalize all forms of sexual contact between staff and inmates, a measure which has been welcomed by Amnesty International and other human rights groups.[54] However, rape and

[52] Rule 53 of the Standard Minimum Rules provides that no male member of staff shall enter part of the institution set aside for women unless accompanied by a woman officer and that "Women prisoners shall be attended and supervised only by women officers".

[53] In its investigation of reports of sexual abuse in Michigan prisons, the US Justice Department concluded that "many sexual relationships appear to be unreported due to the presence of widespread fear of retaliation and vulnerability felt by these women". Amnesty International and Human Rights Watch have received many reports from prisoners and other sources about under-reporting of sexual abuse through fear of reprisals.

[54] States without such laws as of April 2000 were: Alabama, Minnesota, Oregon, Utah, Vermont

sexual abuse continues to be reported and there is evidence that many prisoners are still afraid to report abuses and that inadequate preventive measures are taken. In October 1999, a state inquiry was ordered into complaints of widespread sexual abuse by guards in Fluvianna Correctional Center for Women in Virginia. Complaints ranged from guards giving gifts to inmates in return for sexual favours, to rape. Inmates reported that most prisoners were afraid to report abuse because they feared reprisals.

In December 1999 it was reported that 11 former guards and a male counsellor had been indicted on charges ranging from rape to sexual harassment of 16 women in a privately-run jail in Austin, Texas; 20 other cases in the jail were under investigation. Guards were reportedly poorly trained and the jail had failed to act on past complaints by prisoners. The investigation was initiated after one inmate filed a federal lawsuit and another gave birth to a guard's child.

and Wisconsin

The US authorities have argued that anti-discrimination employment laws in the USA mean that they cannot refuse to employ male guards in women's prisons (or female guards in men's prisons). However, some jurisdictions have placed certain restrictions on male duties in women's prisons (often in response to abuse reports) and US courts have upheld such restrictions as lawful.[55] As a recent example, in January 2000, the county executive authorities in Westchester, New York, announced that correctional officers had been banned from the living quarters at the Westchester County Jail after four guards were charged with sex crimes, including rape, sodomy, sexual abuse and other misconduct.

Amnesty International has called on the US authorities to ensure that female prisoners are supervised only by female staff as required under international standards. The UN Special Rapporteur on Violence Against Women in her report of her 1998 visit to the USA (in which she expressed concern about widespread sexual abuse, among other issues) recommended that certain posts in women's prisons - such as those responsible for guarding housing units and body searches - should be restricted to female staff. The Human Rights Committee in 1995 recommended that the USA change its laws so that no male staff will have unaccompanied access to female prisoners. Amnesty International believes that the US Government should do more to promote international standards in this area with a view to implementing these recommendations.

Shackling of pregnant women

It remains common for restraints to be used on sick and pregnant women prisoners when they are transported to and kept in hospital, regardless of their security status. In many jurisdictions women are kept in restraints (such as handcuffs and leg shackles) while in labour up until the moment of birth and shackled again shortly afterwards. Amnesty International considers that there is no sound reason for the authorities to routinely shackle women in labour or who have just given birth, particularly as most are already under armed guard. The use of restraints in such circumstances is cruel and degrading and violates international standards which state that restraints should be imposed only when "strictly necessary". Medical experts have also reported that shackling women while in labour can endanger the health of the woman and her child.

Other concerns relating to women in prison

[55] Amnesty International's report *USA: Not Part of My Sentence* cites several examples on p. 52.

There are other human rights concerns relating to the treatment of women in custody, noted by Amnesty International and other bodies. A federal study released by the General Accounting Office (GAO) in February 2000, found that US states and the federal system were not meeting the specific needs of female inmates.[56] The study noted, for example, that most incarcerated women were mothers, but because they were a small percentage of the overall prison population and there were fewer facilities available, many women were held in prisons long distances from their children and had little contact with them. The study also found that women prisoners had a higher rate of HIV infection and mental illness than men but were not always receiving adequate treatment, and that drug treatment programs for women had actually been reduced, despite the fact that non-violent drugs offences were the major cause of female incarceration.

The GAO study also noted that black females were more than twice as likely as Hispanic females and eight times more likely than white females to be incarcerated - partly because of the unequal racial impact of drugs sentencing provisions.[57] Congresswoman Eleanor Holmes Norton, who commissioned the study, said she would introduce bills requiring states to provide gender-specific health and other services in women's prisons as a condition for receiving federal funding, and for community-based facilities to be established for non-violent federal offenders.

