

Human Rights Committee

Report on follow-up to the concluding observations of the Human Rights Committee*

Report of the Special Rapporteur for follow-up to concluding observations

1. The Human Rights Committee, in accordance with article 40, paragraph 4, of the International Covenant on Civil and Political Rights, may prepare follow-up reports based on the various articles and provisions of the Covenant with a view to assisting States parties in fulfilling their reporting obligations. This draft report of the Special Rapporteur for Follow-up to Concluding Observations is prepared based on that article.

2. The report sets out the information received by the Special Rapporteur for follow-up on concluding observations between the 113th and 114th sessions, and the analyses and decisions adopted by the Committee during its 114th session. All the available information concerning the follow-up procedure used by the Committee since its eighty-seventh session, held in July 2006, is outlined in the table below.

Assessment of replies

Reply/action satisfactory

A Response largely satisfactory

Reply/action partially satisfactory

B1 Substantive action taken, but additional information required

B2 Initial action taken, but additional information and measures required

Reply/action not satisfactory

C1 Response received but actions taken do not implement the recommendation

C2 Response received but not relevant to the recommendations

No cooperation with the Committee

* Adopted by the Committee at its 114th session (29 June–24 July 2015).

Assessment of replies

- D1 No response received within the deadline, or no reply to a specific question in the report
- D2 No response received after reminder(s)
- The measures taken are contrary to the Committee's recommendations
- E The response indicates that the measures taken are contrary to the Committee's recommendations
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103rd session (October 2011)

Norway

- Concluding observations:** CCPR/C/NOR/CO/6, 2 November 2011
- Follow-up paragraphs:** 5, 10 and 12
- First reply:** Received 19 November 2012
- Committee's evaluation:** Additional information required on paragraphs 5[B2], 10[B2] and 12[B2]
- Second reply:** Received 27 June 2013
- Committee's evaluation:** Additional information required on paragraphs 5[B2] and 10[B1]
- Third reply:** Reply to the Committee's letter of 24 April 2014, 8 December 2014; received 14 January 2015
- Committee's evaluation:** Additional information required on paragraphs 5[B2] and 10[B2][B1][B2][C1]

Paragraph 5: The State party should ensure that the current restructuring of the national human rights institution effectively transform it, with the view to conferring on it a broad mandate in human rights matters. In this regard, the State party should ensure that the new institution will be fully compliant with the Paris Principles.

Follow-up question:

[B2]: Information is required on:

- (a) the results of the consultation process carried out by the Ministry of Foreign Affairs with organizations and NGOs;
- (b) the decision made by the Ministry of Foreign Affairs on what shape the new national human rights institution will take; and
- (c) the precise mandate, objectives, activities, and monitoring mechanisms of the new institution.

Summary of State party's reply:

As a result of the consultation process carried out by the Ministry of Foreign Affairs, the government and Parliament agreed to establish a new independent national institution for human rights directly linked to the Parliament. The Parliament's Presidium held a public hearing on 6 January 2015 on a draft act regulating the mandate, tasks and management of the institution. The act is currently being considered in Parliament and is expected that the new institution could become effective from July 2015.

Committee's evaluation:

[B2]: The Committee welcomes the legislative measures taken by the State party to establish a new independent national institution of human rights. The State party should submit additional information on:

- (a) the shape of the new national human rights institution;
- (b) the precise mandate, objectives, activities, and monitoring mechanisms of the new institution;
- (b) the progress and implementation of the draft act; and
- (c) whether the draft act is in full compliance with the Paris Principles.

Paragraph 10: The State party should take concrete steps to put an end to the unjustified use of coercive force and restraint of psychiatric patients. In this regard, the State party should ensure that any decision to use coercive force and restraint should be made after a thorough and professional medical assessment that determines the amount of coercive force or restraint to be applied to a patient. Furthermore, the State party should strengthen its monitoring and reporting system of mental health-care institutions so as to prevent abuses.

Follow-up question:

[B1]: Information is required on:

- (a) the impact of the national strategy to end the unjustified use of coercive force and restraint of psychiatric patients;
- (b) the measures foreseen in the national strategy to strengthen the monitoring and reporting system in mental health care institutions and its impact;
- (c) the procedure preceding the use of coercive force and restraint and on steps taken to ensure that such decisions are based on a thorough and professional medical assessment; and
- (d) the progress on the implementation of the national professional guidelines for the use of the electroconvulsive treatment (ECT) and the establishment of a register for such use.

Summary of State party's reply:

- (a) The Directorate of Health will give an assessment on the impact of the national strategy by the end of 2015. The Ministry of Health and Care Services will then consider what steps to take based on the Directorate's assessment.
- (b) It is still early to adequately assess the impact and success of the national strategy. A work group has been established to explore and suggest ways to improve data quality and due to challenges arising from various regional and local data-collecting programs, the Ministry of Health and Care Services has given priority to establishing a more efficient and unified digital data structure for the health and care system.
- (c) The Mental Health Care Act, as amended in 2007, is in line with its international human rights obligations. The Directorate of health is preparing new guidelines for the prevention and reduction of coercion; the guidelines are expected to be adopted by the end of the year and will be addressed to personnel in both the municipal and specialist health care sector.
- (d) The drafting of the national professional guidelines for the use of ECT (already mentioned by the State party, CCPR/C/NOR/CO/6/Add.2, para 11) has been delayed and are expected to be finished in 2015. The establishment of a register on the use of ECT will be addressed as part of the work with the guidelines.

Committee's evaluation:

[B2]: (a) the Committee requires information on the concluding assessment and recommendations made by the Directorate and the steps considered and/or taken by the Ministry of Health and Care Services.

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[B1]: (b) the Committee requires information on the suggestions made by the work group to improve data quality, measures foreseen in the national strategy to strengthen the monitoring and reporting system in mental health care institutions and its impact.

[B2]: (c) the Committee welcomes steps taken by the State party to prepare guidelines for the prevention and reduction of coercion. The Committee requests additional information regarding the status, content and implementation of the guidelines, as well as information on the procedure preceding the use of force and restraint. The Committee reiterates its recommendation.

[C1]: (d) the Committee regrets that the State party has not implemented the Committee's recommendations to end the unjustified use of coercive force and restraint of psychiatric patients. The committee also regrets that no progress has been made to implement the guidelines and establish a register for the use of ECT. The Committee reiterates its recommendation.

Recommended action: A letter should be sent informing the State party of the discontinuation of the follow-up procedure. The information requested should be included in the State party's next periodic report.

