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## **ADVANCE UNEDITED VERSION**

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### **Human Rights Committee**

#### **List of issues to be taken up in connection with the consideration of the fourth periodic report of the United States of America (CCPR/C/USA/4), adopted by the committee at its 107th session, 11 – 28 March 2013**

##### **Constitutional and legal framework within which the Covenant is implemented (art. 2)**

1. Please clarify the following issues:
  - a) the State party's understanding of the scope of applicability of the Covenant with respect to individuals under its jurisdiction but outside its territory; in times of peace, as well as in times of armed conflict;
  - b) which measures have been taken to ensure that the Covenant is fully implemented by State and local authorities;
  - c) whether the State party intends to reinvigorate Executive Order 13107/1998 titled "Implementation of Human Rights Treaties".
2. Please clarify whether the State party will establish a national human rights institution with a broad human rights mandate, in line with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles).
3. Please clarify whether the State party will review its reservations to the Covenant with a view to withdrawing them.

##### **Non-discrimination and equal rights of men and women (arts. 2, para.1, 3 and 26)**

4. Please provide information on steps taken to address racial disparities in the criminal justice system, including the overrepresentation of individuals belonging to racial and ethnic minorities in prisons and jails. Please provide the Committee with the latest US Department of Justice three-year report "on the nature and characteristics of contacts between US residents and the police", and clarify whether the State party has conducted a study on the disparities between population groups, and if so, on the findings of such a study.
5. Please clarify which steps have been taken to eliminate and combat all forms of racial profiling against Arabs, Muslims and South Asians, and whether the Guidance Regarding the Use of Race by Federal Law Enforcement Agencies covers profiling based on religion, religious appearance or national origin. Please provide information on the practices and justification of practices involving the surveillance of Muslims in the State party, given that it has not resulted in any prosecution. Please clarify whether plans are

foreseen to review all relevant immigration enforcement programs, including the Immigration and Customs Enforcement Agreements of Cooperation in Communities to Enhance Safety and Security – Criminal Alien Program, the Secure Communities program, and 287(g) agreements, to determine whether they result in racial profiling. Please provide information on the number of complaints regarding racial profiling received annually by the Office of Civil Rights and Civil Liberties against Department of Homeland Security personnel, as well as the results of the investigations and disciplinary action undertaken. Please also provide information on steps taken to address discriminatory and unlawful use of “stop and frisk” practices by officers of the New York Police Department.

6. Please provide information on the imposition of criminal penalties on people living on the streets. Please also provide information on the implementation of the 2009 Helping Families Save Their Home Act and the creation of durable alternatives to criminalization measures to address homelessness.

7. Please provide information on obstacles to access of undocumented migrants to health services and higher education institutions, and to federal and state programs addressing such obstacles.

#### **Right to life (art. 6)**

8. Please provide information on:

a) death sentences imposed, the number of executions carried out, the grounds for each conviction and sentence, the age of the offenders at the time of committing the crime, and their ethnic origin;

b) whether the death penalty has been imposed on people with mental or intellectual disabilities since the 2002 Supreme Court ruling in *Atkins v. Virginia* exempting people with “mental retardation” from the death penalty;

c) steps taken to guarantee access to federal review of state court death penalty convictions, in the light of the drastic limits imposed by the Antiterrorism and Effective Death Penalty Act of 1996 and the USA Patriot Improvement and Reauthorization Act of 2005 on the availability of federal habeas corpus relief for defendants sentenced to death;

d) steps taken to ensure that the death penalty is not imposed on the innocent;

e) steps taken to improve criminal defence programmes and legal representation for indigent persons in capital cases, including in Alabama and Texas, as well as civil proceedings, in particular for defendants belonging to racial, ethnic and national minorities.

9. Please provide information on:

a) the number of victims of gun violence, including in the context of domestic violence, and on steps taken to better protect people against the risks associated with proliferation of firearms. Please also provide information on the applicability of “stand your ground” laws, and whether they provide blanket immunity to persons using force as defined and permitted by such laws;

b) the use of firearms by police and the number of cases where such use resulted in the death of persons as well as the investigations and prosecutions in such cases.