Ill-treatment of children in detention

Amnesty International published *Betraying the Young: Human Rights Violations Against Children in the US Justice System* (AMR 51/57/98) in November 1998. This report detailed the organization's widespread concerns about the treatment of children who come into conflict with the law, both in the juvenile justice system and in the general criminal justice system. The internationally-recognized human rights of children continue to be violated in the USA, including via harsh, inflexible sentences for children tried as adults, such as the death penalty and life imprisonment without the possibility of parole (in violation of the Convention on the Rights of the Child), and various forms of ill-treatment.

Across the USA, black and Latino children are far more likely than white children to be locked up if arrested. Amnesty International is concerned that the authorities have not done enough to tackle the problem of "disproportionate minority confinement" despite this being a long-standing concern among juvenile justice organizations.

[56]The study looked at the federal system and California and Texas, the USA's three largest prison systems.

[57]Amnesty International's report: *Not Part of My Sentence* made similar findings to many of the issues covered in the GAO study.

Betraying the Young also reported on the excessive incarceration of children in the USA, in violation of international standards which require that the deprivation of liberty of a child occur only when there is no appropriate alternative.[58] This recognizes the inherent risks that incarceration poses to the physical and mental integrity of children. In jurisdictions across the USA, children have been incarcerated in juvenile detention facilities for relatively minor offences or behaviour. Examples in *Betraying the Young* included the arrest, handcuffing and incarceration for 19 hours in a juvenile facility of a 10-year-old boy in Florida in April 1998 after he allegedly kicked his mother at a restaurant. In Texas in November 1999 a 13-year-old schoolboy was sentenced to 10 days in juvenile detention for writing a Halloween story for class which described a school shooting. He was released after five days following legal action. His mother complained that her son should have been referred to a counsellor, not criminalized. Other children have been incarcerated for acts such as truancy or being involved in minor fights at school.

International standards, adopted by almost every country in the world, encourage governments to establish laws, procedures, authorities and institutions specifically for children. Although each US state has a juvenile justice system in addition to its general criminal justice system, there is a growing tendency in the USA to prosecute and punish children as if they were adults, a tendency inconsistent with international standards. According to the US Justice Department, as of 1997, 28 US states had laws which automatically excluded certain types of juvenile offenders from the juvenile court system. This trend continues. For example, in March 2000, California voters adopted Proposition 21, giving prosecutors the authority to send children as young as 14, accused of certain offences, straight into the adult court system instead of to juvenile court.

One result of this tendency is that large numbers of children are held in adult state prisons. International standards, including article 10(3) of the International Covenant on Civil and Political Rights, require that children be segregated from adults. Such standards recognize the vulnerability of children, including to physical and sexual assault by adult inmates, and to increased risk of suicide. In February 2000, the US Department of Justice announced that the number of people under 18 sent to adult state prisons each year had more than doubled between 1985 and 1997 -- from 3,400 to 7,400. The Department noted that in 1997, 26 per cent of the under-18-year-olds sentenced to more than one year in a state prison were between 13 and 16 years old. Of all young persons entering state prison, 58 per cent were African American, 25 per cent were white, 15 per cent were Hispanic and two per cent were Asian or American Indian. About 90 per cent had not graduated from school when they were imprisoned.

Children treated and punished as if they were adults can face the same conditions that adult offenders face, as described elsewhere in this report. For example, Jason Halda and

[58] Rules 13.1 and 17.1(c), UN Standard Minimum Rules for the Administration of Juvenile Justice.

Michael Watts, accused of murder, were made to wear electro-shock stun belts at their pre-trial hearings in Manitowoc, Wisconsin, in late 1998 when both were aged 17. Some defendants condemned to death for crimes committed when they were under 18, have still been under 18 by the time they are sent to death row. Shareef Cousin, 16 at the time of the crime and just 17 at the time of conviction, became the country's youngest death row inmate in 1996. Eventually granted a retrial, he was released from death row in 1999 after the state dropped charges. There is overwhelming evidence that he was subjected to the cruelty of the death penalty for a crime he did not commit.

Children in juvenile facilities have also been held in cruel conditions in overcrowded facilities and deprived of adequate mental health care, educational or rehabilitation programs. They have also been subjected to brutal force and cruel punishments, including excessive use of restraints and chemical sprays. Solitary confinement is also a common punishment in juvenile facilities in the USA, in violation of international standards.[59] Examples of ill-treatment included in *Betraying the Young* included excessive and punitive use of a restraint chair and the imposition of lengthy or indefinite isolation on children in Maine Youth Center, and regular use of stun guns and pepper spray in the juvenile section of Daviess County Detention Center in Kentucky.

