

UNITED STATES OF AMERICA

Follow-up - State Reporting Action by Treaty Bodies

CAT, A/61/44 (2006)

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CHAPTER IV. FOLLOW-UP ON CONCLUSIONS AND RECOMMENDATIONS ON STATES PARTIES REPORTS

38. In Chapter IV of its annual report for 2004-2005 (A/60/44), the Committee described the framework that it had developed to provide for follow-up subsequent to the adoption of the concluding observations on States parties reports submitted under article 19 of the Convention. It also presented information on the Committee's experience in receiving information from States parties from the initiation of the procedure in May 2003 through May 2005. This chapter updates the Committee's experience to 19 May 2006, the end of its thirty-sixth session.

39. In accordance with rule 68, paragraph 2, of the rules of procedure, the Committee established the post of Rapporteur for follow-up to concluding observations under article 19 of the Convention and appointed Ms. Felice Gaer to that position. As in the past, Ms. Gaer presented a progress report to the Committee in May 2006 on the results of the procedure.

40. The Rapporteur has emphasized that the follow-up procedure aims "to make more effective the struggle against torture and other cruel, inhuman and degrading treatment or punishment," as articulated in the preamble to the Convention. At the conclusion of the Committee's review of each State party report, the Committee identifies concerns and recommends specific actions designed to enhance each State party's ability to implement the measures necessary and appropriate to prevent acts of torture and cruel treatment, and thereby assists States parties in bringing their law and practice into full compliance with the obligations set forth in the Convention.

41. Since its thirtieth session in May 2003, the Committee began the practice of identifying a limited number of these recommendations that warrant a request for additional information following the review and discussion with the State party concerning its periodic report. Such "follow-up" recommendations are identified because they are serious, protective, and are considered able to be accomplished within one year. The States parties are asked to provide within one year information on the measures taken to give effect to its "follow-up recommendations" which are specifically noted in a paragraph near the end of the conclusions and recommendations on the review of the States parties' report under article 19.

42. Since the procedure was established at the thirtieth session in May 2003 through the end of the thirty-sixth session in May 2006, the Committee has reviewed 39 States for which it has identified follow-up recommendations. Of the 19 States parties that were due to have submitted their follow-up reports to the Committee by 1 May 2006, 12 had completed this requirement (Argentina, Azerbaijan, Czech Republic, Colombia, Germany, Greece, Latvia, Lithuania,

Morocco, New Zealand, United Kingdom, and Yemen). As of May, seven States had failed to supply follow-up information that had fallen due (Bulgaria, Cambodia, Cameroon, Chile, Croatia, Moldova, Monaco), and each was sent a reminder of the items still outstanding and requesting them to submit information to the Committee.

43. With this procedure, the Committee seeks to advance the Convention's requirement that "each State party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture ..." (art. 2, para. 1) and the undertaking "to prevent ... other acts of cruel, inhuman and degrading treatment or punishment ..." (art. 16).

44. The Rapporteur has expressed appreciation for the information provided by States parties regarding those measures taken to implement their obligations under the Convention. In addition, she has assessed the responses received as to whether all of the items designated by the Committee for follow-up (normally between three to six recommendations) have been addressed, whether the information provided responds to the Committee's concern, and whether further information is required. Where further information is needed, she writes to the State party concerned with specific requests for further clarification. With regard to States that have not supplied the follow-up information at all, she writes to solicit the outstanding information.

45. Each letter responds specifically and in detail to the information presented by the State party, which is given a formal United Nations document symbol number.

46. Since the recommendations to each State party are crafted to reflect the specific situation in that country, the follow-up responses from the States parties and letters from the Rapporteur requesting further clarification address a wide array of topics. Among those addressed in the letters sent to States parties requesting further information have been a number of precise matters seen as essential to the implementation of the recommendation in question. A number of issues have been highlighted to reflect not only the information provided, but also the issues not addressed but which are deemed essential in the Committee's ongoing work in order to be effective in taking preventive and protective measures to eliminate torture and ill-treatment.

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48. The chart below details, as of 19 May 2006, the end of the Committee's thirty-sixth session, the state of the replies with respect to follow-up.

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C. Follow-up due May 2007

State party	Date due	Date reply received	Document symbol number	Further action taken/required
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United States of America	May 2007			
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CAT, CAT/C/SR.757 (2007)

COMMITTEE AGAINST TORTURE

Thirty-eighth session

SUMMARY RECORD OF THE 757th MEETING

Held at the Palais Wilson, Geneva,
on Wednesday, 2 May 2007, at 10 a.m.

Chairperson: Mr. MAVROMMATIS

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**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE
19 OF THE CONVENTION**

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Follow-up on article 19

52. Mr. MARIÑO MENÉNDEZ, Rapporteur for follow-up for the United States of America, said the deadline for receipt of a reply from the State party had not yet expired and he expected to receive a reply in the near future. He could, however, provide an update on related developments. In June 2006, the Supreme Court had found that the President had exceeded his authority in creating special military commissions to try, for example, detainees at Guantánamo Bay, and had declared those commissions unconstitutional. As a result of that ruling, a new law governing those military commissions had been enacted in October 2006. The commissions were currently functioning and had taken their first decision on March 2007. In April 2007, the Supreme Court had rejected an appeal questioning the constitutionality of the reconstituted military commissions submitted by two groups of prisoners from Guantánamo, saying it preferred to wait to see how the commissions functioned in practice and to await any related decisions of the lower courts.

53. In September 2006, the Pentagon had issued new guidelines for the questioning of detainees aimed at prohibiting techniques which might be considered degrading, including some referred to by the Committee. He also expected the State party to reply to the concerns expressed by the Committee regarding lists of detainees, extraordinary rendition, respect for the principle of non-refoulement, due process for detainees at Guantánamo and the closure of Guantánamo, interrogation practices, conditions of detention for women and children, and concerns about some actions of the Chicago police. He was convinced that the State party had taken due note of the Committee's concerns and would soon submit its reply.

The meeting rose at 12.50 p.m.

CAT, A/62/44 (2007)

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IV. FOLLOW UP ON CONCLUSIONS AND RECOMMENDATIONS ON STATES PARTIES REPORTS

46. In Chapter IV of its annual report for 2005 2006 (A/61/44), the Committee described the framework that it had developed to provide for follow up subsequent to the adoption of the conclusions and recommendations on States parties reports submitted under article 19 of the Convention. It also presented information on the Committee's experience in receiving information from States parties from the initiation of the procedure in May 2003 through May 2006. This chapter updates the Committee's experience to 18 May 2007, the end of its thirty eighth session.

47. In accordance with rule 68, paragraph 2, of the rules of procedure, the Committee established the post of Rapporteur for follow up to conclusions and recommendations under article 19 of the Convention and appointed Ms. Felice Gaer to that position. As in the past, Ms. Gaer presented a progress report to the Committee in May 2007 on the results of the procedure.

48. The Rapporteur has emphasized that the follow up procedure aims "to make more effective the struggle against torture and other cruel, inhuman and degrading treatment or punishment", as articulated in the preamble to the Convention. At the conclusion of the Committee's review of each State party report, the Committee identifies concerns and recommends specific actions designed to enhance each State party's ability to implement the measures necessary and appropriate to prevent acts of torture and cruel treatment, and thereby assists States parties in bringing their law and practice into full compliance with the obligations set forth in the Convention.