Next periodic report: 2 November 2016

106th session (October 2012)

Portugal

Concluding observations:	CCPR/C/PRT/CO/4, 31 October 2012
Follow-up paragraphs:	9, 11 and 12
First reply:	Received 9 April 2014.
Committee's evaluation:	Additional information required on paragraphs 9[B2], 11[B1][B2][B1] and 12[B1][B1][B1].
Second reply:	Received 31 October 2014
Committee's evaluation:	Additional information required on paragraphs 9[C2][C2][A], 11[A][C2][C2] and 12[A].
Third reply:	22 January 2015

Paragraph 9: The State party should take further steps to reduce the number of persons in pretrial detention as well as the duration of such detention, including through measures aimed at reducing the length of investigations and legal procedures, improving judicial efficiency and addressing staff shortages. It should also ensure that pretrial detainees are held separately from convicted criminals.

Follow-up question:

[B2]: Additional information is required on the legislative amendment introduced in the Criminal Procedural Code which increased the scope of application of measures alternative to imprisonment and on measures taken to reduce the length of investigations and legal procedures, improve judicial efficiency and address staff shortages. In addition, statistical data should be requested on:

(a) the average length of pretrial detention in the last 3 years, disaggregated on the basis of

gender and grounds for detention; and

(b) the number of individuals held in pretrial detention in the last 3 years.

Summary of State party's reply:

The State party informed the Committee that no additional information is available on the amendment introduced to the Criminal Procedural Code and on measures taken to reduce the length of investigations and legal procedures, improve judicial efficiency and address staff shortages.

(a) The State party informed the Committee that there is no additional information on the subject.

(b) The numbers of individuals held in pretrial detention on 31 December 2012, 2013, and 2014, respectively, are: 2,661 individuals (19.5%); 2,590 individuals (18.1%); and 2,328 individuals (16.7%).

Committee's evaluation:

[C1]: The Committee regrets that no additional information was provided on both the amendment to the Criminal Procedural Code which increased the scope of application of measures alternative to and on measures taken to reduce the length of investigations and legal procedures, improve judicial efficiency and address staff shortages. The Committee reiterates its recommendation.

[C1]:(a) the Committee regrets that no statistical data was provided on the average length of pretrial detention in the last 3 years, disaggregated on the basis of gender and grounds for detention. The Committee reiterates its recommendation.

[A]: (b) the Committee welcomes the reduction in the number of persons in pretrial detention from 2012 to 2014.

Paragraph 11: The State party should expedite its efforts to address the problem of overcrowding in prisons, including the Angra do Heroísmo Regional Prison (Azores), as well as inadequate facilities, the availability of drugs and drug dependence, and the high rate of HIV/AIDS and hepatitis C in correctional institutions. It should also take steps, legislative or otherwise, to prevent physical ill-treatment and other forms of abuse, including excessive strip searches, by prison guards.

Follow-up question:

[B1]: Regarding the overcrowding in prisons, the Committee takes note of the investment plan aimed at the requalification and extension of prison facilities, but requires updated information on its progress and on the creation of new places in prisons.

[B2]: Additional information is requested on measures taken, after the adoption of the Committee's Concluding observations on 31 October 2012, to increase the availability of drugs and to address the high rate of HIV/AIDS and hepatitis C in correctional institutions.

[B1]: Concerning physical ill-treatment and other forms of abuse, additional information is required on the monitoring visits carried out by the Ombudsman in February and March 2013 and measures taken to address the deficiencies identified.

Summary of State party's reply:

Overcrowding in Prisons: From 1 January 2014 to 31 December 2014, the overcapacity rate of the prison system fell from 16.2% to 9.9% overall and 12% to 6.6% on a daily basis (excluding detainees subject to weekend detention).

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From 2011 until 2015, a total of USD\$ 31,422,159 has been and is foreseen to be invested in 9 projects aimed to address the overcrowding of prisons. The 2011-2015 investment plan is projected to produce a total of 1,170 new places in prisons. Of these 9 projects, 5 are being executed through the use of prison labour.

Drug and Health Conditions: As of 31 December 2013, 1330 detainees were part of treatment programs; 96 were in abstinence-oriented programs, falling from 185 at the beginning of 2013, and 1234 were in pharmacological programs. The pharmacological programs include: a program with Methadone (1127 detainees); a program with Buprenorfina (Subuxone) (13 detainees); a narcotics antagonist program (37 detainees); and a program with Suboxone (57 detainees).

As of 31 December 2013, 2,752 detainees tested positive for HIV, Hepatitis B, and/or Hepatitis C.

Treatment of Prisoners: In May 2013 a new Ombudsman was appointed as National Preventative Mechanism in the framework of the Optional Protocol to the UN Convention against Torture. The Ombudsman made several visits to prisons frequently targeted in submitted complaints or of more cause for concern.

Issues at stake related to overcrowding, contact with the outside world, and food and beverage, and attention was paid to the use of disciplinary power and communication between the prison's health services and the National Health System. The majority of issues were adequately dealt with and the local structures accepted the remarks and proposals made by the Ombudsman.

Committee's evaluation:

[A]: The Committee considers the State party's response largely satisfactory. Additional information should be submitted on the progress of the pending and ongoing investment plan projects.

[C1]: The Committee welcomes the detailed statistical data submitted by the State party on individuals undergoing treatment for drug dependence. It regrets that the State party has not provided information on measures taken since October 2012 to address the high rate of HIV/AIDS and hepatitis C in correctional institutions. The Committee reiterates its recommendation in this respect.

[C1]: Additional information is required on the remarks and proposals made by the Ombudsman during his 2014 prison visits with respect to the prevention of ill-treatment and measures taken by the local structures to implement them. The Committee regrets that no information was provided on measures taken to prevent physical ill-treatment and other forms of abuse, including excessive strip searches by prison guards. The Committee reiterates its recommendation.

Paragraph 12: The State party should continue to take steps, in particular within its Fourth National Action Plan against Domestic Violence (2011-2013), to combat and prevent domestic violence and ensure that victims have effective access to complaints mechanisms. It should ensure that victims have access to means of protection, including an adequate number of shelters set up for women victims. The State party should also ensure that acts of domestic violence are effectively investigated and that perpetrators are brought to justice and sanctioned.

Follow-up question:

[A]: On the need to combat and prevent domestic violence, the Committee takes note of the legal amendments introduced in February 2013 in order to extend the concept of domestic violence and to regulate aspects on the prevention of domestic violence and on the protection of and assistance of victims, but requires additional information on the impact of such amendments. The Committee also requires a copy of the legal amendments adopted after 31 October 2012.

[A]: Concerning the National Action Plan against domestic violence and the measures taken to ensure that victims have effective access to complaint mechanisms, the Committee takes note of the adoption of the V National plan against Domestic and Gender-Based Violence 2014-2017, but requires updated information on its impact, in particular concerning measures taken to ensure that victims have effective access to complaints mechanisms. In addition, please clarify the decrease in the number of complaints presented to Police Forces, which amounted to 31.235 complaints in 2010 and decreased to 27.318 in 2013.

