



# **Submission to the United Nations Committee against Torture**

**Follow-up Assessment Report, March 1, 2016**



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The ACLU is a nationwide, nonprofit, nonpartisan organization dedicated to protecting human rights and civil liberties in the United States. Headquartered in New York City, the ACLU is the largest civil liberties organization in the country with offices in all 50 states, Puerto Rico and Washington, D.C. and over 500,000 members. Founded in 1920, largely in response to the curtailment of liberties that accompanied the United States' entry into World War I, including the persecution of political dissidents and the denial of due process rights for non-citizens, the ACLU has advocated in the intervening decades to hold the U.S. government accountable to the rights protected under U.S. Constitution as well as other civil and human rights laws and treaties.

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## Introduction

This submission assesses the response of the United States to Committee against Torture’s request for follow-up information pertaining to recommendations 12(a), 14(c) and 17 of the Committee’s Concluding Observations on the combined third to fifth periodic reports of the United States of America (CAT/C/USA/CO/3-5).

### Follow-up for Recommendation 12(a)

In its 2014 Concluding Observations on the Third to Fifth periodic reports of United States of America the Committee expressed concern over the ongoing failure of the US to fully investigate allegations of torture and ill-treatment of suspects held in US custody abroad.<sup>1</sup> The Committee recommended that the US “carry out prompt, impartial and effective investigations wherever there is reasonable ground to believe that an act of torture and ill-treatment has been committed in any territory under its jurisdiction.”<sup>2</sup>

In its Follow-up Report to the Committee the United States submitted no new information on progress made towards implementing this recommendation.<sup>3</sup> Instead, it repeated the same two prosecutions of a CIA contractor and a military contractor and the same main investigation the Justice Department initiated into CIA abuses (known as the Durham investigation after its lead prosecutor, US Attorney John Durham) cited in its 2013 report to the committee. The only case it added in its Follow-up Report concerned the conviction of four civilian contractors for the killing of 14 unarmed civilians at Nisour Square in Iraq in 2007. While that prosecution was certainly important, it does not appear to be a case that involved allegations of torture or ill-treatment.<sup>4</sup>

The US asserts that the Durham investigation was a “thorough” and “impartial” examination of available facts and of applicable criminal statutes, and notes jurisdictional and statute of limitations concerns. After evaluating the cases examined for a “clear violation of a federal criminal statute with provable facts that reflect evidence of guilt beyond a reasonable doubt and a reasonable probability of conviction” the Justice Department ultimately decided to bring no charges.<sup>5</sup>

Human Rights Watch published a report *No More Excuses: A Roadmap to Justice for CIA Torture* in December 2015 that included an in-depth analysis of the various criminal charges that could be brought for abuses committed as part of the CIA interrogation program.<sup>6</sup> That report challenges both the thoroughness of the Durham investigation and claims by the United States that prosecutions for CIA torture are not possible.<sup>7</sup> There is evidence that the Durham investigation did not carry out an investigation into torture consistent with international requirements. Rather than examining whether US officials who authorized and were responsible for carrying out the CIA’s “enhanced interrogation program” violated US anti-torture and other laws, the investigation only looked at whether individuals involved in the program exceeded authorizations.<sup>8</sup> The inquiry should never have been limited in this way since detention and interrogation practices used as part of the program amounted to torture and those

responsible for authorizing, implementing and carrying them out should have been part of the US investigation.

The Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“The Istanbul Protocol”) states that the fundamental principles of any viable investigation into incidents of torture are “competence, impartiality, independence, promptness and thoroughness.”<sup>9</sup>

Taking this criteria into consideration, the Durham investigation was always too narrow in scope. However, even within the narrow confines of the administration’s imposed restraints, Durham investigators appear not to have interviewed any detainees in the CIA program, whether still detained or since released. According to the Istanbul Protocol, investigators “must, at a minimum, seek to obtain statements from the victims of alleged torture.”<sup>10</sup> Former detainees would have been in the best position to provide information from which investigators could assess whether CIA interrogators applied approved techniques in ways that exceeded authorizations. Indeed, as Human Rights Watch knows from its own reporting, some of which was corroborated by the Senate Intelligence Committee in the executive summary of its study of the CIA’s detention and interrogation program (Senate Summary) released on December 9, 2014,<sup>11</sup> the CIA tortured detainees in ways that were not authorized.<sup>12</sup> This includes but is not limited to the use of so-called “rectal feedings”—a procedure that medical experts say serves no medical purpose and is dangerous;<sup>13</sup> waterboarding and “water dousing” in ways not authorized;<sup>14</sup> “rough take downs”—when CIA personnel stormed a detainee’s cell, cut off his clothes, struck him, and dragged him down a hall, naked;<sup>15</sup> and forcing detainees to stand for days to deprive them of sleep while they had broken bones in their feet and legs, despite medical directives not to do so.<sup>16</sup>

Human Rights Watch has searched for but has been unable to find former detainees of the CIA who were interviewed for the Durham investigation. In November 2014 five former detainees held by the CIA for between eight months and two years, some of whom were subjected to abuses beyond those authorized, submitted a letter to the Committee informing them that no one ever spoke to them for the purposes of any US criminal investigation.<sup>17</sup> Lawyers for several other former detainees subsequently came forward, many of whom were subjected to CIA torture, and also made the same claim.<sup>18</sup>

During the November 2014 review, Committee members asked the US delegation whether Durham investigators interviewed any former detainees of the CIA. In response, David Bitkower, deputy assistant attorney general in the Justice Department’s Criminal Division, stated that 96 witnesses were interviewed—though he would not say whether any of them were former CIA detainees.<sup>19</sup> Though Bitkower said that because ultimately no charges were brought he could not publicly provide the “identities” of any of the witnesses interviewed, that should not preclude him from stating whether any of them were victims of the alleged crime.

The Istanbul Protocols also direct investigators to work to “recover and preserve evidence, including medical evidence,” and identify other possible witnesses, in addition to the victims, and obtain

statements from them.<sup>20</sup> Investigators should also “have the power and obligation to obtain all the information necessary to the inquiry.”<sup>21</sup> It is not clear what evidence Durham investigators had access to during the course of their investigation. However, during the period when Durham was reviewing the bulk of the 101 cases he was investigating, from August 24, 2009 until June 30, 2011, Durham stated in a recent court declaration filed in connection with a Freedom of Information Act (FOIA) request made by the *New York Times*, that there were “limitations on the evidence available to [his] team.”<sup>22</sup>

As background, Durham’s investigation initially opened in 2008 to see if any criminal laws had been violated when the CIA destroyed 92 videotapes depicting interrogations of detainees, including waterboarding sessions. On August 24, 2009, the new attorney general, Eric Holder, expanded Durham’s investigation to include 101 cases of CIA abuse. Holder closed 99 of the 101 cases on June 30, 2011 but kept two cases open, both of which had resulted in a detainee’s death. However, on August 30, 2012, Holder closed those investigations as well, also without bringing any charges.<sup>23</sup>

In the same declaration, Durham did not discuss limitations on the evidence available to his team in connection with his investigation into the destruction of the videotapes or the full investigations pursued into the remaining two of the 101 cases not closed on June 30, 2011.<sup>24</sup> In those two cases, a more rigorous examination of the facts, including grand jury testimony, appears to have taken place.<sup>25</sup>