49. Since its thirtieth session in May 2003, the Committee began the practice of identifying a limited number of these recommendations that warrant a request for additional information following the review and discussion with the State party concerning its periodic report. Such "follow up" recommendations are identified because they are serious, protective, and are considered able to be accomplished within one year. The States parties are asked to provide within one year information on the measures taken to give effect to its "follow up recommendations" which are specifically noted in a paragraph near the end of the conclusions and recommendations on the review of the States parties' reports under article 19.

50. Since the procedure was established at the thirtieth session in May 2003, through the end of the thirty eighth session in May 2007 the Committee has reviewed 53 States for which it has identified follow up recommendations. Of the 39 States parties that were due to have submitted their follow up reports to the Committee by 18 May 2007, 25 had completed this requirement (Albania, Argentina, Austria, Azerbaijan, Bahrain, Canada, Chile, Czech Republic, Colombia, Croatia, Ecuador, Finland, France, Germany, Greece, Latvia, Lithuania, Monaco, Morocco, New Zealand, Qatar, Sri Lanka, Switzerland, United Kingdom and Yemen). As of 18 May, 14 States had not yet supplied follow up information that had fallen due (Bulgaria, Bosnia and Herzegovina, Cambodia, Cameroon, Democratic Republic of the Congo, Georgia, Guatemala,

Republic of Korea, Moldova, Nepal, Peru, Togo, Uganda and United States of America). In March 2007, the Rapporteur sent a reminder requesting the outstanding information to each of the States whose follow up information was due in November 2006, but had not yet been submitted, and who had not previously been sent a reminder.

51. The Rapporteur noted that 14 follow up reports had fallen due since the previous annual report (A/61/44). However, only 4 (Austria, Ecuador, Qatar and Sri Lanka) of these 14 States had submitted the follow up information in a timely manner. Despite this, she expressed the view that the follow up procedure had been remarkably successful in eliciting valuable additional information from States on protective measures taken during the immediate follow up to the review of the periodic reports. While comparatively few States had replied precisely on time, 19 of the 25 respondents had submitted the information on time or within a matter of one to four months following the due date. Reminders seemed to help elicit many of these responses. The Rapporteur also expressed appreciation to non governmental organizations, many of whom had also encouraged States parties to submit follow up information in a timely way.

52. Through this procedure, the Committee seeks to advance the Convention's requirement that "each State party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture ..." (art. 2, para. 1) and the undertaking "to prevent ... other acts of cruel, inhuman and degrading treatment or punishment ..." (art. 16).

53. The Rapporteur has expressed appreciation for the information provided by States parties regarding those measures taken to implement their obligations under the Convention. In addition, she has assessed the responses received as to whether all the items designated by the Committee for follow up (normally between three and six recommendations) have been addressed, whether the information provided responds to the Committee's concern, and whether further information is required. Each letter responds specifically and in detail to the information presented by the State party. Where further information is needed, she writes to the State party concerned with specific requests for further clarification. With regard to States that have not supplied the follow up information at all, she writes to solicit the outstanding information.

54. At its thirty eighth session in May, the Committee decided to make public the Rapporteur's letters to the States parties. These would be assigned a United Nations document symbol number and placed on the web page of the Committee. The Committee further decided to assign a United Nations document symbol number to all States parties' replies (these symbol numbers are under consideration) to the follow up and also place them on its website.

55. Since the recommendations to each State party are crafted to reflect the specific situation in that country, the follow up responses from the States parties and letters from the Rapporteur requesting further clarification address a wide array of topics. Among those addressed in the letters sent to States parties requesting further information have been a number of precise matters seen as essential to the implementation of the recommendation in question. A number of issues have been highlighted to reflect not only the information provided, but also the issues that have not been addressed but which are deemed essential to the Committee's ongoing work, in order to be effective in taking preventive and protective measures to eliminate torture and ill treatment.

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57. The chart below details, as of 18 May 2007, the end of the Committee's thirty eighth session, the state of the replies with respect to follow up.

Follow up procedure to conclusions and recommendations from May 2003 to May 2007

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Thirty sixth session (May 2006)

State party	Information due in	Information received	Action taken
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United States of America	May 2007	Not received***	

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*** Information received after the thirty eighth session: CAT/C/USA/CO/2/Add.1.

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CHAPTER IV. FOLLOW-UP ON CONCLUSIONS AND RECOMMENDATIONS ON STATES PARTIES REPORTS

46. In this chapter, the Committee updates its findings and activities that follow-up on the conclusions and recommendations adopted under article 19 of the Convention, in accordance with the recommendations of its Rapporteur on Follow-Up to Country conclusions. The Rapporteur's activities, responses by States parties, and the Rapporteur's views on recurring concerns encountered through this procedure are presented below, and updated to through May 2008, following the Committee's fortieth session.

47. In chapter IV of its annual report for 2005-2006 (A/61/44), the Committee described the framework that it had developed to provide for follow-up subsequent to the adoption of the conclusions and recommendations on States parties reports submitted under article 19 of the Convention. It also presented information on the Committee's experience in receiving information from States parties from the initiation of the procedure in May 2003 through May 2008.

48. In accordance with rule 68, paragraph 2, of the rules of procedure, the Committee established the post of Rapporteur for follow-up to conclusions and recommendations under article 19 of the Convention and appointed Ms. Felice Gaer to that position. As in the past, Ms. Gaer presented a progress report to the Committee in May 2008 on the results of the procedure.

49. The Rapporteur has emphasized that the follow-up procedure aims "to make more effective the struggle against torture and other cruel, inhuman and degrading treatment or punishment", as articulated in the preamble to the Convention. At the conclusion of the Committee's review of each State party report, the Committee identifies concerns and recommends specific actions designed to enhance each State party's ability to implement the measures necessary and appropriate to prevent acts of torture and cruel treatment, and thereby assists States parties in bringing their law and practice into full compliance with the obligations set forth in the Convention.

50. In its follow-up procedure, the Committee has identified a number of these recommendations as requiring additional information specifically for this procedure. Such follow-up recommendations are identified because they are serious, protective, and are considered able to be accomplished within one year. The States parties are asked to provide within one year information on the measures taken to give effect to its follow-up recommendations which are specifically noted in a paragraph near the end of the conclusions and recommendations on the review of the States parties' reports under article 19.

51. Since the procedure was established at the thirtieth session in May 2003, through the end of the fortieth session in May 2008, the Committee has reviewed 67 States for which it has identified follow-up recommendations. Of the 53 States parties that were due to have submitted

their follow-up reports to the Committee by 16 May 2008, 33 had completed this requirement (Albania, Argentina, Austria, Azerbaijan, Bahrain, Bosnia and Herzegovina, Canada, Chile, Czech Republic, Colombia, Croatia, Ecuador, Finland, France, Georgia, Germany, Greece, Guatemala, Hungary, Republic of Korea, Latvia, Lithuania, Monaco, Morocco, Nepal, New Zealand, Qatar, Russian Federation, Sri Lanka, Switzerland, United Kingdom of Great Britain and Northern Ireland, United States of America and Yemen). As of 16 May, 20 States had not yet supplied follow-up information that had fallen due (Bulgaria, Burundi, Cambodia, Cameroon, Democratic Republic of the Congo, Denmark, Guyana, Italy, Japan, Luxembourg, Mexico, Moldova, the Netherlands, Peru, Poland, South Africa, Tajikistan, Togo, Uganda and Ukraine). In March 2008, the Rapporteur sent a reminder requesting the outstanding information to each of the States whose follow-up information was due in November 2007, but had not yet been submitted, and who had not previously been sent a reminder.