[A]: Concerning the rehabilitation of victims, the Committee notes the protocol signed in August 2012 by the Government and the National Association of Portuguese Municipalities to provide low-cost housing to victims of domestic violence upon leaving the shelter, but requires information on the implementation of this protocol. The Committee also takes note of the initiative of the Institute for Employment and Vocational Training to support victims of domestic violence in becoming financially independent, but requires information on the sustainability of this project and if the State party intends to continue with this initiative.

Summary of State party's reply:

Measures to combat and prevent crimes of domestic violence: The State party provided substantive detail of the changes made to the Penal Code via the February 2013 amendments.

Furthermore, a number of provisions have been introduced to regulate aspects covered by the "Law on the prevention of domestic violence and on the protection of and assistance to its victims."

Prison services are implementing the Program for Domestic Violence Offenders (PAVD), which consists of cognitive-behavioural therapy for domestic violence offenders, aimed at promoting awareness, responsibility, and the use of alternate strategies to prevent recidivism. From 1 January to 31 October 2014, 572 defendants/convicted persons underwent an intervention in accordance to the procedures set up in the PAVD.

In February 2013, Portugal became the first country in the European Union to ratify the Council of Europe's Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention).

The V National Plan and access to complaints mechanisms: The State party is unable to provide information on this subject, as the Council of Ministers Resolution approving the V National Plan against Domestic and Gender-Based Violence 2014-2017 obliges the Commission for Citizenship and Gender Equality to submit an annual report on the National Plan's impact every March 15, the first of which is not due until 15 March 2015. The information required by the Committee will not be available until that date.

Low-cost housing and employment and vocational training programs: The Commission for

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Citizenship and Gender Equality is currently evaluating the practical results of the August 2012 Protocol to provide low-cost housing to victims of domestic violence once leaving the shelter. The Commission's first preliminary results will be available at the end of January 2015.

Regarding the Institute for Employment and Vocational Training (IEFP), under the IV National Plan against Domestic Violence (2011–2013), experts were placed in local IEFP offices to act as liaison officers between supporting institutions and the public employment service. Under the V National Plan to Prevent and Combat Domestic Violence and Gender (2014–2017), the IEFP, IP, in conjunction with other entities, is responsible for consolidating and expanding “access to vocational training and labour integration for victims of gender violence/domestic violence.” From 1 January to 30 September 2014, 346 victims of domestic violence were assisted by the employment services, 216 of which were integrated.

Committee's evaluation:

[A]: The Committee welcomes the legislative and institutional steps taken by the State party to implement the Committee's recommendation. Information on additional measures taken by the State party to implement the Committee's recommendation should be provided in its next periodic report. In particular, the Committee requires information regarding the assessment and conclusions of the Commission for Citizenship and Gender Equality's annual report on the V National Plan against Domestic and Gender-Based Violence 2014–2017. The Committee also requires information on the results of the Commission for Citizenship and Gender Equality's evaluation of the Protocol once such results are made available

Recommended action: A letter should be sent informing the State party of the discontinuation of the follow-up procedure. The information requested should be provided by the State party in its next periodic report, which is due on 31 October 2018.

Next periodic report: 31 October 2018

107th session (March 2013)

China, Hong Kong

Concluding observations:	CCPR/C/CHN-HKG/CO/3, 26 March 2013
Follow-up paragraphs:	6, 21 and 22
First reply:	Received 25 March 2014
Committee's evaluation:	Additional information required on paragraphs 6[C1], 21[C1] and 22[B2].
Second reply:	Received 25 March 2015
Committee's evaluation:	Additional information required on paragraphs 6[C1], 21[C1][C2][C1] and 22[B2].

Paragraph 6: Hong Kong, China, should take all necessary measures to implement universal and equal suffrage in conformity with the Covenant as a matter of priority for all future elections. It should outline clear and detailed plans on how universal and equal suffrage might be instituted and ensure enjoyment by all its citizens, under the

new electoral system, of the right to vote and to stand for election in compliance with article 25 of the Covenant, taking due account of the Committee's general comment No. 25 (1996) on the right to participate in public affairs, voting rights and the right of equal access to public service. It is recommended to consider steps leading to withdrawing the reservation to article 25(b) of the Covenant

Follow-up question:

[C1]: The Committee notes the public consultation carried out by the State party on the selection methods for the CE in 2017 and on the election of the LegCo in 2016. The Committee also notes the decision of 31 August 2014 of the NPCSC. The Committee requires additional information on the specific method for selecting the CE and the LegCo by universal suffrage, which includes the right to vote and the right to stand for election, and its compatibility with the Covenant. The Committee also requires information on measures taken to withdraw the reservation to article 25(b) of the Covenant.

Summary of State party's reply:

The 31 August 2014 decision of the Standing Committee of the National People's Congress ("NPCSC Decision") lays down a clear framework for selection of the CE by universal suffrage. In accordance with Basic Law and the NPCSC Decision, a two-month public consultation took place between 7 January 2015 and 7 March 2015 on the method for selecting the CE by universal suffrage. The State party is consolidating and summarising the views received, with a view to submitting to the Legislative Council ("LegCo") a resolution on the proposed amendment to Annex I to the Basic Law regarding the method for selecting the CE. The proposed amendment will require endorsement by two-thirds majority of all Members of the LegCo, consent of the CE and approval of the NPCSC to complete the constitutional steps necessary to allow for election of the next CE through "one person, one vote" in 2017.

The State party repeated information contained in its third periodic report, and stated that Honk Kong, China remains subject to the reservation to article 25(b).

Committee's evaluation:

[C1]: The Committee notes that the State party has not provided information on the specific method for selecting the LegCo by universal suffrage, as requested by the Committee, and requests additional information on the progress towards the adoption of an amendment allowing for election of the CE by universal suffrage. The Committee regrets that no measures appear to have been taken to withdraw the reservation to article 25(b) of the Covenant.

Paragraph 21: Hong Kong, China, should adopt measures to ensure that all workers enjoy their basic rights, independently of their migrant status, and establish affordable and effective mechanisms to ensure that abusive employers are held accountable. It is also recommended to consider repealing the "two-weeks rule" (whereby domestic migrant workers have to leave Hong Kong within two weeks upon termination of contract) as well as the live-in requirement.

Follow-up question:

[C1]: While the Committee notes the information that the State party provided on the protection and entitlements provided for foreign domestic workers, additional information is required on:

- (a) data on the incidence of all forms of alleged employer abuse and of criminal prosecutions, convictions and imprisonment of employers;
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(b) accessible and effective mechanisms in place to ensure accountability of employer abuse; and

(c) if the State party envisages repealing the “live-in requirement”.

Summary of State party’s reply:

(a) In 2014, the Hong Kong Police received 38 reports of wounding and serious assault cases involving foreign domestic workers having been attacked by their employers. No statistics are maintained concerning sentencing outcomes.