Durham also cited jurisdictional limits and statutes of limitations in determining not to pursue criminal charges.<sup>26</sup> Neither should have been determined to be a bar to prosecution. Regarding jurisdiction, the administration, at the 2014 Committee against Torture review, said that it will interpret “territory under its jurisdiction” to mean that treaty obligations extend to “all places that the State Party controls as a governmental authority.”<sup>27</sup> Black sites where the CIA operated its detention and interrogation program were entirely run by the CIA, which exercised enough authority over the facility to maintain a high degree of control and secrecy during the course of operations. The two domestic statutes cited in paragraphs 14 and 15 of the US Follow-up Report, also provide jurisdiction.<sup>28</sup> Additionally, the Committee has made clear, that any territory under a state’s jurisdiction includes all areas where a state has de jure or de facto “effective control” including where it exercises control over persons in detention.<sup>29</sup>

Statutes of limitations should also not be a bar to prosecutions.<sup>30</sup> Under US federal law there is no statute of limitations for capital offenses, which includes torture that results in death.<sup>31</sup> In addition, several statutes of limitations for specific crimes were expanded under the USA Patriot Act, including torture as well as conspiracy to torture, and when the commission of one of these offenses results in death or creates a foreseeable risk of death or serious bodily injury, there is no statute of limitations.<sup>32</sup> Many of the CIA detention abuses documented by journalists, nongovernmental organizations and in the Senate Summary would fit into this category.<sup>33</sup> There is also no statute of limitations for certain types of sexual abuse crimes, which include those that could be charged in connection with the CIA’s use of so-called “rectal rehydration.”<sup>34</sup>

In its Follow-up Report, the US also does not provide any new information on investigations into the use of torture or ill-treatment by the US military overseas. Instead it makes a broad statement that the US Armed Forces conduct prompt and independent investigations into all credible allegations concerning mistreatment of detainees and that courts-martial are a matter of public record. It states that the records can be viewed at a website provided. However, the website listed does not provide any information about courts martial that have taken place. Rather it is a 2008 document that lays out the procedures for determining when the Justice Department will have jurisdiction over certain matters.<sup>35</sup>

To the best of our knowledge, credible allegations of torture against detainees in US military custody abroad have not been sufficiently investigated, prosecuted or punished. In 2006 Human Rights Watch, The Center for Human Rights and Global Justice at New York University Law School, and Human Rights First jointly published *By the Numbers: Findings of the Detainee Abuse and Accountability Project*.<sup>36</sup> The report assessed that, as of April 10, 2006, approximately 600 US personnel were implicated in detainee abuse. Of these, 79 were recommended for courts martial and 64 appeared to actually have been court martialled. Ten courts martial were pending and five appeared to have been dropped at the time the report was published. Of the 64 courts martial, 54 resulted in guilty verdicts on at least one charge.<sup>37</sup> A more recent summary assembled by the Constitution Project's Task Force on Detainee Treatment includes some of the same information on detainee abuse cases handled by the US military but also includes information on roughly ten new cases completed since 2006.<sup>38</sup>

Though not requested for follow-up, the United States reported to the Committee that a “wide range of civil remedies” exist for victims of torture to obtain rights relevant to the Convention. In fact, not one former CIA detainee has been able to enforce this right in US court.<sup>39</sup> Nearly every case that has been brought in US courts has been dismissed, not for lack of merit but rather because the US government has blocked suits at early stages by claiming that: litigating the cases will jeopardize national security; that they are pre-empted under federal law; or that they trigger various forms of immunity.<sup>40</sup> Though the United States could initiate a mechanism outside the judicial system to compensate individuals who have been tortured or otherwise ill-treated in US custody in a manner that would not jeopardize genuine intelligence sources, it has not done so.