Examples since publication of Amnesty International's report include serious allegations of abuse of children, male and female, held in the State Training School in Plankinton, South Dakota. The allegations have mainly emerged following the death of 14-year-old Gina Score after an enforced running exercise at the girl's "boot camp".[60] The excessive and punitive use of restraints (see page 21) has been reported, as well as the use of solitary confinement as punishment. It is alleged that children in Plankinton have routinely been held in isolation for 23 hours a day, sometimes for months at a time. This is of particular concern given the claim that a number of children in Plankinton suffer from mental illness.

In December 1999, the Governor of Maryland moved to suspend his state's juvenile boot camps following allegations of serious ill-treatment of children held in them. It was alleged that guards had engaged in unnecessary and excessive use of force, the use of force as punishment, routine use of restraints including leg shackles, verbal abuse and other intimidatory practices.

[59] The UN Rules for the Protection of Juveniles Deprived of their Liberty, Rule 67, states "All disciplinary measures constituting cruel, inhuman or degrading treatment shall be strictly prohibited, including corporal punishment, placement in a dark cell, or solitary confinement or any other punishment that may compromise the physical or mental health of the juvenile concerned."

[60] Amnesty International is concerned by this and other reports of deaths of children in custody in boot camps and other juvenile facilities. For example, Nicholaus Contrarez died on 2 March 1998 in Arizona Boys Ranch following repeated incidents of punitive solitary confinement and enforced physical exercise. On 6 February 2000, 12-year-old Michael Wiltsie died, reportedly of "compressional asphyxiation" after a counsellor at Camp E-Kel-Etu in Florida sat on him in order to restrain him. On 23 February, a grand jury decided that the counsellor should not face criminal charges.

Amnesty International continues to urge US authorities to take specific actions in relation to child offenders, including: banning the use of solitary confinement as punishment against children; ending the cruel use of force and restraints against incarcerated children; and legislation to ensure that children in custody are separated from adult offenders. Amnesty International also continues to urge the USA to ratify the Convention on the Rights of the Child, without reservation.

Investigation and oversight of US jails and prisons

Amnesty International believes that not enough is done to prevent systematic abuses in US jails and prisons, despite a range of remedies available under US law. Criminal prosecutions of guards for ill-treatment are rare and penalties imposed for misconduct have often been inadequate. Most prisoner complaints about their treatment are investigated by the institution itself, through internal grievance procedures, and there is a lack of outside scrutiny of complaints in many systems.[61] Furthermore, few states have independent, external monitoring bodies authorized to conduct regular inspections of jails or prisons and to report on conditions and investigate abuses. Inspection bodies that exist in some states have inadequate resources to monitor effectively the growing number of jails, prisons and inmates. National accreditation bodies such as the American Correctional Association (ACA) do not provide a detailed monitoring or oversight function.[62]

In practice, the US federal courts have provided the most effective oversight of prison conditions during the past 30 years, through court orders resulting from litigation. Since the 1970s many prisons have been made to improve unconstitutional conditions as a result of "class action" lawsuits, usually filed by civil rights attorneys.[63]

[61]A few states have an Ombudsman to receive complaints by prisoners about their treatment. However, in some states - for example California and Texas - the Ombudsman's office is part of the department of corrections and is not independent.

[62]The ACA issues standards for prisons and jails and operates a voluntary accreditation program. However, this does not provide effective monitoring against ill-treatment or patterns of abuse. The ACA's auditing role in the accreditation process is not generally performance based but concentrates on whether policies are in place. The ACA has accredited facilities which have been found by the courts to operate unconstitutional conditions.

[63]The federal government can also bring court action to end certain abuses in federal, local, state or private facilities under the Civil Rights of Institutionalized Persons Act (CRIPA). By June 1999 the Justice Department had obtained court-approved consent decrees to improve conditions in about 200 facilities since CRIPA came into force in 1980 and many other investigations were underway (as noted in the US report to the Committee against Torture). While this is a welcome remedy, the Justice Department is restricted by resource limitations in the number of investigations it can undertake in the many state and local jurisdictions nationwide.

However, while litigation can be an effective way to remedy abuses, the process is expensive and may take years to reach conclusion; in some jurisdictions there are few civil rights lawyers with resources to pursue such action. Settlements are individually framed and do not have binding effect on other facilities. As noted above, the courts have also provided a narrow interpretation of what constitutes unconstitutional treatment in some areas, e.g. segregated confinement.

