



## Loud and clear

### UN Human Rights Committee makes wide-ranging recommendations to USA

In advance of its appearance before a United Nations (UN) treaty body in Switzerland last month, the US administration said that the USA would use this review process to “improve its human rights performance”. The Human Rights Committee has now concluded that there is much room for improvement on the part of the USA. Authorities at federal, state and local level across the USA should respond and collaborate in a manner that leads to genuine and lasting human rights progress.

The Human Rights Committee is the expert body established under the International Covenant on Civil and Political Rights (ICCPR) to monitor implementation of and compliance with that treaty, one of the few core international human rights treaties that the USA has ratified. It did so in 1992, and its Fourth Periodic Report under the ICCPR was reviewed last month by the Committee in a public meeting that was attended by a large government delegation and many non-governmental organizations, including Amnesty International.

“[T]he United States has taken this opportunity to engage in a process of stock-taking and self-examination. The United States hopes to use this process to improve its human rights performance.”

USA’s [Fourth Periodic Report](#) to the UN Human Rights Committee

#### Accountability for past human rights violations

The Committee was able to welcome President Barack Obama’s January 2009 executive order to terminate the secret detention programme operated by the Central Intelligence Agency (CIA) under the authorization of his predecessor. Yet, as Amnesty International [submitted to the Committee](#), the USA continues to violate the ICCPR by allowing impunity to persist and blocking remedies for the human rights violations that occurred in this programme. At the recent launch of the USA’s latest assessments of the human rights records of other countries, Secretary of State John Kerry said that “Accountability for security force abuses is essential to the realization of the promise of the Universal Declaration of Human Rights”. The USA now needs to recognize its own failure in this regard.

The Human Rights Committee noted with concern that “all reported investigations into enforced disappearances, torture and other cruel, inhuman or degrading treatment that had been committed in the context of the CIA secret rendition, interrogation and detention programmes were closed in 2012”, and that many of the operational details of the CIA programme were still secret, “thereby creating barriers to accountability and redress for victims”. The Committee called on the USA to ensure that “perpetrators, including, in particular, persons in command positions, are prosecuted and sanctioned, and that victims are provided with effective remedies”. It added that “the responsibility of those who provided legal pretexts for manifestly illegal behaviour should also be established”.

Amnesty International welcomes the Committee’s attention to this issue, and reminds the USA that crimes under international law were committed in and around the CIA detention programme, crimes for which there has been no accountability. The organization welcomes the fact that the Committee has called for expedited reporting on this issue and requested the USA to update the Committee on implementation of these recommendations within a year.

Hopefully, in far less than a year, the Committee will learn that – as it has recommended – the USA has declassified the full report of the Senate Select Committee on Intelligence’s review into the CIA secret detention programme. Amnesty International is calling for the whole report – and indeed the CIA detention, interrogation and rendition programmes as a whole – to be declassified and made public.

#### Detainees at Guantánamo Bay

Another issue on which the Committee has requested the government to report within a year relates to the situation of detainees held at the US Naval Base at Guantánamo Bay in Cuba. Some have now been held there for more than twelve years without charge or trial. The Human Rights Committee noted President Obama’s commitment to closing the detention facility, but regrets that “no timeline for closure of the facility has been provided” since the President’s initial deadline of 22 January 2010 was missed. The Committee has called on the USA to bring detainees to trial or immediately release them. It said that the USA should end “the system of administrative

detention without charge or trial” and to ensure that any prosecutions of detainees at Guantánamo or in military detention in Afghanistan are conducted “within the criminal justice system rather than military commissions” and that all trials comport with international fair trial standards, as contained in article 14 of the ICCPR.

The USA should set about resolving the Guantánamo detentions and abandoning military commission trials as a matter of urgency, so as to be able to tell the Committee that the detentions have been resolved in a manner entirely consistent with the USA’s human rights obligations.