The United States took an important step forward when it declassified and released to the public significant portions of the 499-page Senate Summary. However, the full 6,700 report, with details on individual cases, remains classified. The Follow-Up Report notes that the US declassified the Senate Summary after being asked by the Senate Intelligence Committee to do so—however, no such request was actually required. The US could declassify more aspects of the CIA program on its own without waiting for a request from Congress. It also continues to block former detainees of the CIA still in US custody from providing further accounts of their abuse.<sup>41</sup>

In its Follow-up Report the US states that the CIA enhanced interrogation program is “part of our history” and “not representative of the way we deal with the threat from terrorism today.”<sup>42</sup> The Follow-up Report notes that on November 25, 2015, President Barack Obama signed the National Defense Authorization Act

for Fiscal Year 2016.<sup>43</sup> This law bolsters the already existing ban on torture and should make it more difficult for future administrations to find ways around the torture ban. However, unless laws are enforced there is a danger that future administrations will risk flouting the law again, especially in the face of another national security threat. Indeed, some 2016 presidential candidates are promising to do just that. But laws are not only in place to deter future conduct—they exist to provide justice and redress to the victims of crime and abuse. Human Rights Watch’s research over the past 25 years in dozens of countries has shown that forgoing criminal accountability for serious offenses by state officials carries a high price. Lack of accountability may fuel future abuses and weaken the rule of law.<sup>44</sup> This administration’s Follow-up Report states that “torture is contrary to the founding principles of our country and to the universal values to which we hold ourselves and the international community.” However, the US failure to respect its obligations under the treaty will hinder efforts to eliminate torture at home and to successfully press other governments to end torture abroad.

### **Follow-Up on Recommendation 14(c)**

With regards to the Guantanamo Bay detention facility, the Committee specifically asked the United States to supply it with information on progress made on its recommendation that it “investigate allegations of detainee abuse, including torture and ill-treatment, appropriately prosecute those responsible, and ensure effective redress for victims.”

The US Follow-up Report provides no information responsive to this request. Instead of the information requested, it supplied information about laws and mechanisms currently in place that allow for investigations into detainee abuse, but nothing on investigations regarding detainees at the detention facility. Human Rights Watch is not in a position to provide the committee with information about the number or outcome of any investigations into detainee abuse at Guantanamo because we are not permitted to visit the detention facility or speak to any detainees. The US also continues to refuse to provide nongovernmental organizations and the media with information on the number of detainees currently on hunger strike or their health conditions as well as any information on the conditions of confinement at secret Camp 7, where so-called “high value” detainees are incarcerated.

The US Follow-up Report similarly provides no information on steps taken to provide redress to individuals who have been unlawfully held for years at Guantanamo or subjected to torture or ill-treatment. Human Rights Watch is not aware of any such redress being provided. In fact, many former Guantanamo detainees report being released from Guantanamo without adequate resources to rebuild their lives or reintegrate into society.<sup>45</sup>

### **Follow-Up on Recommendation 17**

The Committee expressed concern that Appendix M of the current US Army Field Manual permits interrogators to use a technique called “separation.”<sup>46</sup> The technique has the stated dual purpose of: 1) separating detained “unlawful enemy combatants” so that they cannot communicate with each other to learn counter-intelligence techniques or coordinate cover stories; and 2) decreasing their resistance to

interrogation.<sup>47</sup> The technique permits detainees to be limited to four hours of sleep each 24-hour period for up to 30 days. The 30-day limited can be extended with approval.<sup>48</sup> The Committee stated that this treatment “amounts to sleep deprivation—a form of ill-treatment.”<sup>49</sup> Additionally, though Appendix M ostensibly prohibits “sensory deprivation,”<sup>50</sup> it nevertheless permits interrogators to use goggles, blindfolds and earmuffs to “generate a perception of separation.”<sup>51</sup> The Committee stated that this is a form of sensory deprivation that can create a “psychotic-like state” in a detainee that can amount to torture or ill-treatment.<sup>52</sup>

The Committee recommended that the United States “abolish” the sleep deprivation and sensory deprivation aspects of the “separation” technique.

Rather than report on progress made towards implementing the Committee’s recommendation, the US Follow-up Report defends Appendix M and repeats its position that these provisions would not be implemented in an abusive way. The US specifically informed the Committee—as it did during the Committee’s November 12-13 review—that despite the wording of Appendix M, 40 continuous hours of interrogation with only four hours of sleep on either end would not be permitted.<sup>53</sup>

Although detainees can be “separated” from each other in a manner that does not amount to prolonged or indefinite isolation in violation of the Convention, the combination of separation with abusive sleep or sensory deprivation raises concerns under the Convention. A minimum of four hours of sleep each night over a 30 day period, with the possibility of extension, deprives an individual of essential sleep and can amount to torture or ill-treatment.