Furthermore, as Amnesty International notes in *Rights for All* (p82-3), legal action by prisoners seeking redress has been significantly restricted through the 1996 Prison Litigation Reform Act (PLRA) and other measures.[64] The PLRA's complex provisions include clauses: requiring the dismissal of court orders after only two years (hardly time to ensure lasting changes); preventing prisoners from bringing lawsuits alleging mental or emotional harm unless they can also prove physical injury (thereby barring lawsuits involving psychological torture); imposing restrictions on attorney fees; and making it more difficult for prisoners to file actions on their own behalf.

In its report to CAT, the US Government states that the PLRA was enacted by Congress as "a response to the large number of frivolous or harassing prisoner suits which have drained the resources of the federal judicial system". However, the legislation has been strongly criticized by prison reform organizations, independent prison specialists and some judges for making it more difficult to bring serious cases before the courts and for allowing authorities to seek to nullify existing court orders. Since the legislation was enacted many cities and states have gone back to the courts to seek to free themselves from existing court orders to improve prison conditions, as they are entitled to do under retroactive provisions of the PLRA.[65]

Amnesty International is particularly disturbed that a reduction of oversight has coincided with an era in which treatment of prisoners has deteriorated in many respects.[66] Amnesty International has recommended that the federal government review the impact of the PLRA to establish the extent to which the legislation may have unduly restricted inmates' ability to use the courts to end ill-treatment. No such review has been undertaken to Amnesty International's knowledge.

[64] Another measure is a 1996 law prohibiting the Legal Services Corporation, a federal agency that provides legal services to poor people, from providing funds to legal aid organizations that represent prisoners in lawsuits relating to their conditions.

[65] Amnesty International has heard from many civil rights lawyers (including attorneys with the US Justice Department) how the PLRA has served to reduce their resources for taking on new cases by forcing them back into court re-argue settled cases.

[66] A growing number of states have also imposed restrictions or bans on media access to prisons (especially face-to-face interviews between prisoners and journalists), creating concern among human rights groups that prisons are becoming still more closed to outside scrutiny.

4. TREATMENT OF ASYLUM-SEEKERS/REFOULEMENT

Article 3 of the Torture Convention states that no State Party shall expel, return or extradite a person to another State where there are "substantial grounds for believing that he would be in danger of being subjected to torture".

Amnesty International is concerned that the US conditioned its ratification of the Convention on the understanding that, under Article 3, the phrase "substantial grounds" means "if it is more likely than not" that someone would be tortured. This unilateral interpretation of Article 3 places a higher burden of proof on the asylum seeker than is intended under the treaty. This is clear from the general comment by the Committee against Torture which states that, in assessing whether a claim meets the test under Article 3, the risk of torture must go "beyond mere theory or suspicion" but "*does not have to meet the test of being highly probable*" (AI emphasis).[67]

Amnesty International's concerns about the treatment of asylum-seekers are described in its report *USA: Lost in the Labyrinth: detention of asylum-seekers*, published in September 1999 (AI Index: AMR 51/51/99). These include the following:

Amnesty International is concerned that the extradited removal procedure introduced under the 1996 Illegal Immigrant Reform and Immigrant Responsibility Act (IIRIRA) fundamentally weakens the rights previously enjoyed by those seeking to enter the USA and could lead to the refoulement of people who have a genuine fear of torture in their home countries. The provisions require the summary removal of people who arrive at US ports of entry without proper documents, unless they express a fear of persecution or an intention to apply for asylum - in which case they are referred to an Asylum Officer for a "credible fear" interview. Only if this initial screening process is successful will an asylum seeker be referred to the normal asylum adjudication process for full consideration of their claim. The asylum seeker may consult a person of their choice before the "credible fear" interview, provided the process is not delayed. However the role of the representative and any subsequent review is limited. Amnesty International is concerned that in practice effective consultation may be difficult to achieve, given the circumstances of arriving asylum-seekers and the barriers to outside access - especially as detention at this stage is mandatory.

Amnesty International believes that it is important for independent bodies to be able to monitor the expedited removal process at ports of entry to ensure that the procedure is not being used to turn away genuine asylum-seekers. However, Amnesty International, among other organizations, has been denied access to observe the process. The Immigration and Naturalization Service (INS) has failed to provide information about who is being screened

[67]General comment 1 on implementation of article 3 of the Convention, adopted by the Committee against Torture at its nineteenth session on 21 November 1997

out or summarily removed, and the UNHCR is not able to monitor comprehensively or to report on what is happening at border points.