(b) The State party has repeated the information provided during the dialogue with the Committee. Inflicting bodily harm against any person in Hong Kong, including foreign domestic workers, is a serious criminal offense and is punishable by time in prison. Foreign domestic workers are advised to report to the Police any acts of abuse or assault by their employers as soon as possible. If a foreign domestic worker is required to remain in Hong Kong for assisting in investigation or acting as a witness, etc. after the termination of his/her employment contract, the Immigration Department may exercise discretion to extend his/her stay in Hong Kong as a visitor.

(c) There are no plans to repeal the “live-in requirement.”

Committee’s evaluation:

[C1]:(a) The Committee notes the reports received of wounding and serious assaults cases involving foreign domestic helpers. It regrets that the State party does not maintain data on the concerned sentencing outcomes. The Committee reiterates its recommendation and requires updated data on incidences of all forms of alleged employer abuse, including statistics on prosecutions, convictions and sentencing outcomes.

[C2]:(b) Additional information is required on mechanisms in place that are specifically tailored to ensure accountability of employer abuse, specifically abuse against foreign domestic workers, including mechanisms in place to facilitate reporting of abuse and to protect employees from retribution for coming forward with complaints.

[C2]:(c) The Committee regrets that no steps have been taken in consideration of repealing the “live-in requirement.” The Committee reiterates its recommendation.

Paragraph 22: In light of the recommendation made by the Committee on the Elimination of Racial Discrimination (CERD/C/CHN/CO/10-13, para. 31), Hong Kong, China, should intensify its efforts to improve the quality of Chinese language education for ethnic minorities and non-Chinese speaking students with an immigrant background, in collaboration with the Equal Opportunities Commission and other groups concerned. Hong Kong, China, should further intensify its efforts to encourage the integration of students of ethnic minorities in public school education.

Follow-up question:

[B2]: The Committee notes the additional funding allocated for the 2014/15 school year to support NCS students in learning the Chinese language; however, additional information is required on measures taken to integrate ethnic minorities in the public education system, in particular, the concrete policy goals, implementation objectives/timetables, monitoring mechanisms and measures to ensure transparency that will be used in implementing the “Chinese Language Curriculum Second Language Learning Framework” programme.

Summary of State party’s reply:

The “Chinese Language Curriculum Second Language Learning Framework” programme (“Learning Framework”) has been implemented in primary and secondary schools in the 2014/15 school year to help non-Chinese speaking (“NCS”) students overcome difficulties

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of learning Chinese as a second language and enable them to bridge over to mainstream Chinese Language classes. An Applied Learning Chinese subject has been introduced in phases as an alternative qualification for NCS students to opt for at senior secondary levels. After-school Chinese learning support programmes and cultural activities at the community level are also being implemented.

To facilitate implementation of the Learning Framework, schools have been provided with practical tools and steps and second language learning reference materials, complemented by seminars and workshops for school leaders, middle managers and teachers. From the 2014/2015 school year onwards, professional development programmes will be regularly organized to ensure teachers have ample training opportunities.

A research framework to evaluate the effectiveness of these support measures has been finalized, and a team within the Education Bureau has been set up to monitor the use of the additional funding given to schools for the implementation of the Learning Framework.

In the 2014/15 school year, NCS students have spread across about 70% of public primary schools and about 60% of public secondary schools.

Committee's evaluation:

[B2]: The Committee welcomes efforts by the State party to integrate ethnic minorities in public school education and requests further information on the progress of measures taken, in particular, the Learning Framework, including: (i) statistical data on NCS students involved in the programmes and their progress therein; (ii) evaluations conducted regarding the Learning Framework's effectiveness; and (iii) reports and findings of the monitoring team within the Education Bureau on the use of funds for its implementation.

Recommended action: A letter should be sent reflecting the analysis of the Committee.

Next periodic report: 30 March 2018

109th session (October 2013)

Bolivia

Concluding observations:	CCPR/C/BOL/CO/3, 29 October 2013
Follow-up paragraphs:	12, 13 and 14
First reply:	Received 13 February 2015
NGO information:	Amnesty International; Instituto de Terapia e Investigación sobre las Secuelas de la Tortura y la Violencia Estatal – ITEI; Comunidad de Derechos Humanos
Committee's evaluation:	Additional information required on paragraphs 12[C2][D1][C2][C2], 13[C2][D1][D1][B2] and 14[B2].

Paragraph 12: The State party should:

(a) Actively investigate human rights violations committed during the period in question so as to identify those responsible, prosecute them and punish them

accordingly;

(b) Ensure that the Armed Forces cooperate fully in the investigations and promptly hand over all the information at their disposal;

(c) Revise the standards of proof in relation to acts for which reparation is sought so that the burden of proof borne by victims is not an insurmountable obstacle; establish a mechanism for appeal and review of applications; and make available the resources needed to ensure that victims will receive the full amount of compensation awarded to them;

(d) Guarantee the effective enjoyment of the right to full redress, including psychosocial care and counselling and the honouring of historical memory, as established in Act No. 2640. Particular attention should be paid to gender considerations and victims in vulnerable situations.

Summary of State party's reply:

(a) and (b) The State party referred to information provided in its third periodic report, as follows:

The draft bill for a proposed truth commission has been under consideration by the House of Representatives since 2013. The State party provided information on the functions, objectives and the composition of the proposed truth commission. The Truth commission will act on human rights violations which occurred between 1964-1982.

(c) The State party repeated the information provided in its replies to the list of issues (CCPR/C/BOL/Q/3/Add.1, paras. 52-59). The Supreme Decree No. 28015 (2005) clearly establishes that the burden of proof is borne by the potential beneficiary. A total of 1714 persons qualified as beneficiaries in accordance with the law. The victim's qualification process was based on the law and is, therefore, legitimate.

(d) The Ministry of Health and Sports has implemented a project on mental health under the National Plan of Mental Health 2009-2015. This project aims at providing psychosocial support for victims of the events of violence occurred in 2008 in the Pando Department.

NGO Information:

Amnesty International:

(a) The State party has not implemented the Committee's recommendation to investigate human rights violations committed during 1964-1982.

Concerning the investigation of the Teoponte case, to date, remains of 17 people were found. In June 2014 an area was identified, where it was estimated there could be a common grave however for climatic reasons it was not possible to excavate the area. There is no information on efforts taken to identify those responsible for human rights violations committed in Teoponte.

With respect to the Renato Ticona Estrada case, there is no information on actions taken to apprehend those responsible and impose sanctions.

(b) To date, no victim or their families have had access to military archives using the Resolution No. 0316 of 2009. In addition, there are several other judicial orders that have aimed access to military archives, without success.

(c) Act No. 2640 on compensation and the requirements to qualify for compensation was already referred to by the State party in its third periodic report and does not comply with international standards.

On the compensation funds the State indicates that there have been no "positive results" in terms of getting resources from the international cooperation. Amnesty International is of the opinion that this does not justify the failure to comply with the obligation to ensure

compensation to the victims.