Additionally, despite US assurances that sensory deprivation is not permitted, the use of goggles, blindfolds and earmuffs is a form of sensory deprivation. The Manual states that, in addition to being used to separate detainees, the “field expedient method” is intended to “prolong the shock of capture” and “foster a feeling of futility.”<sup>54</sup> Additionally, although this method cannot be used at the “initial facility” for longer than 12 hours without approval, it is not clear what would be permissible after detention at the initial facility.

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<sup>1</sup> UN Committee against Torture, “Concluding observations on the third to fifth periodic reports of United States of America” (“Concluding Observations”), November 20, 2014, (CAT/C/SR. 1276 and 1277) [http://www.ushrnetwork.org/sites/ushrnetwork.org/files/cat\\_us\\_concluding\\_observations\\_2014.pdf](http://www.ushrnetwork.org/sites/ushrnetwork.org/files/cat_us_concluding_observations_2014.pdf) (accessed February 16, 2016), para. 12.

<sup>2</sup> Concluding Observations, para. 12(a).

<sup>3</sup> “One-Year Follow-up Response of the United States of America to Recommendations of the Committee against Torture on its Combined Third to Fifth Periodic Reports on Implementation of the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment” (“US Follow-up Report”), November 27, 2015, <http://www.state.gov/j/drl/rls/250342.htm> (accessed February 19, 2016).

<sup>4</sup> Spencer S. Hsu and Victoria St. Martin, “Four Blackwater guards sentenced in Iraq shootings of 31 unarmed civilians,” *Washington Post*, April 13, 2015, [https://www.washingtonpost.com/local/crime/four-blackwater-guards-sentenced-in-iraq-shootings-of-31-unarmed-civilians/2015/04/13/55b777e0-dee4-11e4-be40-566e2653afe5\\_story.html](https://www.washingtonpost.com/local/crime/four-blackwater-guards-sentenced-in-iraq-shootings-of-31-unarmed-civilians/2015/04/13/55b777e0-dee4-11e4-be40-566e2653afe5_story.html) (accessed February 18, 2016).

<sup>5</sup> US Follow-Up Report, paras. 16-18.

<sup>6</sup> Human Rights Watch, *No More Excuses: A Roadmap to Justice for CIA Torture*, December 1, 2015, <https://www.hrw.org/report/2015/12/01/no-more-excuses/roadmap-justice-cia-torture>.

<sup>7</sup> Carol Rosenberg, “Human rights groups ask attorney general to order new CIA torture probe,” *Miami Herald*, June 23, 2015, <http://www.miamiherald.com/news/nation-world/world/americas/guantanamo/article25313905.html> .

<sup>8</sup> Declaration of John Durham, *The New York Times v. U.S. Department of Justice* (“Durham Declaration”), December 8, 2014, 1:14-cv-03777-JPO (S.D.N.Y. 2014), para. 13, [http://pdfserver.amlaw.com/nlj/durham\\_declaration\\_20141209.pdf](http://pdfserver.amlaw.com/nlj/durham_declaration_20141209.pdf) (accessed February 16, 2016); see also Department of Justice, “Statement of the Attorney General Regarding Investigation into the Interrogation of Certain Detainees,” June 30, 2011, <http://www.justice.gov/opa/pr/statement-attorney-general-regarding-investigation-interrogation-certain-detainees> (accessed February 18, 2016); Department of Justice, “Statement of Attorney General Eric Holder on Closure of Investigation into the Interrogation of Certain Detainees,” August 30, 2012, <https://www.justice.gov/opa/pr/statement-attorney-general-eric-holder-closure-investigation-interrogation-certain-detainees> (accessed February 18, 2016).