10. Regarding the protection of life in armed conflict;

a) Please clarify how targeted killings conducted through drone attacks on the territory of other States, as well as collateral civilian casualties are in compliance with Covenant obligations. Please clarify how the State party ensures that such use of force fully complies with its obligation to protect life.

b) Please clarify whether the State party has effectively investigated and punished lower-ranking soldiers for unlawful killings, including possible war crimes, in its international

operations, and whether it has held senior officers responsible under the doctrine of command responsibility. Please also clarify whether similar investigations have been instigated against private contractors and civilian intelligence agencies.

**Prohibition of torture and cruel, inhuman or degrading treatment or punishment, right to liberty and security of person, and treatment of persons deprived of their liberty (arts. 7, 9, 10, 12 and 13, 14)**

11. Please provide information on:

a) whether the State party has instigated independent investigations into cases of torture or cruel, inhuman or degrading treatment or punishment of detainees in US custody outside its territory. Please clarify whether those responsible have been prosecuted and sanctioned, and whether the State party has prosecuted former senior government and military officials who have authorized such torture and abuse;

b) whether the State party deems so-called “enhanced interrogation techniques”, now prohibited by the State party, including “water boarding”, to be in violation of article 7 of the Covenant. Please provide information on whether the State party has taken steps to prosecute officers, employees, members of the Armed Forces, or other agents of the US Government, including private contractors, for having employed these techniques and what is being done to prevent the use of such techniques in the future. Please also clarify whether remedies have been offered to victims of such techniques;

c) the reasons why there is no legislation explicitly prohibiting torture within the territory of the State Party.

12. Please provide information on the implementation of the recommendations of the Special Interagency Task Force on Interrogations and Transfer Policy Issues. Please also clarify whether since that report the State party systematically evaluates diplomatic assurances from receiving countries, whether in all cases monitoring mechanisms have been established, whether returned detainees have reported the breach of assurances, as well as whether the State party has taken any remedial steps in response to any such reports.

13. Please provide information on:

a) steps taken to address cases of police brutality and excessive use of force, in particular against persons belonging to racial, ethnic or national minorities, as well as undocumented migrants crossing the US-Mexico border, and to hold responsible officers accountable for such abuses;

b) steps taken to strictly regulate the use of Electro-Muscular-Disruption devices. Please clarify whether its use is restricted to substitution for lethal weapons, and whether such devices are used to restrain persons in custody.

14. Please provide information on:

a) steps taken to prohibit and prevent corporal punishment of children in schools (including the practice of “paddling”), penal institutions (including as a disciplinary measure in juvenile detention), the home, and all forms of care. Please provide information on measures taken to address the alleged more frequent use of corporal punishment against African-American students and students with disabilities;

b) the application of criminal law to minors in order to address disciplinary issues arising in schools.

15. Please clarify how, in the State party’s view, the possibilities for non-consensual use of medication in psychiatric institutions and for research and experimentation, as outlined in paragraph 31 of the Committee’s previous concluding observations, are in conformity with the obligations upon a State party under 7 of the Covenant.

16. Please provide information on steps taken to reduce the practice in some maximum security prisons of holding detainees in prolonged cellular isolation, including children and persons with mental disabilities, as well as to improve the conditions and duration of out-of-cell recreation. Please provide information on steps taken to ensure that persons deprived of their liberty have the ability to maintain regular contact with their family, in particular minor children. Please provide information on steps taken to protect detainees against violence, including sexual violence, by other inmates and to improve detention conditions of death row facilities. Please provide information on the number of complaints received on an annual basis by the Department of Justice concerning violations of human rights in prisons, as well as legal actions undertaken. Please provide information on all investigations undertaken by the Department of Justice into conditions in state prisons and jails and state juvenile detention facilities, as well as law enforcement actions undertaken. Please provide information on steps taken to ensure monitoring of conditions in private detention facilities. Please also clarify whether the State party intends to prohibit the shackling of detained pregnant women during transport, labour, delivery and post-delivery, under all circumstances.

17. Please clarify whether the State party will deal with detainees held in Guantanamo Bay and in military facilities in Afghanistan and Iraq within the criminal justice system, and will end the system of administrative detention without charge or trial. Please clarify whether the State party will grant detainees the right to legal representation. Please clarify why there has not been any periodic review yet of individuals at Guantanamo scheduled for indefinite detention, as ordered by Executive Order 13567 of 7 March 2011. Please clarify how the rights enshrined in article 14 of the Covenant are guaranteed for detainees tried by military commissions. Please also clarify how many detainees that were cleared for release are still detained in Guantanamo Bay and which steps the State party is taking to ensure their immediate release.