(d) The State party has not provided information on the effective enjoyment of the right to full redress. Concerning the draft bill for a proposed truth commission, as the Committee was already informed during the adoption of the concluding observations of Bolivia, the discussion on the bill is currently suspended because it has been widely criticized by organizations of victims and relatives.

Instituto de Terapia e Investigación sobre las Secuelas de la Tortura y la Violencia Estatal:

(d) Concerning the project on mental health, referred to by the State party, it was funded and implemented by the International Red Cross. The ITEI was asked to elaborate the training programme.

Comunidad de Derechos Humanos:

(a) The State party has not taken measures in this respect .

(b) To date, no victim or their families have had access to military archives using the Resolution No. 0316 of 2009 .

(c) and (d) The State party has not taken measures to implement the Committee's recommendations .

Committee's evaluation:

[C2]: (a) the State party has not provided new information. The Committee requires information on the proposed Truth Commission, the progress towards its adoption, and whether it complies with international human rights standards regarding investigations of human rights violations committed under the de facto regimes of 1964–1982. It also requests information on the participation of civil society in the drafting of this Bill. The State party should also provide information on the progress made since 2013 in identifying those responsible for human rights violations committed under the de facto regimes of 1964–1982, and regarding prosecutions and punishments, including the plans for investigating the Teoponte and Estrada cases. In regards to the Teoponte case, please provide information on the area identified in June 2014 as the possible site of a common grave and whether excavations have been initiated there.

[D1]:(b) the Committee requires information on measures taken to ensure that victims, their families, including through judicial orders, have access to information contained in military archives. The Committee also requires information on measures taken to ensure better cooperation from the Armed Forces in providing information at their disposal. The Committee reiterates its recommendation.

[C2]:(c) the Committee notes that no action has been taken to revise the standard of proof in relation to acts for which reparation is sought, to establish a mechanism for appeal and review of applications and to make available the resources needed to ensure that victims receive the full amount of compensation awarded to them. The Committee reiterates its recommendation.

[C2]:(d) the Committee notes that the State party has not provided information on measures taken to provide full redress to victims of human rights violations committed under the de facto regimes of 1964–1982. The Committee reiterates its recommendations.

Paragraph 13: The State party should amend the current rules of military criminal law to exclude human rights violations from military jurisdiction. It should also amend the Criminal Code to include a definition of torture that is fully in line with articles 1 and 4 of the Convention against Torture and Other Cruel, Inhuman or

Degrading Treatment or Punishment and with article 7 of the Covenant. The State party should ensure that all alleged acts of torture or ill-treatment are promptly investigated, that the perpetrators are prosecuted and punished in a manner that is commensurate with the seriousness of the offence and that the victims obtain appropriate redress and protection. The State party should expedite its adoption of the measures required to establish a national mechanism for the prevention of torture and ensure that that body is provided with sufficient resources to enable it to operate efficiently.

Summary of State party's reply:

The Service for the Prevention of Torture (SEPRET) was created in 2013. Its functions include: conducting trainings directed to personnel working with persons deprived of their liberty; conduct visits to places of detention; make recommendations to the competent authorities to improve conditions of detention of persons deprived of liberty; and follow investigations of cases of torture, inhuman or degrading treatment. The SEPRET is currently consolidating its structure.

Concerning military jurisdiction, the State referred to article 245 of its Constitution, the Penal Military Code (1976), the Code of Penal Military Procedures (1993) and the Act on the Organization of Military Justice (1993).

NGO information:

Amnesty International:

Concerning military jurisdiction, the State party repeated the information provided in its third periodic report.

The State party has provided no additional information with respect to the definition of torture or opening of investigations.

Until today, the State party has not established an independent mechanism, in charge of receiving and investigating complaints of torture. The SEPRET is under the Ministry of Justice, which may affect the SEPRET's independence and autonomy.

Comunidad de Derechos Humanos:

Concerning military jurisdiction, the State party has not taken measures to implement the Committee's recommendation .

Concerning the definition of torture, the State party is in the process of amending the Penal Code .

The State party has not taken measures to investigate and prosecute alleged acts of torture .

The SEPRET was established by law, but does not meet the criteria of independence and does not have adequate funding.

Committee's evaluation:

[C2]: The Committee notes that the response received by the State party is not relevant to the Committee's recommendation and that the recommendation has not been implemented. The Committee reiterates its recommendations.

[D1]: The Committee notes that the State has not provided additional information. The

Committee reiterates its recommendation that State party amend the Criminal Code to include a definition of torture that is fully in line with articles 1 and 4 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and with article 7 of the Covenant.

[D1]: The Committee notes that the State party has not provided information on measures taken to ensure that all alleged acts of torture or ill-treatment are promptly investigated, that the perpetrators are prosecuted and punished in a manner that is commensurate with the seriousness of the offence and that the victims obtain appropriate redress and protection. The Committee reiterates its recommendation and requests information on the number of investigations and prosecutions of perpetrators of acts of torture or ill-treatment in the last two years.

[B2]: The Committee notes the establishment of the SEPRET, but requires further information on its structure, its scope of authority with respect to investigations of torture and other cruel, inhuman or degrading treatment, and on measures taken to ensure its independence and autonomy.

Paragraph 14: The State party should speed up the proceedings relating to the incidents of racial violence that occurred in Pando and in Sucre in 2008 in order to put an end to the prevailing situation of impunity. The State party should also award full redress to all the victims, including appropriate medical and psychosocial treatment for the injury suffered.

Summary of State party's reply:

The Case of Pando and the Case of Sucre are at the oral trial stage. Concerning the Case of Pando, three suspects are in preventive detention and two are in house arrest.

The Public Prosecutor is following the case and ensuring compliance with procedural deadlines.

NGO Information (Comunidad de Derechos Humanos):

The State party has not taken measures to implement the Committee's recommendations .

Committee's evaluation:

[B2]: The Committee welcomes the information provided by the State party on the cases of Pando and Sucre and requires updated information on these proceedings. The Committee also requires information on measures taken to award full redress to all the victims, including relevance of the project implemented by the Ministry of Health and Sports under the National Plan of Mental Health 2009-2015.

Recommended action: A letter should be sent reflecting the analysis of the Committee.

Next periodic report: 1 November 2018

Concluding observations:	CCPR/C/DJI/CO/1, 29 October 2013
Follow-up paragraphs:	10, 11 and 12
First reply:	Received 15 January 2015
NGO information:	Alkarama
Committee's evaluation:	Additional information required on paragraphs 10[D1], 11 [D1][D1][B2] and 12[D1].

Paragraph 10: The State party should strengthen the legal framework for the protection of women against domestic violence by specifically criminalizing domestic violence, including marital rape. It should guarantee that cases of domestic violence and marital rape are thoroughly investigated and prosecuted. The State party should also ensure that law enforcement officials are provided with appropriate training to deal with domestic violence and sufficient, adequately resourced shelters are available. The State party should further organize awareness-raising campaigns for men and women on the adverse effects of violence against women on the enjoyment of their human rights.