<sup>9</sup> Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“Istanbul Protocol”), August 9, 1999, <http://www.ohchr.org/Documents/Publications/training8Rev1en.pdf> (accessed February 20, 2016), para. 74. The Istanbul Protocol is recognized by the Committee as the correct protocol to follow when conducting investigations into allegations of torture. See “Observations of the Committee against Torture on the revision of the United Nations Standard Minimum Rules for the Treatment of Prisoners (SMR),” CAT/C/51/4, December 16, 2013, [https://www.unodc.org/documents/justice-and-prison-reform/EGM-Uploads/IEGM\\_Brazil\\_Jan\\_2014/CAT\\_observations\\_to\\_SMR\\_-\\_18.12.2013\\_FINAL.pdf](https://www.unodc.org/documents/justice-and-prison-reform/EGM-Uploads/IEGM_Brazil_Jan_2014/CAT_observations_to_SMR_-_18.12.2013_FINAL.pdf) (accessed February 26, 2016), paras. 42 and 43.

<sup>10</sup> Istanbul Protocol, para. 77.

<sup>11</sup> US Senate, Select Committee on Intelligence, Committee Study of the Central Intelligence Agency’s Detention and Interrogation Program, December 13, 2012, updated April 3, 2014, released December 2, 2014, [http://fas.org/irp/congress/2014\\_rpt/ssci-rdi.pdf](http://fas.org/irp/congress/2014_rpt/ssci-rdi.pdf) (accessed February 18, 2016) (hereinafter “Senate Summary”)

<sup>12</sup> See Human Rights Watch, *No More Excuses*, pp. 65-79.

<sup>13</sup> “CIA Torture Report Highlights Unnecessary Medical Procedure,” Physicians for Human Rights Press Release, December 10, 2014, <http://physiciansforhumanrights.org/press/press-releases/cia-torture-report-highlights-unnecessary-medical-procedure.html> accessed February 26, 2016).

<sup>14</sup> See Senate Summary, particularly pp. 105-108. See also, Human Rights Watch, *Delivered Into Enemy Hands: US-Led Abuse and Rendition Opponents to Gaddafi’s Libya*, September 2012, [http://www.hrw.org/sites/default/files/reports/libya0912webwcover\\_1.pdf](http://www.hrw.org/sites/default/files/reports/libya0912webwcover_1.pdf), pp. 48-51; *Abdullah Salim v. Mitchell*, Civil Action No. 2:15-CV-286-JLQ, October 13, 2015, [https://www.aclu.org/sites/default/files/field\\_document/salim\\_v\\_mitchell\\_-\\_complaint\\_10-13-15.pdf](https://www.aclu.org/sites/default/files/field_document/salim_v_mitchell_-_complaint_10-13-15.pdf) (accessed February 24, 2016).

<sup>15</sup> A “rough takedown” was described in the Senate Summary as being when “approximately five CIA officers would scream at a detainee, drag him outside of his cell, cut his clothes off, and secure him with Mylar tape. The detainee would then be hooded and dragged up and down a long corridor while being slapped and punched.” See Senate Summary, Findings and Conclusions, p. 4, p. 56, n. 278, and p. 190, n. 1122.

<sup>16</sup> Senate Summary, pp. 491-92.

<sup>17</sup> “Letter former CIA detainees to the United Nations Committee against Torture, November 14, 2014, <https://www.hrw.org/news/2014/11/14/letter-former-cia-detainees-united-nations-committee-against-torture> (accessed February 20, 2016).

<sup>18</sup> Spencer Ackerman, “Former CIA Detainees Claim US Torture Investigators Never Interviewed Them,” *The Guardian*, November 11, 2014, <http://www.theguardian.com/us-news/2014/nov/11/libyan-cia-detainees-torture-inquiry-interview> (accessed February 12, 2016); Spencer Ackerman, “Doubt Cast Over US Torture Investigation as More CIA Detainees Come Forward,” *The Guardian*, November 12, 2014, <http://www.theguardian.com/us-news/2014/nov/12/more-cia-detainees-come-forward-us-investigation-torture> (accessed February 12, 2014).