The IIRIRA makes the detention of asylum-seekers who arrive without proper documents mandatory. Since the introduction of the IIRIRA in 1996, the number of INS detainees has risen sharply and is estimated to have reached approximately 13,500 as of September 1999. This figure includes an unknown number of asylum-seekers, as the US does not distinguish between asylum-seekers and other INS detainees and there is no coherent national data. However, thousands of asylum-seekers may be in detention - many of them for months or years without knowing if or when they will be released. This is contrary to international refugee standards which state that the detention of asylum-seekers should normally be avoided. Decisions on parole are delegated to District Directors, are often arbitrary and in violation of the INS's own national guidelines, and are not subject to any effective review.

Amnesty International is also concerned that many asylum-seekers in INS detention are held with criminal prisoners in conditions which are sometimes cruel and degrading. Asylum-seekers in the USA are often stripped and searched; shackled and chained; or held in prolonged isolation. There have also been allegations of serious physical or verbal abuse of immigrants held in INS detention facilities or local jails. [68] Many asylum-seekers are denied access to their families, lawyers and NGOs who could help them and they may be subjected to frequent transfers making access even more difficult. This punitive treatment can seriously hinder the asylum process and is contrary to international standards.[69]

In 1999 the INS issued guidelines setting out standards for conditions of detention for aliens in INS custody. However, these are weak in application - they do not apply to jails where most asylum-seekers are held -- and are not enforceable. Amnesty International has recommended, *inter alia* that:

- The US Government should revise its detention law and policy in the light of international law requiring that the detention of asylum-seekers should normally be avoided. The discretion currently exercised by INS Directors to detain asylum-seekers must be subject to regular, independent review. The national office of the INS should

[68] In 1998 there were serious allegations of torture and ill-treatment of INS detainees held in Jackson County Correctional Facility, a jail in Florida; alleged abuses included beatings, electro-shocks from stun shields (while detainees were already restrained), racist abuse and excessive periods of punitive solitary confinement. The Justice Department opened an investigation after the Florida Immigrant Advocacy Center (an NGO) took detailed affidavits from detainees transferred from the jail. Amnesty International has learned that, on 30 March 2000, the Justice Department issued a "letter of findings" which reportedly confirmed there were widespread abuses at the jail.

[69] Article 31 of the 1951 Refugee Convention exempts refugees coming directly from a country of persecution from being punished on account of their illegal entry or presence, provided that they present themselves without delay to the authorities and show good cause.

require adherence to its own guidelines, which indicate that asylum-seekers are not a high priority for detention.

- The INS must identify asylum-seekers when they are detained and treat them accordingly; they should be detained in a facility appropriate to their status and not with criminal offenders or in local or county jails. They should have access to counsel and relevant NGOs at all stages of the proceedings.

- specific guidelines relating to conditions of detention should be issued and adhered to wherever asylum- seekers are detained; these should include procedures to ensure that they are not subjected to cruel, inhuman or degrading treatment, including shackling.

5. THE DEATH PENALTY

Amnesty International opposes the death penalty as a violation of fundamental human rights -- the right to life and the right not to be subjected to cruel, inhuman or degrading treatment or punishment.

The cruelty of torture is evident. Like torture, an execution constitutes an extreme physical and mental assault on a person already rendered helpless by government authorities. The cruelty of the death penalty is manifest not only in the execution but in the time spent under sentence of death, during which the prisoner is constantly contemplating his or her own death at the hands of the state. This cruelty cannot be justified, no matter how cruel the crime of which the prisoner has been convicted.

If it is not permissible to cause grievous physical and mental harm to a prisoner by subjecting him or her to electric shocks and mock executions, how can it be permissible for public officials to attack not only the body or the mind, but the prisoner's very life? Threatening to kill a prisoner can be one of the most fearsome forms of torture. As torture, it is prohibited. How can it be permissible to subject a prisoner to the same threat in the form of a death sentence, passed by a court of law and due to be carried out by the prison authorities?

In defending its use of the death penalty, the USA repeatedly states that the punishment is not a violation of international law. However, for those countries which retain the punishment, strict international safeguards and restrictions govern its use. US authorities regularly violate such standards. The USA continues to use the death penalty against child offenders (those who were under 18 at the time of the crime), the mentally retarded, those about whose sanity there were serious doubts, people deprived of their internationally-recognized right to competent defence counsel at all stages of proceedings, and foreign nationals whose rights to consular access after arrest was violated.[70]

[70] For more information, see *USA: Failing the Future: Death Penalty Developments, March 1998 - March 2000* (AMR 51/03/00, April 2000).

Length of time on death row

When the USA ratified the Convention against Torture, it did so on the understanding that the Convention did not restrict or prohibit it from applying the death penalty, "including any constitutional period of confinement" prior to execution.