Summary of State party's reply:

Although marital rape is still taboo, courts may consider these acts as acts of violence punishable by criminal law.

The State party referred to article 33 of the Family Code (2002), which provides that if one spouse complains about the other spouse without being able to provide any evidence, the judge cannot determine the responsible spouse and arbitrators should be nominated. After studying the situation, arbitrators must, to the extent possible, reconcile the spouses and, in all cases, report to the judge.

Committee's evaluation:

[D1]: The State party has not provided the Committee with new information and has not responded to much of the recommendation. Committee considers that the recommendation has not been implemented and therefore reiterates it.

Paragraph 11: The State party should ensure that allegations of torture and ill-treatment are thoroughly investigated and that perpetrators are prosecuted and, if convicted, punished with appropriate sanctions, and that the victims are adequately compensated. The State party should establish an independent mechanism to carry out investigations of alleged misconduct by law enforcement officials. In this connection, the State party should also ensure that law enforcement officials continue to receive training on investigating torture and ill-treatment by integrating the 1999 Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) into all training programmes for them. The State party should indicate in its next periodic report the number of law enforcement officials trained and the impact of such training.

Summary of State party's reply:

The State party referred to its periodic report, which contains detailed information on measures taken to prevent and combat torture.

Allegations of torture and ill-treatment are false and baseless. The African Commission on Human and People's Rights dismissed the case of Mohamed Abdallah Salah-Assad in relation to alleged acts of torture.

The State party continued its efforts to train law enforcement officials. With the support of the Regional Office of the OHCHR, the NHRC and UNFPA, a legal guide for the judicial police was developed in 2014. As part of the implementation of the guide, a two-day training exercise for the police, gendarmerie, coast guard and prison guards was organized in November 2014.

NGO information (Alkarama):

Alkarama, organizations and human rights defenders documented cases of ill-treatment by the police forces against political opponents, journalists and ordinary prisoners.

Committee's evaluation:

[C2]: The Committee regrets that the State party denies continuous reports of ill-treatment of detainees and that it has not taken measures to implement its recommendations with respect to investigations, prosecutions and compensation to victims of torture. The Committee, therefore, reiterates its recommendations.

[D1]: The Committee regrets that the State party has not responded to this recommendation and has not established an independent mechanism to carry out investigations of alleged misconduct by law enforcement officials. The Committee reiterates its recommendations.

[B2]: The Committee notes that the State party developed a guide for judicial police and has conducted a two-day training of the police, gendarmerie, coast-guards and prison guards. The Committee requests additional information on plans to conduct future training, as well as:

- (a) Other trainings that have been carried out or are scheduled to be carried out, and their timing and length;
- (b) the integration of the Istanbul Protocol into all training programmes; and
- (c) the number of law enforcement officials trained and the impact of such trainings.

Paragraph 12: The State party should:

- (a) Take appropriate measures to guarantee in law and in practice, and to create an environment conducive to, the exercise of the rights to freedom of expression, peaceful association and assembly;**
- (b) Revise its legislation to ensure that any restriction on press and media activities is in strict compliance with article 19, paragraph 3, of the Covenant. In particular, it should review the registration requirements for newspapers and abolish prison terms for defamation and similar media offences. It should expedite the functioning of the National Communication Commission and take all above-mentioned measures in line with article 19, paragraph 3, as further explained in the Committee's general comment No. 34 (2011) on freedoms of opinion and expression;**
- (c) Release, rehabilitate and provide adequate judicial redress and compensation for journalists imprisoned in contravention of article 19 of the Covenant; and**
- (d) Give space to civil society organizations to promote their activities, and prosecute those who threaten, harass or intimidate such organizations and human rights defenders and journalists.**

Summary of State party's reply:

The State party reiterated the information provided in its periodic report.

NGO information (Alkarama):

The right to freedom of expression, assembly and association continue to be regularly violated by the authorities. The internet remains controlled and some opposition websites are inaccessible to the public. Journalists are constantly under the threat of being arrested

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and prosecuted for "spreading false information". Foreign journalists have also been banned from entering the country. The National Communication Commission was created in December 2014 and it is difficult for the time being to take stock of its activities. Human Rights defenders are also subjected to pressure and sometimes reprisals.

Committee's evaluation:

[D1]: The State party has provided no new information, has not responded to most of the recommendation, and has not taken measures to implement the Committee's recommendation. The Committee reiterates its recommendations.

Recommended action: A letter should be sent reflecting the analysis of the Committee.

110th session (March 2014)

United States of America

Concluding observations: CCPR/C/USA/CO/4, 26 March 2014

Follow-up paragraphs: 5, 10, 21 and 22

First reply: Received 01 April 2015

NGO information: Brennan Center for Justice at NYU Law, Access and Amnesty International USA; Dream Defenders, Community Justice Project, Inc., Campaign to Keep Guns Off Campus – New York, International Women's Human Rights Clinic, City University of New York Law School, ACLU Michigan/Juvenile Life Without Parole Initiative, Campaign for Youth Justice, The Project on Addressing Prison Rape, American University, Washington College of Law; United States Report Card Youth Justice Issues; Medical Whistleblower Advocacy Network; Center for Victims of Torture; Chicago Alliance Against Racist And Political Repression; Attorneys for Guantánamo Bay prisoners; International Women's Human Rights Clinic; Kent State Truth Tribunal International Human Rights Clinic at University of California, Irvine School of Law and the Human Rights Litigation and International Advocacy Clinic at University of Minnesota School of Law; Legal Counsel for Mr. Mustafa al-Hawsawi.

Due to the high number of NGO submissions received, only part of them were summarized in the present report.

Committee's evaluation: Additional information required on paragraphs 5[B2][C1][C1][B1], 10[C1][C1], 21[B1][E] and 22[C1][C1][C1][D1].

Paragraph 5: The State party should ensure that all cases of unlawful killing, torture or other ill-treatment, unlawful detention or enforced disappearance are effectively, independently and impartially investigated, that perpetrators, including, in particular, persons in positions of command, are prosecuted and sanctioned, and that victims are

provided with effective remedies. The responsibility of those who provided legal pretexts for manifestly illegal behavior should also be established. The State party should also consider the full incorporation of the doctrine of “command responsibility” in its criminal law and declassify and make public the report of the Senate Special Committee on Intelligence into the CIA secret detention programme.

Summary of State party’s reply:

(i) The State party provided information on recent state and federal prosecutions of police and correctional officers charged and convicted of human rights violations and the remedies provided to victims.

Four civilian contractors employed by Blackwater USA were convicted in October 2014 for the deaths and injuries of over 30 civilians in Baghdad, Iraq in 2007; three received a mandatory minimum of 30 years in prison and one received a life sentence. The Department of Defense (DOD) has conducted thousands of investigations into alleged misconduct by U.S. forces since 2001 and more than 70 investigations concerning detainee abuse by military personnel in Afghanistan resulted in trial by courts-martial.