<sup>19</sup> “Transcript: The US Appearance Before the UN Committee on the Convention Against Torture,” *Just Security*, November 21, 2014, <https://www.justsecurity.org/17628/full-transcript-united-states-appearance-committee-convention-torture/> (accessed February 20, 2016).

<sup>20</sup> Istanbul Protocol, para. 77.

<sup>21</sup> Istanbul Protocol, para. 80.

<sup>22</sup> Durham Declaration, para. 14.

<sup>23</sup> See *No More Excuses*, pp. 25-28.

<sup>24</sup> See generally, Durham Declaration.

<sup>25</sup> Jeff Stein and Adam Zagorin, “A Former CIA Interrogator on Death, Torture and the Dark Side,” *Newsweek*, October 7, 2015, <http://www.newsweek.com/2015/10/16/former-cia-interrogator-david-martines-story-380520.html> (accessed February 19, 2016); See also Dan Froomkin, Holder, Too Late, Calls for Transparency on DOJ Torture Investigation,” *The Intercept*, October 15, 2015, <https://theintercept.com/2015/10/15/holder-too-late-calls-for-transparency-on-doj-torture-investigation/> (accessed February 19, 2016).

<sup>26</sup> US Follow-up Report, para. 18.

<sup>27</sup> US Follow-up Report, para. 4.

<sup>28</sup> See *No More Excuses*, p. 82, n. 403, describing in greater detail grounds for jurisdiction under the US jurisdiction statutes. See also Memo from Harold Koh, Legal Advisor to the Department of State, “Memorandum Opinion on the Geographic Scope of the Convention Against Torture and Its Application in Situations of Armed Conflict,” January 21, 2013, <https://www.justsecurity.org/wp-content/uploads/2014/03/state-department-cat-memo.pdf>, pp. 5, 20, 37-38; (accessed February 19, 2016).

