



International Covenant on Civil and Political Rights

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Human Rights Committee

List of issues prior to submission of the fifth periodic report of the United States of America*

A. General information on the national human rights situation, including new measures and developments relating to the implementation of the Covenant

1. Please provide information on measures taken to implement the recommendations contained in the Committee's previous concluding observations (CCPR/C/USA/CO/4).¹ Indicate whether the State party has considered acceding to the Optional Protocol, providing for an individual communication procedure.
2. Please report on any other significant developments in the legal and institutional framework within which human rights are promoted and protected that have taken place since the most recent follow-up information received from the State party (CCPR/C/USA/CO/4/Add.1).

B. Specific information on the implementation of articles 1–27 of the Covenant, including with regard to the previous recommendations of the Committee

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

3. As the State party operates on a federal system of government, please provide information on the extent to and manner in which the Covenant has been incorporated into domestic law at the federal, state and local levels. Please also provide examples of cases in which the provisions of the Covenant have been referred to by national courts and other law-applying institutions. In addition, please indicate the steps taken to increase awareness and understanding of the Covenant among the general public and State employees such as judges, lawyers and law enforcement officials.
4. Please clarify the State party's current legal position on the scope of applicability of the Covenant with respect to individuals under its jurisdiction but outside its territory, such as those detained at the Guantánamo Bay facility, those on ships and aircraft registered to the United States that are participating in programmes such as Operation Martillo, and those directly targeted by aircraft and unmanned aerial vehicles operated by the United States.

* Adopted by the Committee at its 125th session (4–29 March 2019).

¹ Unless otherwise indicated, paragraph numbers in parentheses refer to the Committee's previous concluding observations.



5. Please provide information on any progress made by the State party in withdrawing its reservations to the Covenant, including its reservation to article 6 regarding capital punishment for crimes committed by persons below 18 years of age, which appears to have become moot following the Supreme Court's decision in the case of *Roper v. Simmons*.

Use of lethal force in military contexts (arts. 2, 6, 7, 9, 10 and 14)

6. Please provide information on the practice of using lethal force outside the context of recognized armed conflict and theatres of hostilities, including on existing safeguards to ensure that the use of armed drones is consistent with article 6 of the Covenant and with the principles of international humanitarian law relevant to the protection of civilians and the conduct of hostilities. Comment on reports that the Presidential Policy Guidance on the use of lethal force outside areas of active hostilities is no longer operational and has been replaced by a new policy entitled "Principles, Standards and Procedures". Describe the content of the current policy, particularly the applicable legal framework and available remedies. Indicate what safeguards are currently in place to prevent civilian harm in the use of such force, including any measures of transparency, and explain to what extent they are applicable to the Central Intelligence Agency.

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

7. Please provide information on the steps taken to address racial disparities in the criminal justice system, such as the overrepresentation of individuals belonging to racial and ethnic minorities in detention, the disproportionate representation of minorities in pretrial detention, including on account of the bail system, and the disproportionate length of sentences for racial and ethnic minorities.

8. With regard to foreign nationals, please comment on the ability of individuals to obtain visas under Presidential Proclamation 9645 "Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry into the United States by Terrorists or Other Public-Safety Threats", commonly known as the Muslim ban. In addition, comment on reports that the discretionary waiver process implemented through the Presidential Proclamation has a 98 per cent rejection rate. Explain how the Presidential Proclamation is compatible with the non-discrimination and non-refoulement provisions of the Covenant.

9. With reference to the Committee's previous concluding observations (para. 19), please provide information on the steps taken to decriminalize everyday activities associated with homelessness. Include information on measures adopted, including incentives given to local authorities to implement alternatives to criminalization, and to acknowledge, in practice, the relationship between homelessness and the right to life.

10. Please explain measures adopted by the State party to combat physical and sexual violence against women in schools and institutions of higher learning and in the United States Armed Forces.

11. Please provide information on the legislative and judicial protections and remedial avenues available to lesbian, gay, bisexual and transgender individuals who have been subjected to discriminatory practices, such as unjust dismissal from employment, eviction from housing or refusal of services because of their sexual orientation or gender identity. In addition, provide information on the mechanisms available to transgender individuals to protect them from discrimination in schools, prisons and jails, and the United States Armed Forces.

Maternal mortality, termination of pregnancy and reproductive rights (arts. 2, 3, 6, 7 and 26)

12. Please provide information on measures taken by the State party to address maternal mortality and morbidity, and in particular to address persistent racial disparities in maternal health outcomes. Comment on the impact of the following legislative instruments and measures on the Covenant rights of all women who are in the State party or directly affected by its decisions, and on the compatibility of those measures with the Covenant: (a) Presidential Executive Order 13798, entitled, "Promoting Free Speech and Religious Liberty", which allows employers and insurers to make "conscience-based objections" to

the preventive care mandate of the Patient Protection and Affordable Care Act and thereby restricts women's access to reproductive care; (b) state laws enacted since the adoption of the Committee's previous concluding observations, which restrict women's access to reproductive health and abortion services and create new barriers to them in practice, particularly in the light of the Committee's interpretation of article 6 of the Covenant that any State party's regulation of pregnancy or abortion must ensure that women and girls do not have to undergo unsafe abortions; (c) the criminalization of pregnant women using drugs; (d) the policy entitled "Protecting Life in Global Health Assistance" (also known as the global gag rule); and (e) the practice of shackling detained women even when they are giving birth. Please also provide information on the availability of abortion services in immigration detention facilities.