(ii) A review of the conduct of two senior DOJ officials who gave legal advice justifying the use of “enhanced interrogation techniques” was carried out in 2010; it found that, while the officials exercised poor judgment, they did not engage in professional misconduct.

(iii) The U.S. federal criminal code does not encompass the doctrine of command responsibility *per se*, but the Department of Justice (DOJ) can rely on conspiracy and aiding and abetting statutes to reach senior officials. Comparable state-level criminal law provisions also address conspiracy and participation offenses.

(iv) On December 9, 2014, the Senate Select Committee on Intelligence released its Findings and Conclusions and an Executive Summary of its Study of the CIA’s former Detention and Interrogation Program (SSCI Report). The documents, which totalled over 500 pages, were minimally redacted, with 93% of the released portion declassified.

NGO Information:

The Center for Victims of Torture, CVT: Members of the Obama administration admitted that CIA conduct under its detention and interrogation program amounted to torture, but no senior officials have been held accountable and victims’ right to remedies through the courts has been rejected. While 500 pages of the SSCI report have been released to the public, the full report, which is nearly 6,700 pages, remains classified. The DOJ decided it would not reopen an investigation into the CIA’s conduct.

Legal Counsel for Mr. Mustafa al-Hawsawi: Less than 10% of the SSCI Report has been released and information crucial to Mr. al-Hawsawi’s defense has been redacted. While the Prosecution has obtained a copy of the full report, Mr. al-Hawsawi’s attorneys were informed they would only have access to pieces of the report the Prosecution deems relevant to his defense.

The Case of Abdul Rahim Abdul Razak Al Janko: In March 2015, the Supreme Court denied review of a D.C. Circuit Court ruling that upheld a provision of the Military Commissions Act that strips all US courts of jurisdiction to hear constitutional claims brought by Guantanamo detainees. Because the D.C. Circuit remains the only circuit that may hear appeals by Guantanamo detainees, the Supreme Court’s denial of review has essentially foreclosed the ability of Guantanamo detainees, including Mr. Janko, to obtain

redress for violations of their human rights. To date there are no known cases in which a torture victim of the US military has been financially compensated by the US.

Committee's evaluation:

[B2](i): While noting, with appreciation, information provided by the State party on recent prosecutions of law enforcement officials, as well as the convictions of four Blackwater USA contractors for their crimes in Iraq, the Committee requires information on investigations, prosecutions or convictions of U.S. government personnel in positions of command for crimes committed during international operations or as part of the U.S. detention and interrogation programs. The Committee is also concerned at reports that current and former Guantanamo detainees have been deprived the ability to seek judicial remedy for torture and other human rights violations incurred while in U.S. custody. The Committee reiterates its recommendations.

[C1](ii): The Committee requires information on measures taken, to establish responsibility for those who provided legal pretexts for manifestly illegal behavior. The Committee reiterates its recommendations.

[C1](iii): The Committee regrets that no action has been taken to incorporate the doctrine of command responsibility for crimes under international law into its criminal law. The Committee reiterates its recommendations.

[B1](iv): The Committee welcomes the declassification and release of over 500 pages of the Senate Select Intelligence Committee's report on the CIA's secret detention programme but is concerned about reports that over 6,000 pages remain classified. It is also concerned about reports that the Department of Justice does not plan to reopen investigations, despite having access to the full report.

Paragraph 10: The State Party should take all necessary measures to abide by its obligation to effectively protect the right to life. In particular, it should:

(a) Continue its efforts to effectively curb gun violence, including through the continued pursuit of legislation requiring background checks for all private firearm transfers, in order to prevent possession of arms by persons recognized as prohibited individuals under federal law, and ensure strict enforcement of the Domestic Violence Offender Gun Ban of 1996 (the Lautenberg Amendment); and

(b) Review the Stand Your Ground laws to remove far-reaching immunity and ensure strict adherence to the principles of necessity and proportionality when using deadly force in self-defence.

Summary of State party's reply:

(a): Gun violence continues to be a serious concern in some communities and in July 2014, the Administration announced additional actions would be taken.

(b): Most criminal laws in the United States are enacted by state legislatures and enforced at the state and local levels; while some states have adopted Stand Your Ground (SYG) laws, they are not uniform in their text or application and little information is available on disparities in their application.

The US Commission on Civil Rights is investigating the civil rights implications of SYG laws to determine whether racial disparities exist in their application or enforcement. No date has been set for the release of its final report.

NGO information:

Dream Defenders, Community Justice Project, Inc. and Campaign to Keep Guns Off Campus:

(a) There has been no progress. All actions noted in the report pre-date the State party's March 2014 review.

(b) Several developments at the state level indicate that SYG laws have gotten worse since the review, and the federal government has done little affirmatively to encourage states to roll back these laws. State representatives continue to be heavily influenced by special interest groups. Florida recently passed a bill expanding its SYG laws; the new law allows a defendant to claim immunity for the threatened use of deadly force in self-defense but does not define what "threatened use of force" means and or place any limitations on it. In August 2014, the American Bar Association issued a preliminary report on SYG laws, finding that they continue to have a disparate impact on racial minorities.

Committee's evaluation:

[C1]:(a) While welcoming the Supreme Court decision upholding a federal law barring domestic violence offenders from possessing firearms, the Committee requests information on new measures taken since the examination of the State party's report. The Committee repeats its recommendations.

[C1]:(b) With regard to Stand Your Ground laws, while the Committee recognises the State party's federal system, the Committee requests information on measures taken to implement the recommendation. It is particularly concerned about reports that the immunity provided by Stand Your Ground Laws has, in some areas, expanded. The Committee reiterates its recommendations.

Paragraph 21: The State party should expedite the transfer of detainees designated for transfer, including to Yemen, as well as the process of periodic review for Guantánamo detainees and ensure either their trial or their immediate release and the closure of the Guantánamo Bay facility. It should end the system of administrative detention without charge or trial and ensure that any criminal cases against detainees held in Guantánamo and in military facilities in Afghanistan are dealt with through the criminal justice system rather than military commissions, and that those detainees are afforded the fair trial guarantees enshrined in article 14 of the Covenant.

Summary of State party's reply:

The State party reiterated its position that its obligations under the Covenant only apply to individuals who are both within its territory and its jurisdiction.

(i) All feasible steps are being taken to reduce the detainee population at Guantanamo and to close the detention facility in a responsible manner that protects national security.. Of the 122 detainees that remain in Guantanamo, 56 are designated for transfer, 10 are currently facing charges, awaiting sentencing, or servicing criminal sentences and 56 are eligible for review by the Periodic Review Board (PRB). As of March 2015, the PRB had conducted 14 full hearings and three six-month file reviews since its commencement in October 2013; eight detainees reviewed were approved for transfer, two of which have been transferred to their countries of origin. As of December 2014, the DOD no longer operates detention facilities in Afghanistan.