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- <sup>29</sup> UN Committee against Torture, General Comment No. 2, Implementation of article 2 by States Parties, U.N. Doc. CAT/C/CC/2, (2008), [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=1&DocTypeID=11](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=1&DocTypeID=11) (accessed February 14, 2016), para. 16.
- <sup>30</sup> See generally *No More Excuses*, pp. 89-94.
- <sup>31</sup> *No More Excuses*, p. 89.
- <sup>32</sup> *No More Excuses*, p. 90. In addition the charge of conspiracy is a continuing crime that does not end until the last co-conspirator commits the last overt act of the conspiracy. See “No More Excuses” pp. 90-94.
- <sup>33</sup> See, for example, *No More Excuses*, pp. 89-91.
- <sup>34</sup> See *No More Excuses*, pp. 84-86 and 91, n. 466.
- <sup>35</sup> US Follow-up Report, para. 21, citing to “Memorandum for Secretaries of the Military Departments Chairman of the Joint Chiefs of Staff Undersecretaries of Defense Commanders of the Combatant Commands,” March 10, 2008, <https://fas.org/irp/doddir/dod/dtm-o8-009.pdf> (accessed February 20, 2016). Human Rights Watch placed numerous calls to the State Department February 16-19, 2016 to try to find out if this was the document it meant to cite. The response we received was that someone was looking into it. However, despite our follow-ups, we never received a response.
- <sup>36</sup> Human Rights Watch, *By the Numbers: Findings of the Detainee Abuse and Accountability Project, Volume 18, No. 2(G)*, April 2006, <https://www.hrw.org/sites/default/files/reports/cto406webwcover.pdf>
- <sup>37</sup> *By the Numbers*, p. 9. (Forty of these verdicts resulted in prison time, 30 of which were for terms of less than one year. The remaining ten individuals sentenced to prison times of more than one year received sentences ranging from one year to one instance of life imprisonment).
- <sup>38</sup> See Constitution Project’s Task Force on Detainee Treatment, April 2013, <http://detainee-taskforce.org/resources/alleged-wrongful-conduct-charges/> (accessed February 19, 2016).
- <sup>39</sup> For a detailed discussion of US failure to adhere to its obligations under the treaty to provide redress, compensation and rehabilitation, see *No More Excuses*, pp. 97-112.
- <sup>40</sup> *No More Excuses*, p. 101. Though virtually all suits brought by former CIA and US military detainees since the September 11, 2001 attacks have been dismissed by US courts, the American Civil Liberties Union filed a new complaint on behalf of three former CIA detainees in US federal court on October 13, 2015. The plaintiffs are suing two former CIA contractors James Mitchell and Bruce Jessen under the Alien Tort Statute for their commission of torture; cruel, inhuman, and degrading treatment; non-consensual human experimentation; and war crimes for the role they played in designing and implementing the CIA “enhanced interrogation program.” See “Salim v. Mitchell, Lawsuit Against Psychologists Behind CIA Torture Program,” *American Civil Liberties Union*, October 13, 2015, <https://www.aclu.org/cases/salim-v-mitchell-lawsuit-against-psychologists-behind-cia-torture-program> (accessed February 29, 2016).
- <sup>41</sup> David Rohde, “U.S. Government Blocks Release of New CIA Torture Details,” Reuters, September 10, 2015, <http://www.reuters.com/article/2015/09/11/us-usa-cia-torture-idUSKCN0RA2RM20150911> (accessed October 25, 2015); see also Joseph Margulies, “Open the Lid on US Torture,” *Al Jazeera America*, September 15, 2015, <http://america.aljazeera.com/opinions/2015/9/open-the-lid-on-us-torture.html> (accessed October 25, 2015); “Groups Urge End to Blocking Release of CIA Torture Details,” Human Rights Watch news release, September 18, 2015, <https://www.hrw.org/news/2015/09/18/groups-urge-end-blocking-release-cia-torture-details>.
- <sup>42</sup> US Follow-up report, para. 9.
- <sup>43</sup> US Follow-up report, para. 8.
- <sup>44</sup> See, for example, Human Rights Watch, *Selling Justice Short: Why Accountability Matters for Peace*, July 2009, 1-56432-508-3, [https://www.hrw.org/sites/default/files/reports/ij0709webwcover\\_1.pdf](https://www.hrw.org/sites/default/files/reports/ij0709webwcover_1.pdf).
- <sup>45</sup> See, for example, Human Rights Watch, *No Direction Home: Returns from Guantanamo to Yemen*, March 2009, 1-56432-466-4, <https://www.hrw.org/sites/default/files/reports/cto309web.pdf>; Pardiss Kebriaei, “Life After Guantánamo: A father and son’s story,” *Harpers Magazine*, April 2015, <https://harpers.org/archive/2015/04/life-after-guantanamo/> (accessed February 20, 2015).
- <sup>46</sup> US Department of the Army, Field Manual 2-22.3 (FM 34-52): Human Intelligence Collector Operations (“Army Field Manual”), September 6, 2006, <http://fas.org/irp/doddir/army/fm2-22-3.pdf> (accessed February 20, 2016), Appendix M.
- <sup>47</sup> *Ibid.*, Appendix M, M-1.
- <sup>48</sup> *Ibid.*, Appendix M, M-30.
- <sup>49</sup> Concluding Observations, para. 17.
- <sup>50</sup> Army Field Manual, Appendix M, M-26.
- <sup>51</sup> *Ibid.*, Appendix M, M-27.
- <sup>52</sup> Concluding Observations, para. 17.
- <sup>53</sup> US Follow-up Report, para. 45.
- <sup>54</sup> Army Field Manual, Appendix M, M-28.