52. The Rapporteur noted that 14 follow-up reports had fallen due since the previous annual report.³ However, only 2 (Hungary and the Russian Federation) of these 14 States had submitted the follow-up information in a timely manner. Despite this, she expressed the view that the follow-up procedure had been remarkably successful in eliciting valuable additional information from States on protective measures taken during the immediate follow-up to the review of the periodic reports. While comparatively few States had replied precisely on time, 25 of the 33 respondents had submitted the information on time or within a matter of one to four months following the due date. Reminders seemed to help elicit many of these responses. The Rapporteur also expressed appreciation to non-governmental organizations, many of whom had also encouraged States parties to submit follow-up information in a timely way.

53. Through this procedure, the Committee seeks to advance the Convention's requirement that "each State party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture ..." (art. 2, para. 1) and the undertaking "to prevent ... other acts of cruel, inhuman and degrading treatment or punishment ..." (art. 16).

54. The Rapporteur expressed appreciation for the information provided by States parties regarding those measures taken to implement their obligations under the Convention. In addition, she has assessed the responses received as to whether all the items designated by the Committee for follow-up (normally between three and six recommendations) have been addressed, whether the information provided responds to the Committee's concern, and whether further information is required. Each letter responds specifically and in detail to the information presented by the State party. Where further information has been needed, she has written to the concerned State party with specific requests for further clarification. With regard to States that have not supplied the follow-up information at all, she requests the outstanding information.

55. At its thirty-eighth session in May 2007, the Committee decided to make public the Rapporteur's letters to the States parties. These would be placed on the web page of the Committee. The Committee further decided to assign a United Nations document symbol number to all States parties' replies to the follow-up and also place them on its website (<http://www2.ohchr.org/english/bodies/cat/sessions.htm>).

56. Since the recommendations to each State party are crafted to reflect the specific situation

in that country, the follow-up responses from the States parties and letters from the Rapporteur requesting further clarification address a wide array of topics. Among those addressed in the letters sent to States parties requesting further information have been a number of precise matters seen as essential to the implementation of the recommendation in question. A number of issues have been highlighted to reflect not only the information provided, but also the issues that have not been addressed but which are deemed essential to the Committee's ongoing work, in order to be effective in taking preventive and protective measures to eliminate torture and ill-treatment.

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58. The chart below details, as of 16 May 2008, the end of the Committee's fortieth session, the state of the replies with respect to follow-up.

3/ *Official Records of the General Assembly, Sixty-second Session, Supplement No. 44 (A/62/44).*

**Follow-up procedure to conclusions and recommendations
from May 2003 to May 2008**

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Thirty-sixth session (May 2006)

State party	Information due in	Information received	Action taken
...			
United States of America	May 2007	25 July 2007 CAT/C/USA/CO/2/Add.1	Response under review

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IV. FOLLOW UP ON CONCLUDING OBSERVATIONS ON STATES PARTIES REPORTS

53. In this chapter, the Committee updates its findings and activities that follow-up to concluding observations adopted under article 19 of the Convention, in accordance with the recommendations of its Rapporteur on follow-up to concluding observations. The Rapporteur's activities, responses by States parties, and the Rapporteur's views on recurring concerns encountered through this procedure are presented below, and updated through 15 May 2009, following the Committee's forty-second session.

54. In chapter IV of its annual report for 2005-2006 (A/61/44), the Committee described the framework that it had developed to provide for follow-up subsequent to the adoption of the concluding observations on States parties reports submitted under article 19 of the Convention. It also presented information on the Committee's experience in receiving information from States parties from the initiation of the procedure in May 2003 through May 2009.

55. In accordance with rule 68, paragraph 2, of the rules of procedure, the Committee established the post of Rapporteur for follow up to concluding observations under article 19 of the Convention and appointed Ms. Felice Gaer to that position. As in the past, Ms. Gaer presented a progress report to the Committee in May 2009 on the results of the procedure.

56. The Rapporteur has emphasized that the follow up procedure aims "to make more effective the struggle against torture and other cruel, inhuman and degrading treatment or punishment", as articulated in the preamble to the Convention. At the conclusion of the Committee's review of each State party report, the Committee identifies concerns and recommends specific actions designed to enhance each State party's ability to implement the measures necessary and appropriate to prevent acts of torture and ill-treatment, and thereby assists States parties in bringing their law and practice into full compliance with the obligations set forth in the Convention.

57. In its follow-up procedure, the Committee has identified a number of these recommendations as requiring additional information specifically for this procedure. Such follow-up recommendations are identified because they are serious, protective, and are considered able to be accomplished within one year. The States parties are asked to provide within one year information on the measures taken to give effect to its follow-up recommendations which are specifically noted in a paragraph near the end of the conclusions and recommendations on the review of the States parties' reports under article 19.

58. Since the procedure was established at the thirtieth session in May 2003, through the end of the forty-second session in May 2009, the Committee has reviewed 81 States for which it has identified follow up recommendations. Of the 67 States parties that were due to have submitted their follow up reports to the Committee by 15 May 2009, 44 had completed this requirement. As of 15 May 2009, 23 States had not yet supplied follow up information that had fallen due. The

Rapporteur sends reminders requesting the outstanding information to each of the States whose follow up information was due, but had not yet been submitted, and who had not previously been sent a reminder. The status of the follow-up to concluding observations may be found in the web pages of the Committee (<http://www2.ohchr.org/english/bodies/cat/sessions.htm>).

59. The Rapporteur noted that 14 follow up reports had fallen due since the previous annual report. However, only 4 (Algeria, Estonia, Portugal and Uzbekistan) of these 14 States had submitted the follow up information in a timely manner. Despite this, she expressed the view that the follow up procedure had been remarkably successful in eliciting valuable additional information from States on protective measures taken during the immediate follow up to the review of the periodic reports. One State party (Montenegro) had already submitted information which was due only in November 2009. While comparatively few States had replied precisely on time, 34 of the 44 respondents had submitted the information on time or within a matter of one to four months following the due date. Reminders seemed to help elicit many of these responses. The Rapporteur also expressed appreciation to non governmental organizations, many of whom had also encouraged States parties to submit follow up information in a timely way.

60. Through this procedure, the Committee seeks to advance the Convention's requirement that "each State party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture ..." (art. 2, para. 1) and the undertaking "to prevent ... other acts of cruel, inhuman and degrading treatment or punishment ..." (art. 16).