Right to life, including the death penalty and excessive use of force by law enforcement agents (art. 6)

13. With reference to the Committee's previous recommendation (para. 8) on the death penalty, and to reports regarding execution methods, please provide information on: (a) the number of death sentences imposed, the number of executions carried out, the grounds for each conviction and the sentence imposed, the age of the offenders at the time of committing the crime and their ethnic origin; (b) the steps taken to eradicate racial bias in death penalty convictions; (c) execution methods used in carrying out the death penalty and whether those methods have been reviewed since the previous reporting period; (d) the compatibility of the lethal drugs used in executions with the Covenant, following reports that they cause severe physical and mental suffering; (e) the steps taken to prevent wrongful convictions leading to a death penalty sentence and to provide compensation to those who have been exonerated; and (f) the steps taken to implement the judgment of the International Court of Justice of 31 March 2004 in the case concerning *Avena and Other Mexican Nationals (Mexico v. United States of America)*. In addition, provide information on the number of wrongful death sentence convictions since the previous reporting period and on any measures taken to provide remedies. Indicate whether the State party has considered establishing a federal moratorium on executions, with a view to abolishing the death penalty.

14. With respect to the Committee's previous concluding observations (para. 10) and the follow-up information received from the State party, please provide information on the number of victims of gun violence, including in the context of domestic violence. Please describe the efforts made by the State party to restrict access to firearms for those most at risk of abusing them, and the steps taken to counter patterns of abuse. Please indicate what steps the State party is taking to limit excessive use of force by law enforcement officials against civilians, particularly those belonging to racial minorities. Describe the mechanisms in place to hold law enforcement officials who use excessive force accountable, and include data on the investigations and prosecutions pursued in cases of firearm use by law enforcement officials. Indicate the relevant laws and describe the legal standards under domestic law on the appropriate use of force and firearms by law enforcement and security forces during arrest, during demonstrations, in custody, in anti-terrorism or anti-poaching operations, and under any other circumstances where force may be used. Explain how such laws are compliant, in law and in practice, with the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. Please comment on reports that nine states and Washington, D.C. do not have laws on the use of lethal force by their law enforcement officials.

15. Please indicate what steps the State party is taking to ensure access to safe and clean water for its population. In particular, describe efforts made to remedy the water crisis in Flint, Michigan, and efforts made to keep water affordable for low-income populations when publicly owned water services are privatized. Clarify the State party's initiatives to address significant threats to the right to life posed by the effects of climate change, such as flash floods, coastal flooding, wildfires, infectious diseases, extreme heat and air pollution.

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 and 14)

16. With reference to the Committee's previous concluding observations (para. 12), please provide updated information on measures taken to criminalize torture and provide a comprehensive definition of torture at the federal level. In addition, provide information on the admissibility of evidence obtained through torture or "enhanced interrogation techniques", including those pursuant to the Military Commissions Act of 2009. Describe steps taken to impose strict limits nationwide, in prisons and detention facilities, on the use of solitary confinement, and to abolish the practice for anyone under the age of 18 or living with a serious mental health condition.

17. With reference to the Committee's previous concluding observations (para. 21), please provide information on the detainees in the Guantánamo Bay facility, including:

(a) What plans are in place for the closure of the detention facility at Guantánamo Bay;

(b) Whether new detainees have been incarcerated in the facility during the reporting period, and the legal basis for their detention;

(c) The status and whereabouts of the previously reported 73 transferred detainees, and whether those transfers were made pursuant to diplomatic assurances, and the status of the five detainees previously approved for transfer;

(d) A description of the remaining inmate population, including the current number of detainees, disaggregated by detention status (those in the pretrial phase, convicted detainees and those retained without charge);

(e) Timelines for prosecution or release, including details on the envisaged jurisdiction and forum in the event of prosecution, and timelines for the pending trials;

(f) The current status of Executive Order 13567, establishing a periodic review of detainees at the Guantánamo Bay facility who have not been charged, convicted or designated for transfer;

(g) The number of habeas corpus petitions filed on behalf of detainees before federal courts to challenge the legality of their detention, and the current status of those petitions;

(h) Any measures taken to strengthen due process guarantees in military commission trials.

Elimination of slavery and servitude (art. 8)

18. With reference to the Committee's previous concluding observations (para. 14), please indicate what steps have been taken to strengthen preventative measures against trafficking in persons, increase victim identification, systematically and vigorously investigate allegations of trafficking, prosecute and punish those responsible, and provide effective remedies to victims. In addition, indicate what steps the State party has taken to prevent the criminalization of victims of sex trafficking, including child victims.