As Amnesty International unconditionally opposes the death penalty under all circumstances, it takes no additional position on the length of confinement to death row prior to execution. However, it is important to point out that several courts outside of the USA have held that long periods of confinement to death row renders the punishment cruel, inhuman or degrading, including the European Court of Human Rights and the Judicial Committee of the Privy Council. This very fact was pointed out in a dissenting opinion in November 1999 by US Supreme Court Justice Breyer in the case of two men who between them had spent more than four decades on death row. He wrote: "Both of these cases involve astonishingly long delays flowing in significant part from constitutionally defective death penalty procedures. Where a delay, measured in decades, reflects the State's own failure to comply with the Constitution's demands, the claim that time has rendered the execution inhuman is a particularly strong one."[71] However, as yet, Justice Breyer remains in a minority on the court.

Many US politicians seek to cut the time between death sentence and execution. Again, it is important to point out that in doing so they are increasing the risk of execution of the wrongfully convicted. Many innocent people in the USA have been subjected to the cruelty of the death penalty for crimes they did not commit. Between 1973 and March 2000, at least 87 people have been freed from death row after evidence of their innocence emerged. Many spent years on death row and came close to execution before their wrongful conviction came to light. Anthony Porter spent more than 16 years on death row in Illinois and came within 48 hours of execution in September 1998. He was subsequently found innocent after a group of students investigated his case and he was released in February 1999.

On 16 March 2000, Joseph Green was acquitted of the crime for which he had been sentenced to die in Florida in 1993. For nearly four of the seven years he spent in prison he was on death row, during which time eight other prisoners were executed in the prison's death chamber. On 15 March, Joseph Green told Amnesty International: "To know a guy has been executed who you talked to, to know that one day someone is going to come and take you to death watch and then kill you -- that eats at you, and eats at you, and eats at you. Death row is very, very dehumanizing."

[71] *Knight v Florida* and *Moore v Nebraska*. Certiorari denied. 8 November 1999.

Conditions on death row

In addition to the cruelty of the death sentence itself, Amnesty International has serious concerns about the conditions on death rows across the country. For example it believes that conditions in H-Unit of Oklahoma State Penitentiary amount to cruel, inhuman or degrading treatment in violation of international standards.[72] The facility houses the state's male death row population, effectively underground in tiny windowless concrete cells, in which the condemned are confined for 23 to 24 hours a day. For up to 60 days prior to their scheduled execution, the 10 inmates put to death in H-Unit in 1998 and 1999 were transferred to solitary confinement in special double-doored punishment cells and subjected to a harsh suicide watch regime, including repeated strip-searches and cell searches.[73]

In May 1998, a lawsuit was filed concerning conditions for death row inmates in Idaho Maximum Security Institution. The suit states that inmates are held in solitary confinement for 163 of every week's 168 hours in small concrete and steel cells with solid metal doors and a narrow slit for a window. Inmates are allowed out of their cells for a maximum of one hour a day, excluding weekends, for recreation, alone and handcuffed in one of 12 enclosed wire mesh pens measuring approximately seven by 15 feet. The prisoner named in the lawsuit, Randy McKinney, states that he has lived under such a regime for 16 years, and that such treatment constitutes torture. No ruling on the lawsuit had been made at the time of writing.[74]

As in the case of Frank Valdes (see page 19), individual prisoners on death row have allegedly been subjected to torture or ill-treatment. Christopher Beck was hours from execution in Virginia on 10 June 1999 when he was granted a stay. Exactly a month earlier, on 10 May, an hour and a half after an incident in which he threw a cup of water at a nurse through the food slot in his cell door, up to 10 prison guards entered his cell. It is alleged that they beat him for 45 minutes and arbitrarily electro-shocked him with a stun shield. He was then allegedly held in four-point restraint for 24 hours. The Warden of Sussex I State Prison informed Amnesty International that an investigation was being carried out into the incident, but the organization has not yet been told of its conclusions.

[72] See Amnesty International's report: *Conditions for death row prisoners in H-Unit, Oklahoma State Penitentiary*, AMR 51/34/94, 1994.

[73] This policy was adopted after an incident in 1995 in which Robert Brecheen overdosed on sedatives hours before he was due to be executed. He was taken to hospital, treated, returned to prison and killed. The policy has reportedly been "relaxed" in 2000 to seven days in the punishment cell prior to execution.

[74] In February 2000 a class-action lawsuit was also filed against the Arizona Corrections Department claiming that the harsh conditions on death row, including excessive use of restraints, amount to cruel treatment.