18. Please provide information on measures taken to ensure that all juveniles are separated from adults during pre-trial detention and after sentencing. Please also clarify whether the State party will take steps to ensure that juveniles are not transferred to adult courts but are tried in juvenile courts with specific juvenile protections.

19. Please clarify:

a) whether mandatory detention of immigrants who lack identification documents or are charged with the commission of crimes will be eliminated, and also clarify how the State party ensures that the decision to detain non-citizens is made on a case-by-case basis after an assessment of the functional need for detention. Please also provide information on steps taken to ensure judicial oversight over decisions to detain such immigrants, and clarify whether the detention period is subjected to a maximum duration;

b) whether detained immigrants on a criminal charge are promptly informed of the charges against them, promptly brought before a judicial authority, and are given access to legal counsel and legal assistance;

c) which steps are taken to ensure that immigrants, in particular those with children as well as unaccompanied alien children, are not held in jails or jail-like detention facilities.

20. Please provide information on steps taken, and the impact measured, to prevent and combat domestic violence, as well as to ensure that acts of domestic violence are effectively investigated and that perpetrators are prosecuted and sanctioned. Please clarify what steps have been taken to improve the provision of emergency shelter, housing, child care, rehabilitative services and legal representation for women victims of domestic violence.

#### **Elimination of slavery and servitude (art. 8, 24)**

21. Please provide information on steps taken:

(a) to combat human trafficking;

(b) to protect children under 18 years of age living in the State party from being sexually exploited through prostitution, as well as the steps taken to ensure that these children are not dealt with through the criminal justice system.

**Right to privacy (art. 17)**

22. Please provide information on steps taken to ensure judicial oversight over National Security Agency surveillance of phone, email and fax communications both within and outside the State party. Please also specify what circumstances, as mentioned in section 206 of the USA Patriot Act, justify “roving” wiretaps.

**Freedom of assembly and association (arts. 21 and 22)**

23. Please clarify why agricultural and domestic workers and independent contractors are excluded from the right to organize themselves in trade unions by the National Labor Relations Act and provide information on steps taken to ensure that the right to freedom of association is available to these categories of workers.

**Freedom of movement, marriage, family and measures for the protection of minors (arts. 7, 12, 23 and 24)**

24. Please clarify whether, following the Supreme Court decisions in *Graham v. Florida* and *Miller v. Alabama*, the State party has conducted a review of the situation of those persons already serving a life sentence without parole for an offence committed as a minor. Please also clarify whether the State party will abolish all juvenile life without parole sentences, including discretionary sentences, uncapped consecutive sentences and long minimum sentences likely to exceed the offender’s life.

25. Please provide information on the number of children held in US-administered detention facilities in Iraq and Afghanistan, and at Guantanamo Bay, as well as the length of their detention. Please clarify whether parents or close relatives are promptly informed of the location of their detention, whether these children have access to legal, physical and psychological services, as well as an independent complaints mechanism and whether their status as children is taken into account in the charges brought against them.

**Right to take part in the conduct of public affairs (art. 25)**

26. Please provide information on:

a) the rationale for prohibiting persons with felony convictions from voting in federal elections once they have completed their sentence. Please provide information on steps taken to ensure that states restore voting rights to citizens who have fully served their sentences and those who have been released on parole. Please also provide information on the extent that the regulations relating to deprivation of votes for felony conviction impact on the rights of minority groups.

b) measures taken by several states including restrictions on access to voter registration, more stringent eligibility requirements or purging voters from registration rolls leading to the legal or de facto disenfranchisement of voters;

c) steps taken or foreseen to ensure that residents of Washington D.C. can exercise the right to vote and elect representatives to the Senate and House of Representatives.

**Rights of persons belonging to minorities (art. 27)**

27. Please provide information on measures taken to guarantee the protection of Indigenous Sacred Areas, as well as to ensure that indigenous peoples are consulted and that their free, prior and informed consent is obtained regarding matters that directly affect their interests. Please provide information on steps taken to implement Executive Order 13175 on Consultation and Coordination with Tribal Governments.

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