61. The Rapporteur expressed appreciation for the information provided by States parties regarding those measures taken to implement their obligations under the Convention. In addition, she has assessed the responses received as to whether all the items designated by the Committee for follow up (normally between three and six recommendations) have been addressed, whether the information provided responds to the Committee's concern, and whether further information is required. Each letter responds specifically and in detail to the information presented by the State party. Where further information has been needed, she has written to the concerned State party with specific requests for further clarification. With regard to States that have not supplied the follow up information at all, she requests the outstanding information.

62. At its thirty eighth session in May 2007, the Committee decided to make public the Rapporteur's letters to the States parties. These would be placed on the web page of the Committee. The Committee further decided to assign a United Nations document symbol number to all States parties' replies to the follow up and also place them on its website (<http://www2.ohchr.org/english/bodies/cat/sessions.htm>).

63. Since the recommendations to each State party are crafted to reflect the specific situation in that country, the follow up responses from the States parties and letters from the Rapporteur requesting further clarification address a wide array of topics. Among those addressed in the letters sent to States parties requesting further information have been a number of precise matters seen as essential to the implementation of the recommendation in question. A number of issues have been highlighted to reflect not only the information provided, but also the issues that have not been addressed but which are deemed essential to the Committee's ongoing work, in order to be effective in taking preventive and protective measures to eliminate torture and ill treatment.

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65. The chart below details, as of 15 May 2009, the end of the Committee's forty-second session, the state of the replies with respect to follow up.

Follow-up procedure to conclusions and recommendations from May 2003 to May 2009

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Thirty-sixth session (May 2006)

State party	Information due in	Information received	Action taken
...			
United States of America	May 2007	25 July 2007 CAT/C/USA/CO/2/Add.1	Request for further clarification

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Chapter IV. Follow-up to concluding observations on States parties' reports

65. In this chapter, the Committee updates its findings and activities that constitute follow-up to concluding observations adopted under article 19 of the Convention, in accordance with the procedure established on follow-up to concluding observations. The follow-up responses by States parties, and the activities of the Rapporteur for follow-up to concluding observations under article 19 of the Convention, including the Rapporteur's views on the results of this procedure, are presented below. This information is updated through 14 May 2010, the end of the Committee's forty-fourth session.

66. In chapter IV of its annual report for 2005-2006 (A/61/44), the Committee described the framework that it had developed to provide for follow-up subsequent to the adoption of the concluding observations on States parties reports submitted under article 19 of the Convention. In that report and each year thereafter, the Committee has presented information on its experience in receiving information on follow-up measures taken by States parties since the initiation of the procedure in May 2003.

67. In accordance with rule 68, paragraph 2, of the rules of procedure, the Committee established the post of Rapporteur for follow-up to concluding observations under article 19 of the Convention and appointed Ms. Felice Gaer to that position. In November 2009 and May 2010, the Rapporteur presented a progress report to the Committee on the results of the procedure.

68. At the conclusion of the Committee's review of each State party report, the Committee identifies concerns and recommends specific measures to prevent acts of torture and ill-treatment. Thereby, the Committee assists States parties in identifying effective legislative, judicial, administrative and other measures to bring their laws and practice into full compliance with the obligations set forth in the Convention.

69. In its follow-up procedure, the Committee has identified a number of these recommendations as requiring additional information within one year. Such follow-up recommendations are identified because they are serious, protective and are considered able to be accomplished within one year. The States parties are asked to provide information within one year on the measures taken to give effect to the follow-up recommendations. In the concluding observations on each State party report, the recommendations requiring follow-up within one year are specifically identified in a paragraph at the end of the concluding observations.

70. Since the procedure was established at the thirtieth session in May 2003, through the end of the forty-fourth session in May 2010, the Committee has reviewed 95 reports from States parties for which it has identified follow-up recommendations. It must be noted that periodic reports of Chile, Latvia, Lithuania and New Zealand have been examined twice by the Committee since the establishment of the follow-up procedure. Of the 81 States parties that were due to have submitted their follow-up reports to the Committee by 14 May 2010, 57 had completed this

requirement. As of 14 May 2010, 24 States had not yet supplied follow-up information that had fallen due: Republic of Moldova, Cambodia, Cameroon, Bulgaria, Uganda, Democratic Republic of the Congo, Peru, Togo, Burundi, South Africa, Tajikistan, Luxembourg, Benin, Costa Rica, Indonesia, Zambia, Lithuania (to the 2009 concluding observations), Chad, Chile, Honduras, Israel, New Zealand, Nicaragua and the Philippines.

71. The Rapporteur sends reminders requesting the outstanding information to each of the States for which follow-up information is due, but not yet submitted. The status of the follow-up to concluding observations may be found in the web pages of the Committee at each of the respective sessions. As of 2010, the Committee has established a separate web page for follow-up (<http://www2.ohchr.org/english/bodies/cat/follow-procedure.htm>).

72. Of the 24 States parties that did not submit any information under the follow-up procedure as of 14 May 2010, non-respondents came from all world regions. While about one-third had reported for the first time, two-thirds were reporting for a second, third or even fourth time.

73. The Rapporteur expresses appreciation for the information provided by States parties regarding those measures taken to implement their obligations under the Convention. In addition, she has assessed the responses received as to whether all the items designated by the Committee for follow-up (normally between three and six recommendations) have been addressed, whether the information provided responds to the Committee's concern, and whether further information is required. Each letter responds specifically and in detail to the information presented by the State party. Where further information has been needed, she has written to the concerned State party with specific requests for further clarification. With regard to States that have not supplied the follow-up information at all, she requests the outstanding information.

74. At its thirty-eighth session in May 2007, the Committee decided to make public the Rapporteur's letters to the States parties which are posted on the web page of the Committee. The Committee further decided to assign a United Nations document symbol number to all States parties' replies to the follow-up and also place them on its website.

75. Since the recommendations to each State party are crafted to reflect the specific situation in that country, the follow-up responses from the States parties and letters from the Rapporteur requesting further clarification address a wide array of topics. Among those addressed in the letters sent to States parties requesting further information have been a number of precise matters seen as essential to the implementation of the recommendation in question. A number of issues have been highlighted to reflect not only the information provided, but also the issues that have not been addressed but which are deemed essential to the Committee's ongoing work, in order to be effective in taking preventive and protective measures to eliminate torture and ill-treatment.

76. Among the Rapporteur's activities in the past year, have been the following: attending the inter-committee meetings in Geneva where follow-up procedures were discussed with members from other treaty bodies, and it was decided to establish a working group on follow-up; addressing the Committee on the Elimination of Discrimination against Women at its August 2009 meeting in New York concerning aspects of the follow-up procedure; assessing responses

from States parties and preparing follow-up letters to countries as warranted and updating the information collected from the follow-up procedure.

77. Additionally, the Rapporteur initiated a study of the Committee's follow-up procedure, beginning with an examination of the number and nature of topics identified by the Committee in its requests to States parties for follow-up information. She reported to the Committee on some preliminary findings, in November 2009 and later in May 2010, and specifically presented charts showing that the number of topics designated for follow-up has substantially increased since the thirty-fifth session. Of the 87 countries examined as of the forty-third session (November 2009), one to three paragraphs were designated for follow-up for 14 States parties, four or five such topics were designated for 38 States parties, and six or more paragraphs were designated for 35 States parties. The Rapporteur drew this trend to the attention of the members of the Committee and it was agreed in May 2010 that, whenever possible, efforts would henceforth be made to limit the number of follow-up items to a maximum of five paragraphs.