Emile Duhamel was found dead in his Texas death row cell on 9 July 1998. He was a severely mentally impaired man, with an IQ of 56, and had been diagnosed with serious mental illness, including paranoid schizophrenia. Although he was reported to have died from "natural causes", there was concern that medical neglect and the high temperatures (over 40 degrees centigrade) in the non-air conditioned cells during the summer heatwave may have contributed to his death. Anti-psychotic drugs, which Duhamel was taking, interfere with the body's temperature regulation. The UN Special Rapporteur on extrajudicial, summary or arbitrary executions, concerned by the USA's continuing use of the death penalty against the mentally impaired in contravention of international standards, had met Emile Duhamel during his visit to Texas death row in late 1997.

6. A SUMMARY OF AI'S RECOMMENDATIONS TO THE US AUTHORITIES

In *Rights for All* and its other reports, Amnesty International has made a series of detailed recommendations to the federal, state and local authorities for the prevention and remedy of human rights violations. AI's recommendations include the following:

- The USA should withdraw its reservations to the Convention against Torture and the ICCPR; make torture a distinct crime under US law; ratify the (first) Optional Protocol to the ICCPR (allowing the right of individual petition to the Human Rights Committee) and recognize the competence of the Committee against Torture to receive and act on individual cases; ratify without reservation human rights treaties the USA has not yet ratified.

- The US Government should promote more actively training and the development of standards based on international human rights standards; to introduce such standards at the federal level and to engage with the states for adopting such standards.

- US authorities should ensure that international human rights standards on the use of force and firearms, and on the prohibition of torture and ill-treatment, are fully incorporated into the codes of conduct and training of law enforcement and corrections officials, and strictly enforced. They should ensure that torture or ill-treatment in custody, including failure to report misconduct by police or correctional staff, will not be tolerated, and that those found involved in such abuses will be held accountable and adequately disciplined.

- The US Government should compile, analyse and publish regular national data on police use of excessive force, including all fatal shootings and deaths in custody. Such data should be made readily available by police agencies.

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- US authorities should establish effective, independent oversight bodies with powers to review and investigate complaints of ill-treatment by law enforcement and

corrections officials and to monitor conditions in all US prisons and detention facilities.

- US authorities should ban the use of dangerous and cruel restraint procedures by law enforcement or correctional officials such as hogtying and chokeholds. The federal government should establish an independent inquiry into the use of OC pepper spray and agencies which continue to use the spray should introduce strict limitations on its use including banning its use against non-violent suspects or demonstrators.

- US authorities should ban the use of stun belts by law enforcement and correctional agencies and suspend the use of all other electro-shock weapons pending the outcome of a rigorous, independent inquiry into their use and effects. (The ban and/or suspension of electro-shock weapons should extend to the manufacture, promotion and transfer of such equipment both within and from the USA.)

- US authorities should ensure that restraints are used only when strictly necessary to prevent damage and injury and in accordance with international standards; ban the routine shackling of pregnant women prisoners during and just after labour. The federal government should institute an urgent national inquiry into the use of restraint chairs in prisons and other detention facilities.

- No prisoner should be confined long-term in conditions of isolation and reduced sensory stimulation. There should be an urgent, national review of the criteria for confining prisoners in supermax units. The authorities should immediately improve conditions in administrative and punitive segregation units so that they conform with the minimum requirements under the UN Standard Minimum Rules and other international human rights standards.

- Federal, state and local governments should amend their laws or policies to ensure that male staff will not have unsupervised access to women prisoners and that female prisoners are guarded only by female guards.

- Children should be incarcerated only as a last resort, and should be completely separated from adults, unless it is in the best interests of the child not to do so. State and local authorities should prohibit the use of solitary confinement as punishment for children in confinement.

- States should end use of the death penalty against child offenders and the mentally retarded, and impose a moratorium on executions, as first steps towards abolition of the death penalty.

- The US Government should ensure that asylum-seekers are detained only as a last resort and never in jails. There should be national, enforceable standards governing the treatment of all those in INS custody.

7. APPENDIX

Selected articles of the Convention against Torture (ratified by the USA on 21 October 1994)

Article 1

1. For the purpose of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed or intimidating or coercing him or a third person or for any reason based on discrimination of any kind when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

2. This article is without prejudice to any international instrument or national legislation which does or may contain provisions of wider application.

Article 2

1. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.

2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political in stability or any other public emergency, may be invoked as a justification of torture.

3. An order from a superior officer or a public authority may not be invoked as a justification of torture.

Article 3

1. No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.

Article 4

1. Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture.

2. Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature.

Article 10

1. Each State Party shall ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in

the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.

2. Each State Party shall include this prohibition in the rules or instructions issued in regard to the duties and functions of any such person.

Article 11

Each State Party shall keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture.

Article 12

Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.

Article 13

Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected

against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.