### **Death penalty**

Amnesty International submitted a [separate report](#) to the Committee on the USA’s death penalty. The organization did this because it considered that the federal authorities underreport to the Committee on the death penalty. In the USA’s Fourth Periodic Report, the Obama administration continued a US government tendency to hide behind the federal structure of government when addressing capital punishment and to gloss over the federal government’s own involvement in the state-level death penalty systems.

With this in mind, Amnesty International welcomes the specific recommendation by the Committee that the USA not only “consider establishing a moratorium on the death penalty at the federal level”, but also to “engage with the retentionist states with a view to achieving a nationwide moratorium”. This is a timely call for federal leadership on an issue that has for too long lacked the sort of principled human rights intervention necessary to bring about nationwide abolition in the USA within any reasonable timeframe.

### **Solitary confinement**

Amnesty International submitted to the Committee that the prolonged isolation of thousands of prisoners in some maximum security isolation or segregation facilities is incompatible with the obligation contained in article 10(1) of the ICCPR to treat detainees with humanity and respect for the inherent dignity of the human person and that conditions for some inmates can amount to torture or other cruel, inhuman or degrading treatment, in violation of article 7 of the ICCPR, especially if imposed for prolonged periods. With this in mind, the organization particularly welcomes the Committee’s recommendation that the USA “impose strict limits on the use of solitary confinement, both pre-trial and following conviction, in the federal system, as well as nationwide, and abolish the practice in respect of anyone under the age of 18 and prisoners with serious mental illness”.

### **Applicability of the Covenant**

An overarching concern, and one to which the Human Rights Committee and other treaty bodies have repeatedly found themselves returning, is the question of the USA’s interpretation of its international obligations. This is where an unacceptable form of US exceptionalism impacts the USA’s relationship to international law and goes some way to explaining the double standards that mark the USA’s approach to human rights.

The Committee noted that the manner in which the USA ratified the ICCPR, and the interpretations it continues to place upon its applicability “considerably limit the legal reach and the practical relevance of the Covenant”. Among these elements are the USA’s position that the ICCPR does not apply extraterritorially, that is, with respect to individuals under US jurisdiction but outside its territory. This position directly contradicts the Committee’s own jurisprudence and, as the Committee has reminded the USA, “the jurisprudence of the International Court of Justice and state practice”.

Other limiting elements are the reservations and declarations which the USA lodged at the time of its ratification of the ICCPR. Among them is a reservation to article 7’s prohibition of cruel, inhuman or degrading treatment which stated that the USA only agreed to this ban to the extent that it matched what was prohibited under the US Constitution. As Amnesty International pointed out to the Committee, such reservations were exploited by Bush administration lawyers when giving the green light for the use of interrogation techniques that violated the international prohibition of torture and other ill-treatment. The Committee has once again called on the USA to withdraw its reservations and declarations to the ICCPR, and the USA should now do so as soon as possible.

### **Other key issues**

The Committee’s recommendations cut across a swathe of issues in addition to those outlined above, from racial disparities in the criminal justice system to targeted killings by drones, from excessive force by law enforcement officials to concerns about the treatment of immigrants, from the rights of indigenous peoples to NSA surveillance (“measures should be taken to ensure that any interference with the right to privacy complies with the principles of legality, proportionality and necessity, regardless of the nationality or location of individuals whose communications are under direct surveillance”), from concerns relating to gun violence to the continuing use of life imprisonment without parole against those who were under 18 years old at the time of the crime. Amnesty International welcomes, for example, that the Committee has called for abolition of sentences of life without parole in the case of this age group, regardless of the crime of which the child stands accused.

### **Time for action**

The ball is now in the USA’s court. The UN Human Rights Committee has given the USA much food for thought and cause for action. Participating in these review processes is not sufficient in and of itself; the US administration must seize this opportunity to implement the recommendations of the Committee with a view to ensuring that the USA improves its “human rights performance” and fully meets its obligations under the ICCPR.