78. The Rapporteur also found that certain topics were more commonly raised as a part of the follow up procedure than others. Specifically, for all State parties reviewed since the follow-up procedure began, the following topics were most frequently designated:

Ensure prompt, impartial and effective investigation(s)	76 per cent
Prosecute and sanction persons responsible for abuses	61 per cent
Guarantee legal safeguards	57 per cent
Enable right to complain and have cases examined	43 per cent
Conduct training, awareness-raising	43 per cent
Ensure interrogation techniques in line with the Convention	39 per cent
Provide redress and rehabilitation	38 per cent
End gender-based violence, ensure protection of women	34 per cent
Ensure monitoring of detention facilities/visit by independent body	32 per cent
Carry out data collection on torture and ill-treatment	30 per cent
Improve condition of detention, including overcrowding	28 per cent

79. In the correspondence with States parties, the Rapporteur has noted recurring concerns which are not fully addressed in the follow-up replies and her concerns (illustrative, not comprehensive) have been included in prior annual reports. To summarize them, she finds there is considerable value in having more precise information being provided, e.g. lists of prisoners, details on deaths in detention and forensic investigations.

80. As a result of numerous exchanges with States parties, the Rapporteur has observed that there is need for more vigorous fact-finding and monitoring in many States parties. In addition, there is often inadequate gathering and analysing of police and criminal justice statistics. When the Committee requests such information, States parties frequently do not provide it. The Rapporteur further considers that conducting prompt, thorough and impartial investigations into allegations of abuse is of great protective value. This is often best undertaken through unannounced inspections by independent bodies. The Committee has received documents, information and complaints about the absence of such monitoring bodies, the failure of such bodies to exercise independence in carrying out their work or to implement recommendations for

improvement.

81. The Rapporteur has also pointed to the importance of States parties providing clear-cut instructions on the absolute prohibition of torture as part of the training of law-enforcement and other relevant personnel. States parties need to provide information on the results of medical examinations and autopsies, and to document signs of torture, especially including sexual violence. States parties also need to instruct personnel on the need to secure and preserve evidence. The Rapporteur has found many lacunae in national statistics, including on penal and disciplinary action against law-enforcement personnel. Accurate record keeping, covering the registration of all procedural steps of detained persons, is essential and requires greater attention. All such measures contribute to safeguard the individual against torture or other forms of ill-treatment, as set forth in the Convention.

82. The chart below details, as of 14 May 2010, the end of the Committee's forty-fourth session, the replies with respect to follow-up. This chart also includes States parties' comments to concluding observations, if any.

Follow-up procedure to concluding observations from May 2003 to May 2010

...

Thirty-sixth session (May 2006)

State party	Information due in	Information received	Action taken
...			
United States of America	May 2007	25 July 2007 CAT/C/USA/CO/2/Add.1	Request for further clarifications Request for additional clarifications

...

Follow-up - State Reporting
(ii) Action by State Party

CAT, CAT/C/USA/CO/2/Add.1 (2007)

Comments by the Government of the United States of America to the conclusions and recommendations of the Committee against Torture (CAT/C/USA/CO/2)

1. In its conclusions and recommendations regarding the Second Period report of the United States of America, the Committee Against Torture requested that the United States provide, within one year, information on its response to specific recommendations identified by the Committee.¹ These specific recommendations and the United States responses to them are provided below.

Paragraph 16

“The State party should register all persons it detains in any territory under its jurisdiction, as one measure to prevent acts of torture. Registration should contain the identity of the detainee, the date, time and place of the detention, the identity of the authority that detained the person, the ground for the detention, the date and time of admission to the detention facility and the state of health of the detainee upon admission and any changes thereto, the time and place of interrogations, with the names of all interrogators present, as well as the date and time of release or transfer to another detention facility.”

2. As an initial matter it should be noted that the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred to as “the Convention”) has no provision requiring the registration of prisoners.

3. Although there is no unified national policy governing the registry of persons detained in territory subject to the jurisdiction of the United States, relevant individual federal, state, and local authorities, including military authorities, as a matter of good administrative practice generally maintain appropriate records on persons detained by them.² Such records would generally include the information mentioned in the Committee’s recommendation.

Paragraph 20

“The State party should apply the *non-refoulement* guarantee to all detainees in its custody, cease the rendition of suspects, in particular by its intelligence agencies, to States where they face a real risk of torture, in order to comply with its obligations under article 3 of the Convention. The State party should always ensure that suspects have the possibility to challenge decisions of *refoulement*.”

4. There are two issues that appear to be raised in this conclusion and recommendation. The first issue is the *evidentiary standard* that would trigger application of CAT Article 3. As the United States described to the Committee,³ pursuant to a formal understanding the United States

filed at the time it became a State Party to the Convention, the United States determines whether it is more likely than not that a person would be tortured, rather than whether a person faces a “real risk” of torture.

5. The second issue addresses the *territorial scope* of Article 3. Although the United States and the Committee hold differing views on the applicability of the non-refoulement obligation in Article 3 of the Convention outside the territory of a State Party, as the United States explained to the Committee at length,⁴ with respect to persons outside the territory of the United States as a matter of policy, the United States government does not transfer persons to countries where it determines that it is more likely than not that they will be tortured. This policy applies to all components of the government, including the intelligence agencies.⁵ Although there is no requirement under the Convention that individuals should have the possibility to challenge refoulement, United States practice in the different areas in which this provision comes into play is designed to ensure that any torture concerns, whenever raised by the individual to be transferred, are taken into account. For example, in the context of immigration removals from the United States, as noted in the United States periodic report,⁶ there are procedures for alleging torture concerns and procedures by which those claims can be advanced.

Paragraph 21

“When determining the applicability of its non-refoulement obligations under article 3 of the Convention, the State party should only rely on “diplomatic assurances” in regard to States which do not systematically violate the Convention’s provisions, and after a thorough examination of the merits of each individual case. The State party should establish and implement clear procedures for obtaining such assurances, with adequate judicial mechanisms for review, and effective post-return monitoring arrangements. The State party should also provide detailed information to the Committee on all cases since 11 September 2001 where assurances have been provided.”

6. As explained to the Committee,⁷ the United States undertakes a thorough, case-by-case analysis of each potential transfer where diplomatic assurances are involved. This analysis takes into account all relevant factors, including all available information about the compliance of the potential receiving state with its international obligations, including those under the Convention, and the merits of each individual case.

7. The United States would like to emphasize to the Committee, as it did on other occasions,⁸ that diplomatic assurances are used sparingly but that assurances may be sought in order to be satisfied that it is not “more likely than not” that the individual in question will be tortured upon return. It is important to note that diplomatic assurances are only a factor that may be considered in appropriate cases and are not used as a substitute for a case-specific assessment as to whether it is not more likely than not that a person will be tortured if returned.