(ii) U.S. law currently precludes the transfer of detainees at Guantanamo Bay to the United States for prosecution and there are no current plans to end prosecutions by military commissions.

NGO information:

The Center for Victims of Torture (CVT): (i) In December 2014, the National Defense Authorization Act (NDAA) for FY 2014 was passed, which, while still banning transfers to the United States, lowered barriers on transferring detainees overseas, including to Yemen. However, legislation is currently before Congress that would ban all future transfers of Guantanamo detainees to any country for 2 years and reinstate and make permanent the previous stricter transfer restrictions. On December 31, 2014 the US State Department envoy for closing Guantanamo resigned and has not been replaced, and no transfers have occurred since January 2015.

(ii) While one detainee in Afghanistan has been transferred to face a federal trial in the United States, the NDAA continues to restrict the transfer of Guantanamo detainees to the US for prosecution. Ninety of the 122 men detained in Guantanamo are currently held in detention without trial.

Attorneys for Guantanamo Bay prisoners Ammar al Baluchi and Khalid Shaikh Mohammad: The State party continues to seek execution of six Guantanamo detainees through trial by military commissions, which do not afford article 14 trial guarantees. The release of the SSCI Report revealed that these men suffered torture and other cruel, inhuman and degrading treatment in secret CIA detention sites before being transferred to Guantanamo. The men continue to be subject to punitive conditions though none have been convicted of any crime, and *ad hoc* military commissions consistently refuse to remedy the violation.

Legal Counsel for Mr. Mustafa al-Hawsawi: Mr. al-Hawsawi has been held without trial since 2003, faces death if convicted by military commission, and continues to be denied basic medical treatment and rehabilitation for the torture and ill-treatment he incurred at CIA black sites and Guantanamo Bay. The military commissions system under which they continue to be tried fails to provide the guarantees of basic rights enshrined in the ICCPR.

Committee's evaluation:

[B2]:(i) The Committee welcomes steps taken by the State party to expedite the review and transfer of detainees remaining at Guantanamo Bay, but is concerned about reports that, at the current rate, review hearings will not be completed for all detainees until 2020. . Updated information, including statistical data, is required on the transfer and review of Guantanamo detainees and the detention status of individuals who remain in held there.

[C2]:(ii) The Committee notes that persons continue to be held in administrative detention in Guantanamo Bay without charge or trial in many cases for over a decade and regrets the State party's plans to continue prosecution of Guantanamo detainees by military commission, which is contrary to the Committee's recommendations. The Committee reiterates its recommendations.

Paragraph 22: The State party should:

(a) Take all necessary measures to ensure that its surveillance activities, both within and outside the United States, conform to its obligations under the Covenant, including article 17; in particular, 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 the individuals whose communications are under direct surveillance;

(b) Ensure that any interference with the right to privacy, family, home or correspondence is authorized by laws that: (i) are publicly accessible; (ii) contain provisions that ensure that collection of, access to and use of communications data are

tailored to specific legitimate aims; (iii) are sufficiently precise and specify in detail the precise circumstances in which any such interference may be permitted, the procedures for authorization, the categories of persons who may be placed under surveillance, the limit on the duration of surveillance; procedures for the use and storage of data collected; and (iv) provide for effective safeguards against abuse;

(c) **Reform the current oversight system of surveillance activities to ensure its effectiveness, including by providing for judicial involvement in the authorization or monitoring of surveillance measures, and considering the establishment of strong and independent oversight mandates with a view to preventing abuses;**

(d) **Refrain from imposing mandatory retention of data by third parties;**

(e) **Ensure that affected persons have access to effective remedies in cases of abuse.**

Summary of State party's reply:

(a) and (b): The State party reiterated its position that obligations under the Covenant apply only with respect to individuals who are both within the territory and jurisdiction of the State party. While the Committee's recommendation implies that interference under Article 17 has to be essential or necessary and be proportionate to achieve a legitimate objective, this goes beyond what is required by the text of Article 17.

Comprehensive efforts made over the past 18 months have resulted in strengthened privacy protections. The Director of National Intelligence released a report in February 2015 highlighting these reforms, including those in PPD-28, and a progress report on their on-going implementation is expected to be issued in 2016.

(c): In response to PPD-28, Intelligence Community elements have new training, oversight and compliance programs have been added; any significant compliance incident involving personal information is now required to be reported to the Director of National Intelligence.

(d): With regard to retention of data, all personal information must be deleted within five years after collection unless it has been determined to be relevant to an authorized foreign intelligence or counterintelligence purpose or that continued retention is in the interest of national security.

(e): No information was provided.

NGO information:

Brennan Center for Justice at NYU School of Law, Access and Amnesty International USA:

(a) Despite recent reform attempts, the NSA still asserts authority to indiscriminately acquire and collect digital communications and data around the world.

(b) Evidence exists suggesting that the NSA is relying on a legal loophole in PPD-28, which regulates the collection of data but does not place restrictions on the NSA's acquisition of it, to conduct mass surveillance without violating existing domestic regulations. PPD-28 fails to adequately protect the right to privacy. There appears to be no legal restriction on the NSA's ability to share communications and data collected under EO 12,333 with foreign governments and neither EO 12,333 nor PPD-28 provides any safeguards to prevent collected data from being used to commit or contribute to human rights abuses.

(c) NSA surveillance activities continue to lack effective, independent and external oversight, either by Congress or the judiciary, and are, in practice, entirely self-regulated.

(d) The five-year retention period is subject to significant expansions.

(e) Persons affected by the NSA's surveillance operations have little or no opportunity to challenge surveillance that affects them. For non-US persons located abroad, there is essentially no possibility of relief.

Committee's evaluation:

[B2]:(a) and (b) while the Committee welcomes administrative measures taken by the State party to bring its surveillance activities in line with Article 17, it requires information on legislative measures taken to ensure these safeguards are provided for by law. The Committee is also concerned about reports that the administrative measures taken do not adequately protect rights guaranteed under Article 17, which requires that interference with the right to privacy comply with the principles of legality, proportionality and necessity.

[C1]:(c) no measures appear to have been taken since March 2014 to provide for judicial involvement in the authorization and monitoring of surveillance measures or to establish strong and independent oversight mandates. The Committee repeats its recommendations.

[C1]:(d) the Committee requires information on measures taken to stop the practice mandatory retention of data by third parties.

[D1]:(e) no information was provided by the State party on access to remedies for affected persons in cases of abuse.

[C2]: The Committee notes that the State party has not responded with regard to surveillance acts outside the United States of America and asks for more information on this.

Recommended action: A letter should be sent reflecting the analysis of the Committee.

Next periodic report: 28 March 2019