19. Please indicate how the State party is ensuring full protection against forced labour for all categories of worker and effective oversight of labour conditions for those participating in temporary visa programmes.

Treatment of foreign nationals, including refugees and asylum seekers (arts. 2, 9, 10, 13, 14, 17, 23, 24 and 26)

20. Please provide information on the specific safeguards in place during the implementation of the zero-tolerance policy. In addition, provide information on the number of individuals who were prosecuted pursuant to the memorandums on zero tolerance for offences under Title 8, section 1325 (a) of the United States Code and on a renewed commitment to criminal immigration enforcement, for illegally crossing the border with children, and on the number of children placed into the custody of the Department of

Health and Human Services. Comment on reports that despite a court order mandating the reunion of migrant families, over 300 children are still separated from their parents. Please indicate whether any investigations have commenced into the deaths of migrant children in the care and custody of the Customs and Border Protection authorities, and whether there are any newly enacted safeguards to ensure that such deaths do not happen again.

21. Please provide information on the conditions within immigrant detention facilities, both publicly and privately owned, including access to health care. Describe the conditions within migration detention facilities specifically for family units, unaccompanied minors, pregnant women and persons with special needs, and comment on the alleged use of “ice boxes” and of forced labour. In addition, provide information on the recently reported use of force by Customs and Border Protection officers at the southern border, including the use of tear gas, smoke and pepper spray on migrants, and describe any oversight mechanisms in place to limit the use of force by such authorities.

Right to privacy (art. 17)

22. With reference to the Committee’s previous concluding observations (para. 22) and the follow-up information received from the State party, please provide information on the available legislative and policy guarantees to protect United States and non-United States citizens, including individuals located abroad and migrants’ rights activists, against excessive surveillance. Describe the measures taken by the State party to combat the interference of non-State organizations, such as Facebook, in privacy rights, including but not limited to the enforcement of judicial orders, the enactment of comprehensive privacy laws and the creation of a data protection authority. Indicate whether the State party has granted any effective remedies as a result of a violation of section 702 of the Foreign Intelligence Surveillance Act or of Executive Order 12333.

Freedom of expression (art. 19)

23. Please comment on reports of a pattern of threats and intimidation by some government authorities, including the President himself, against journalists and media outlets. Indicate what measures the Government has in place, or plans to take, to encourage the right to freedom of opinion and expression, including the free operation of an uncensored and unhindered press and other media, and the ability of individuals or businesses to call for the boycott of private enterprises or foreign countries allegedly involved in human rights violations.

24. Please provide information on measures taken to address violent acts of discrimination against those belonging to racial and other minorities, and to ensure that the right to freedom of expression and association and the right to peaceful assembly are not exercised by certain groups, including white supremacists and homophobic groups, to promote hate speech and hate crimes.

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

25. Please comment on reports that state laws on demonstrations are increasingly restrictive. Indicate the steps the State party is taking to eliminate the excessive use of force by police officers during protests. Explain the necessity of the federal 1033 programme, which provides surplus military weapons and equipment to state and local police authorities, and comment on related reports of heavily militarized responses to local protests.

26. Please provide information on the implementation of the National Labor Relations Act, which guarantees the right of employees to form and join trade unions. In particular, explain the protections afforded to agricultural and domestic workers who are not covered under the Act. In addition, provide information on the so-called permanent replacement of employees engaged in economic strikes, a federal statute that has been described, effectively, as a removal of the right to strike, and on available remedial avenues under the statute.

Right to political participation (arts. 25 and 26)

27. With reference to the Committee's previous concluding observations (para. 24), please provide updated information on measures adopted by the State party to encourage the review of state laws on felony disenfranchisement and the removal of lengthy and cumbersome voting restoration procedures. Please comment on the prevalence of voter suppression measures in the State party, such as cuts to early voting and voter identification laws, which may impose an excessive burden on voters, especially those belonging to minority groups. In addition, comment on the compatibility of the practice of drawing electoral boundaries with a view to influencing election outcomes with article 25 of the Covenant.

28. Please provide information on the measures taken to prevent undue influence on the conduct of elections at the federal and state levels, and to ensure that rules governing campaign funding guarantee an equal right to take part in the conduct of public affairs.

Rights of indigenous peoples (art. 27)

29. Please provide updated information on the steps taken to give effect to the Committee's previous recommendation (para. 25) to protect the traditional ways of life and sacred areas of indigenous peoples, and to ensure that consultations are held with indigenous communities that might be adversely affected by development projects and the exploitation of natural resources, with a view to obtaining their free prior and informed consent. Indicate what redress measures are available to indigenous communities who have been adversely affected by development projects. Please provide further information on the steps taken to address the high number of missing and murdered indigenous women in the State party, including efforts to accurately gather data and statistics on those crimes and to carry out investigations, and the training and support available to law enforcement officials working to address such crimes. Please comment on the high level of gender-based violence against indigenous women and explain what initiatives are in place to accurately gather data surrounding such crimes.