8. Procedures for obtaining diplomatic assurances vary according to the context (*e.g.*, extradition, immigration removal, or military custody transfer) and have been made available to the Committee.⁹ For example, the United States report provides information regarding regulatory procedures for consideration of diplomatic assurances in the immigration removal context, which provide for the opportunity to allege torture and advance such claims.¹⁰ In

addition, attached in Annex 1 is a declaration by Clint Williamson, Ambassador-at-Large for War Crimes Issues at the Department of State, dated June 8, 2007, and filed in United States federal court. This declaration explains in detail the process for obtaining and considering diplomatic assurances for detainees to be transferred from Guantanamo. It supersedes the declaration by former Ambassador Pierre Prosper that was provided to the Committee as part of the Second Periodic Report.¹¹ For the Committee's information, With regard to post-return monitoring arrangements, the United States agrees that follow-up following return is important. Indeed, the United States has requested and obtained information about the situation of individuals who have been transferred to other countries subject to assurances. As explained to the Committee, the United States would pursue any credible report and take appropriate action if it had reason to believe that those assurances would not be, or had not been, honored.

9. The United States does not unilaterally make public the specific assurances provided to it by foreign governments. Reasons for this policy were articulated in the materials provided to the Committee,¹² including the fact that unilaterally making assurances public might make foreign governments reluctant in the future to communicate frankly with the United States concerning important concerns related to torture or mistreatment.

Paragraph 22

“The State party should cease to detain any person at Guantánamo Bay and close this detention facility, permit access by the detainees to judicial process or release them as soon as possible, ensuring that they are not returned to any State where they could face a real risk of being tortured, in order to comply with its obligations under the Convention.”

10. Among the actions purported by the Committee to be governed under the Convention - including, for example, (1) closing Guantanamo; (2) permitting judicial access by enemy combatant detainees in that facility; or (3) not returning individuals who face “a real risk” of being tortured - the first two lack an arguable textual basis in the Convention, while the third issue is discussed at length in materials provided to the Committee¹³ as well as in the response to the Committee's recommendation in paragraph 20 above.

11. As the United States explained to the Committee,¹⁴ the United States is in an armed conflict with al-Qaida, the Taliban, and their supporters. As part of this conflict, the United States captures and detains enemy combatants, and is entitled under the law of war to hold them until the end of hostilities. The law of war, and not the Convention, provides the applicable legal framework governing these detentions.

12. Without going into further detail about its legal disagreements with the Committee's sweeping legal assertions regarding the scope of the Convention - which are addressed in other responses¹⁵ - the United States has made it clear in many different settings that it does not want to be the world's jailer. Although the Committee calls for the closure of Guantanamo, it does not appear to take into account the consequences of releasing dangerous terrorist combatants detained there or explain where those who cannot be repatriated due to humane treatment concerns might be sent. The United States will continue to look to the international community for assistance with resettlement of those detainees approved for transfer or release.

13. The United States does permit access by Guantanamo detainees to judicial process. Every detainee in Guantanamo is evaluated by a Combatant Status Review Tribunal (CSRT), which determines whether the detainee was properly classified as an enemy combatant and includes a number of procedural guarantees. A CSRT decision can be directly appealed to a United States domestic civilian court, the Court of Appeals for the District of Columbia Circuit. Providing such an opportunity for judicial review exceeds the requirements of the law of war and is an unprecedented and expanded protection available to all detainees at Guantanamo. These procedural protections are more extensive than those applied by any other nation in any previous armed conflict to determine a combatant's status.

14. After a CSRT determination, each enemy combatant not charged by a Military Commission receives an annual review to determine whether the United States needs to continue detention. An Administrative Review Board (ARB) conducts this review.

[ed note - there is no paragraph 15 in the officially published document]

16. Since the Committee's consideration of the United States report in May 2006, approximately 120 detainees have departed Guantanamo. This process is ongoing. Updates are available at <http://www.defenselink.mil/news/nrdgb.html>.

17. These transfers are a demonstration of the United States' desire not to hold detainees any longer than necessary. It also underscores the processes put in place to assess each individual and make a determination about their detention while hostilities are ongoing - an unprecedented step in the history of warfare.

18. At present, approximately 375 detainees remain at Guantanamo, and approximately 405 have been released or transferred. The Department of Defense has determined -- through its comprehensive review processes -- that approximately 75 additional detainees are eligible for transfer or release. Departure of these detainees is subject to ongoing discussions between the United States and other nations.

Paragraph 24

“The State party should rescind any interrogation technique, including methods involving sexual humiliation, “waterboarding”, “short shackling” and using dogs to induce fear, that constitutes torture or cruel, inhuman or degrading treatment or punishment, in all places of detention under its de facto effective control, in order to comply with its obligations under the Convention.”

19. As an initial matter, as the United States has informed the Committee,¹⁶ the United States is in an armed conflict with al-Qaida, the Taliban, and their supporters. As part of this conflict, the United States captures and detains enemy combatants, and is entitled under the law of war to hold them until the end of hostilities. The law of war, and not the Convention, is the applicable legal framework governing these detentions. Moreover, as the Committee is aware,¹⁷ the United States disagrees with the Committee's contention that “de facto effective control” is

equivalent to territory subject to a State party's jurisdiction for the purposes of the Convention.

20. Leaving aside interpretive issues arising under the Convention, as a matter of United States law, there is a ban on torture of anyone under the custody or physical control of the United States Government. Torture, attempt to commit torture, and conspiracy to commit torture outside of the United States by U.S. nationals or persons present in the United States are crimes under the extraterritorial torture statute.¹⁸ Moreover, pursuant to the Detainee Treatment Act of 2005,¹⁹ cruel, inhuman, or degrading treatment or punishment of anyone under the custody or physical control of the United States Government is prohibited. All detainee interrogations must be conducted in a manner consistent with these prohibitions, Common Article 3 of the Geneva Conventions, as well as any greater applicable law of war protections.

21. In September 2006, the Department of Defense released the updated DoD detainee program directive 2310.01E, and the Army released its revised Field Manual on Interrogation. These documents are attached in Annexes 2 and 3, respectively. They provide guidance to military personnel to ensure compliance with the law, and require that all personnel subject to the directive treat all detainees, regardless of their legal status, consistently with the minimum standards of Common Article 3 until their final release, transfer out of DoD control, or repatriation. Of course, certain categories of detainees, such as enemy prisoners of war, enjoy protections under the law of war in addition to the minimum standards prescribed by Common Article 3.

22. Furthermore, under the Military Commissions Act of 2006,²⁰ serious violations of Common Article 3, including torture and cruel or inhuman treatment, are criminal offenses. In defining precisely those violations that are subject to criminal prosecution, greater clarity is provided to officials involved in detention and interrogation operations on what treatment violates United States and international law. A copy of the Military Commissions Act is attached at Annex 4.

Paragraph 33

“The State party should adopt all appropriate measures to ensure that women in detention are treated in conformity with international standards.”

23. The United States provided the Committee with information about its efforts to ensure appropriate treatment of women in detention facilities, including action taken against gender-based violence and sexual abuse.²¹ As the United States told the Committee,²² incidents of shackling of female detainees during childbirth are extremely rare and are not a standard procedure. It also provided the information on these issues in response to other questions from members of the Human Rights Committee.²³

24. In its written reply to the Committee's List of Issues, the United States provided Bureau of Prisons statistics regarding enforcement actions for sexual abuse against prisoners.²⁴ These figures were for calendar year 2004, the latest year for which statistics were available at the time. Updated figures are provided below.