Article 16

1. Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. In particular, the obligations contained in articles 10, 11, 12 and 13 shall apply with the substitution for references to torture of references to other forms of cruel, inhuman or degrading treatment or punishment.

2. The provisions of this Convention are without prejudice to the provisions of any other international instrument or national law which prohibits cruel, inhuman or degrading treatment or punishment or which relates to extradition or expulsion.

The Committee against Torture

Article 17 establishes a Committee against Torture (the Committee), consisting of 19 experts of 'high moral standing and recognized competence in the field of human rights'. The experts, who must be nationals of states parties to the Convention, are elected by secret ballot for a term of four years, and are eligible for re-election.

The Committee is serviced by the Office of the High Commissioner for Human Rights in Geneva, where it holds two sessions a year, in May for three weeks and in November for two weeks.

Selected US Reservations, Declarations and Understandings

Reservations

I. The Senate's advice and consent is subject to the following reservations:

(1) That the United States considers itself bound by the obligation under article 16 to prevent cruel, inhuman or degrading treatment or punishment', only insofar as the term "cruel, inhuman or degrading treatment or punishment" means the cruel, unusual and inhumane treatment or punishment prohibited by the Fifth, Eighth, and-or Fourteenth Amendments to the Constitution of the United States.

(2) That pursuant to article 30 (2) the United States declares that it does not consider itself bound by Article 30 (1), but reserves the right specifically to agree to follow this or any other procedure for arbitration in a particular case.

II. The Senate's advice and consent is subject to the following understandings, which shall apply to the obligations of the United States under this Convention:

(1) (a) That with reference to article 1, the United States understands that, in order to constitute torture, an act must be specifically intended to inflict severe physical or mental pain or suffering and that mental pain or suffering refers to prolonged mental harm caused by or resulting from
(1) the intentional infliction or threatened infliction of severe physical pain or suffering;
(2) the administration or application, or threatened administration or application, of mind altering substances or other procedures calculated to disrupt profoundly the senses or the personality;
(3) the threat of imminent death; or
(4) the threat that another person will imminently be subjected to death, severe physical pain or suffering, or the administration or application of mind altering substances or other procedures calculated to disrupt profoundly the senses or personality.

(b) That the United States understands that the definition of torture in article 1 is intended to apply only to acts directed against persons in the offender's custody or physical control.

(c) That with reference to article 1 of the Convention, the United States understands that "sanctions" includes judicially-imposed sanctions and other enforcement actions authorized by United States law or by judicial interpretation of such law. Nonetheless, the United States understands that a State Party could not through its domestic sanctions defeat the object and purpose of the Convention to prohibit torture.

(d) That with reference to article 1 of the Convention, the United States understands that the term "acquiescence" requires that the public official, prior to the activity constituting torture, have awareness of such activity and thereafter breach his legal responsibility to intervene to prevent such activity.

(e) That with reference to article 1 of the Convention, the Unites States understands that noncompliance with applicable legal procedural standards does not per se constitute torture.

(2) That the United States understands the phrase, "where there are substantial grounds for believing that he would be in danger of being subjected to torture", as used in article 3 of the Convention, to mean "if it is more likely than not that he would be tortured".

(3) That it is the understanding of the United States that article 14 requires a State Party to provide a private right of action for damages only for acts of torture committed in territory under the jurisdiction of that State Party.

(4) That the United States understands that international law does not prohibit the death penalty, and does not consider this Convention to restrict or prohibit the United States from applying the death penalty consistent with the Fifth, Eighth and-or Fourteenth Amendments to the Constitution of the United States, including any constitutional period of confinement prior to the imposition of the death penalty.

(5) That the United States understands that this Convention shall be implemented by the United States Government to the extent that it exercises legislative and judicial jurisdiction over the matters covered by the Convention and otherwise by the state and local governments. Accordingly, in implementing articles 10-14 and 16, the United States Government shall take measures appropriate to the Federal system to the end that the competent authorities of the constituent units of the United States of America may take appropriate measures for the fulfilment of the Convention.

III. The Senate's advice and consent is subject to the following declarations:

(1) That the United States declares that the provisions of articles 1 through 16 of the Convention are not self-executing.

Declarations

I. The Government of the United States of America reserves the right to communicate, upon ratification, such reservations, interpretive understandings, or declarations as are deemed necessary.

II. The United States declares, pursuant to article 21, paragraph 1, of the Convention, that it recognizes the competence of the Committee against Torture to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the Convention. It is the understanding of the United States that, pursuant to the above-mentioned article, such communications shall be accepted and processed only if they come from a State Party which has made a similar declaration.