25. During Calendar Year (CY) 2005, the latest figures available, there were 17 allegations of

inmate-on-inmate non-consensual sexual acts (also broadly referred to as “rape”). During CY 2005, there were five guilty findings for *non-consensual sexual acts*. Please note that there is not necessarily a correspondence between allegations and findings because cases may span more than one calendar year.

26. During CY 2005, there were 40 allegations of *inmate-on-inmate abusive sexual contacts* (also broadly referred to as “touching offenses”). During CY 2005, there were 30 guilty findings for abusive sexual contacts. Please note that there is not necessarily a correspondence between allegations and findings because cases may span more than one calendar year.

27. During CY 2005, there were 203 allegations of staff sexual misconduct. During CY 2005, 6 allegations were substantiated. Please note that it is possible for a single case to have multiple subjects; and similarly, the same subject could be charged with multiple allegations in the same case. If a single case involved multiple subjects, an allegation is counted for each subject and for each behavior. Any allegations made during previous years which were closed during CY 2005 are not reflected.

28. Allegations of the sexual abuse of inmates by staff are tracked in accordance with the definitions outlined Title 18, United States Code, Chapter 109A.

29. Additionally, other behaviors such as indecent exposure, staff voyeurism, and inappropriate comments of a sexual nature are also tracked and are included with the sexual abuse allegations. All types of allegations are included in the above figures. These figures are for allegations made against staff working in Bureau of Prisons facilities.

Paragraph 34

“The State party should ensure that detained children are kept in facilities separate from those for adults in conformity with international standards. The State party should address the question of sentences of life imprisonment of children, as these could constitute cruel, inhuman or degrading treatment or punishment.”

30. As the United States explained to the Committee,²⁵ juveniles are not regularly held in federal prison with the adult prison population. Federal law prohibits juvenile offenders held in the custody of federal authorities from being housed in correctional institutions or detention facilities in which they could have regular contact with adults. As a general rule, the state prison populations do not include “juveniles” as that term is defined by the applicable state law.

31. The Convention does not prohibit the sentencing of juveniles to life imprisonment without parole. The United States, moreover, does not believe that the sentencing of juveniles to life imprisonment constitutes cruel, inhuman or degrading treatment or punishment as defined in United States obligations under the Convention. In this context, it is significant to recall the specific treaty obligations of the United States under Article 16 in light of the formal reservation the United States took with respect to that provision at the time it became a State Party to the Convention. Specifically, that reservation stated “[t]hat the United States considers itself bound by the obligation under article 16 to prevent ‘cruel, inhuman or degrading treatment or

punishment,' only insofar as the term 'cruel, inhuman or degrading treatment or punishment' means the cruel, unusual and inhumane treatment or punishment prohibited by the Fifth, Eighth, and/or Fourteenth Amendments to the Constitution of the United States." United States courts have considered such sentences on numerous occasions and ruled that juvenile life imprisonment does not violate the United States Constitution. Accordingly, such sentences do not violate U.S. obligations under the Convention with respect to cruel, inhuman or degrading treatment or punishment.

32. A prohibition of juvenile life imprisonment without parole is an important provision in the later-negotiated Convention on the Rights of the Child (CRC). States that wished to assume new treaty obligations with respect to juvenile sentencing were free to become States Parties to the CRC, and a very large number of countries chose to do so. Accordingly, States Parties to the CRC have an obligation under Article 37 of that Convention to ensure that "neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age." However, the United States has not become a State Party to the CRC²⁶ and, accordingly, is under no obligation to prohibit the sentencing of juveniles to life imprisonment without the opportunity for parole.

Paragraph 42

"The Committee requests the State party to provide detailed statistical data, disaggregated by sex, ethnicity and conduct, on complaints related to torture and ill-treatment allegedly committed by law-enforcement officials, investigations, prosecutions, penalties and disciplinary action relating to such complaints. It requests the State party to provide similar statistical data and information on the enforcement of the Civil Rights of Institutionalized Persons Act by the Department of Justice, in particular in respect to the prevention, investigation and prosecution of acts of torture, or cruel, inhuman or degrading treatment or punishment in detention facilities and the measures taken to implement the Prison Rape Elimination Act and their impact. The Committee requests the State party to provide information on any compensation and rehabilitation provided to victims."

33. The United States provided substantial statistical information to the Committee²⁷ and provides the following updated information.

34. In July 2006, the Department of Justice's Bureau of Justice Statistics released a report, Sexual Violence Reported by Correctional Authorities, 2005. This report is attached as Annex 5 and is also available at: <http://www.ojp.usdoj.gov/bjs/pub/pdf/svrca05.pdf>. This report has detailed statistical information, including:

35. According to this report, in 2005, in substantiated incidents of staff sexual misconduct and harassment, staff were discharged or resigned in approximately 82% of cases, arrested or referred for prosecution in approximately 45% of cases, and disciplined, transferred, or demoted in approximately 17% of cases (these numbers add to more than 100% because more than one action against a staff member could be taken concerning the same incident).

36. This report also states that in 2005, approximately 15% of allegations of staff sexual misconduct in Federal and state prisons were substantiated, while approximately 6% of allegations of staff sexual harassment in Federal and state prisons were substantiated. The report states that in local jails, approximately 37% of allegations of staff sexual misconduct were substantiated, while approximately 10% of allegations of staff sexual misconduct were substantiated.

37. Finally, the report states that in 2005, in Federal and state prisons approximately 67% of the victims of staff misconduct were male, while approximately 62% of the perpetrators were female. In local jails, however, approximately 78% of the victims of staff misconduct were female, while approximately 87% of the perpetrators were male. With respect to race, approximately 69% of the staff members involved in staff sexual misconduct and harassment were White, approximately 24% were Black (non-Hispanic), approximately 4% were Hispanic, and approximately 4% were Other (this category includes American Indians, Alaska Natives, Asians, Native Hawaiians, and Other Pacific Islanders).

“The Committee encourages the State party to create a federal database to facilitate the collection of such statistics and information which assist in the assessment of the implementation of the provisions of the Convention and the practical enjoyment of the rights it provides.”

38. As a result of the decentralized federal structure of the United States, the creation of one unified database would not materially contribute to better implementation of the Convention. Instead, Federal and state authorities compile relevant statistics, including those mentioned by the Committee, and use them for a wide variety of purposes, including assessing the effectiveness of enforcement. Enforcement against torture and cruel, inhuman or degrading treatment or punishment is managed through the laws and procedures described at length in the United States periodic report²⁸ and its responses to the questions posed by the Committee.²⁹

“The Committee also requests the State party to provide information on investigations into the alleged ill-treatment perpetrated by law-enforcement personnel in the aftermath of Hurricane Katrina.”

39. For the Committee’s information, a partial list of the work done by Federal agencies in response to Hurricanes Katrina and Rita, including enhanced law enforcement operations in the Gulf Coast region, is attached at Annex 6 and is available at http://www.dhs.gov/xprepresp/programs/gc_1157649340100.shtm.

40. Since the Committee has not provided the United States with specific information about the allegations of ill-treatment it mentions, the United States is unable to provide a detailed response to any specific allegations the Committee may have in mind.

41. That said, U.S. law prohibits brutality and discriminatory actions by law enforcement officers. The Civil Rights Division of the Department of Justice, with the aid of United States Attorney’s Offices and the FBI, actively enforces those laws. In addition, states have laws and/or other mechanisms that protect individuals from mistreatment by law enforcement officers.

42. Following Hurricane Katrina, which devastated the Gulf Coast region of the United States, there have been media reports of alleged ill-treatment perpetrated by law-enforcement personnel. The Federal government and relevant state entities have attempted to determine the validity of the allegations. Given the dual-sovereign system of government in the United States, as well as the manner in which the Federal government keeps statistics of allegations of police misconduct, it is not possible for the United States to accurately determine how many allegations of law enforcement misconduct were reported or investigated in the aftermath of Hurricane Katrina.

43. The Department of Justice's Civil Rights Division has opened files in connection with at least ten complaints of law-enforcement misconduct in the affected areas following the storm. Three of those complaints have been closed without prosecution because the allegations did not constitute prosecutable violations of federal criminal civil rights law. The three closed files included unsubstantiated allegations of an assault in a Mississippi jail; a civilian who was struck by a patrol car during the evacuation; and officers stealing cars from a car dealership following the storm.

44. Two of the nine matters opened by the Civil Rights Division involve incidents that have led to criminal charges being filed by the State of Louisiana. In October 2005, three New Orleans Police Department officers were charged with battery stemming from the assault of an individual in the New Orleans French Quarter a few weeks after Hurricane Katrina. In December 2006, seven New Orleans Police Department officers were indicted for the fatal shooting of two individuals on the Danzinger Bridge in the aftermath of the hurricane. Both cases still are pending, and the Department of Justice will continue to monitor these prosecutions.

45. The remaining files that were opened by the Civil Rights Division still are open and the investigations into those allegations are pending. Applicable federal law and policy requires that information concerning pending investigations into those allegations remain confidential. Nevertheless, the Committee can be assured that if an investigation indicates that there was a violation of a federal criminal civil rights statute, appropriate action will be taken.

46. In addition to the cases reviewed by the Civil Rights Division, the Louisiana Attorney General's Office is conducting an exhaustive inquiry into allegations that New Orleans residents were not permitted by law enforcement officials to cross the Greater New Orleans Bridge to Gretna, Louisiana, during the evacuation of the city. The Civil Rights Division intends to review the results of the state's investigation to determine whether the facts implicate a violation of any federal statutes.

47. The U.S. Department of Homeland Security (DHS) also received complaints alleging ill-treatment by law enforcement personnel in the aftermath of Hurricane Katrina. Specifically, DHS's Immigration and Customs Enforcement Office of Professional Responsibility (ICE OPR) received six complaints and its Office of Inspector General (IG) received three complaints. The allegations raised by these complainants are detailed below:

48. Complaints received by ICE OPR:

a) One complaint regarding an alleged civil rights/false arrest violation.

- b) Two complaints regarding alleged looting/theft of electronics.
- c) One complaint regarding an alleged rape.
- d) One complaint regarding an alleged unauthorized procurement of supplies.
- e) One complaint regarding alleged rude conduct.

49. Complaints received by the DHS Inspector General:

- a) One complaint regarding alleged intimidation/mismanagement.
- b) Two complaints regarding alleged false claims.

50. These allegations are being or have been investigated pursuant to standard procedures.

Annexes

- 1. Declaration of Clint Williamson
- 2. Department of Defense Directive 2310.01E
- 3. Army Field Manual 2-22.3, Human Intelligence Collector Operations
- 4. Military Commissions Act of 2006 (P.L. 109-366)
- 5. Sexual Violence Reported by Correctional Authorities, 2005 (Department of Justice, Bureau of Justice Statistics)
- 6. Department of Homeland Security, “Hurricane Katrina: What Government Is Doing”

¹ See Committee Against Torture, Conclusions and Recommendations of the Committee Against Torture -United States of America, UNDOC CAT/C/USA/CO/2 at ¶43 (July 25, 2006).

² For further information on such records, see List of Issues to Be Examined During the Consideration of the Second Periodic Report of the United States of America - Response of the United States of America, *available at* <http://www.usmission.ch/Press2006/CAT-May5.pdf> at 13 (May 5, 2006) [hereinafter referred to as “Response to List of Issues”].

³ See, e.g., Second Periodic Report of the United States of America to the Committee Against Torture, *available at* <http://www.state.gov/g/drl/rls/45738.htm> at ¶30 (May 6, 2005) [hereinafter referred to as “Second Periodic Report”]; Response to List of Issues at 37-38.

⁴ See, e.g., Response to List of Issues, *supra* note 2, at 32-37.

⁵ See *id.* at 49.

⁶ See Second Periodic Report, *supra* note 3, at ¶2-38; Response to List of Issues, *supra* note 2, at 27-30.

⁷ See, e.g., Second Periodic Report, *supra* note 3, at ¶30; Response to List of Issues, *supra* note 2, at 45-48.

⁸ See, e.g., Response to List of Issues, *supra* note 2, at 45.

⁹ See Second Periodic Report, *supra* note 3, at ¶33 (immigration removal) and ¶40 (extradition); Annex I, Part One, Section II.E (military transfers).

¹⁰ See Second Periodic Report, *supra* note 3, at ¶33.

¹¹ See *id.*, Annex I, Tab 1.

¹² See *id.*

¹³ See, e.g., Second Periodic Report, *supra* note 3, at ¶30; Response to List of Issues, *supra* note 2, at 37-38.

¹⁴ See, e.g., Second Periodic Report, *supra* note 2, Annex I, Part One, Section I.

¹⁵ See *supra* at 2-3.

¹⁶ See, e.g., Second Periodic Report, *supra* note 3, Annex I, Part One, Section I.

¹⁷ See Response to List of Issues, *supra* note 2, at 87.

¹⁸ 18 U.S.C. § 2340A.

¹⁹ Pub. L. No. 109-148, 119 Stat. 2739.

²⁰ Pub. L. No. 109-366, 120 Stat. 2600.

²¹ See, e.g., Second Periodic Report, *supra* note 3, at ¶¶87-94, 96-101, 120; Response to List of Issues, *supra* note 2, at 101-05.

²² See Response to List of Issues, *supra* note 2, at 100.

²³ See List of Issues to be Taken up in Connection with the Second and Third Periodic Reports of the United States of America, available at <http://www.usmission.ch/ICCPRAdvanceQ&A.pdf> (July 17, 2006).

²⁴ See Response to List of Issues, *supra* note 2, at 102-03.

²⁵ See Second Periodic Report, *supra* note 3, at ¶¶14-17; Response to List of Issues, *supra* note 2, at 97-99.

²⁶ The United States is a party to the two Optional Protocols to the Convention on the Rights of the Child.

²⁷ See, e.g., Response to List of Issues, *supra* note 2, at 69-76, Annexes 4-8.

²⁸ See, e.g., Second Periodic Report, *supra* note 3, at ¶¶8, 11-29, 45-55, 63-84, 87-139.

²⁹ See, e.g., Response to List of Issues, *supra* note 2, at 8-12, 44, 50-53, 63-69, 85-89.