



UNITED STATES MISSION
TO THE UNITED NATIONS AND OTHER INTERNATIONAL ORGANIZATIONS
IN GENEVA

December 3, 2015

Ms. Mireille Fanon Mendes-France
Chair-Rapporteur of the Working Group of Experts on the People of African Descent
Geneva, Switzerland

OHCHR REGISTRY

Ms. Rita Izsák
Special Rapporteur on minority issues
Geneva, Switzerland

04 DEC 2015

Recipients: SPB
P. G. (Encl.)
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Mr. Mutuma Ruteere
Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia
and related intolerance
Geneva, Switzerland

Mr. Christof Heyns
Special Rapporteur on extrajudicial, summary or arbitrary executions
Geneva, Switzerland

Mr. Juan E. Méndez
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or
punishment

Dear Ms. Fanon Mendes-France, Ms. Izsák, Mr. Ruteere, Mr. Heyns, and Mr. Méndez:

Thank you for your letter dated April 10, 2015 expressing concern about the torture of African Americans and members of other minorities at Area [REDACTED] Police Headquarters in the City of Chicago from 1972 through 1991. As our President has said, "Torture violates United States and international law as well as human dignity." It is "contrary to the founding documents of our country, and the fundamental values of our people." The prohibition of torture and cruel treatment is part of our Constitution, and it binds our federal government and all 50 of our states. We believe that torture, and cruel, inhuman and degrading treatment and punishment are forbidden in all places, at all times, with no exceptions.

As we noted in our preliminary response dated August 5, 2015, we reached out to the relevant federal, state, and local authorities for information responsive to your specific questions. The Office of the Attorney General of Illinois (OAG) provided a response containing information related to your questions. We have excerpted the relevant passages below (omitting footnotes and internal headings), and have appended the relevant attachment:

"As the OHCHR letter notes, dozens of incarcerated individuals have asserted they were convicted of various crimes in part due to an incriminatory confession obtained by Chicago Police through torture at Areas ██████████ Headquarters. In 2002, in response to calls for a criminal investigation of ██████████ and the officers working under his command, the Chief Judge of the Cook County Circuit Court, Paul P. Biebel, Jr. determined that the Cook County State's Attorney's Office (CCSAO) had a conflict of interest with respect to ██████████. Chief Judge Biebel then appointed former Appellate Court Justice Edward J. Egan as a Special Prosecutor to investigate and prosecute any misconduct related to the allegations of torture by ██████████ or officers working under his supervision. [Please see the relevant attachment entitled "Report of the Special State's Attorneys" as provided by the Cook County State's Attorney's Office.]

In 2003, Chief Judge Biebel also appointed the [Office of the Attorney General of Illinois] OAG as a Special Prosecutor to replace the CCSAO in representing the People in all pending and future post-conviction matters in which the petitioners sought to overturn their convictions based on allegations involving conduct by ██████████ or his officers. The OAG continued in this role until 2009 when Chief Judge Biebel appointed former Cook County Judge Stuart A. Nudelman to handle all future post-conviction cases as a Special Prosecutor.

For individuals incarcerated because of a confession obtained due to torture by ██████████ or officers under his supervision, Illinois law offers several avenues of relief, including:

- state habeas corpus from the Illinois Supreme Court or County Circuit Court granting release because the trial court lacked personal or subject matter jurisdiction or because a post-conviction occurrence entitled the individual to immediate release (735 ILCS 5/Art. X);
- post-conviction relief for a new trial because the prior proceedings involved a substantial denial of the individual's rights under the United States or Illinois Constitution (725 ILCS 5/122-1 *et. seq.*);
- relief from final judgment (735 ILCS 5/2-1401);
- grant of executive clemency from the Illinois Governor (Ill. Const. 1970, Art. V, § 12); and
- preliminary review by the Illinois Torture Inquiry and Relief Commission where there is a sufficiently credible claim of torture that warrants further judicial review (775 ILCS 40/1 *et. seq.*).

If a conviction is overturned, an individual may petition for a certificate of innocence from the Cook County Circuit Court (735 ILCS 5/2-702).

The OAG conducted a detailed, individual factual and legal analysis of the post-conviction claims raised by each petitioner. Based on that analysis, the OAG exercised prosecutorial discretion in responding to the petitions for relief by opposing or supporting those requests. If a new trial was granted, the OAG then exercised prosecutorial discretion either to re-prosecute the case or drop the charges. Between 2003 and 2009, the

OAG was assigned 28 post-conviction matters. These matters took various forms, including: 19 post-conviction petitions, 5 habeas petitions, 1 petition for relief from a final judgment, and 3 petitions for executive clemency. Of those, 13 petitioners were granted a new trial or other form of relief, 7 petitioners were denied a new trial, 1 petitioner dropped his claim, 1 case remains pending, 2 cases were transferred to the new Special Prosecutor because the petitioners had not yet moved forward with their claims, and 1 petitioner is deceased. Three petitioners were pardoned by the Governor [of Illinois].

In addition to the post-conviction matters handled by the OAG, the Illinois General Assembly established the Illinois Torture Inquiry and Relief Commission in 2009 to fast track requests for judicial review for [REDACTED] victims. The Commission is empowered to review claims for post-conviction relief and make a preliminary finding as to whether a claim of torture by an incarcerated individual is sufficiently credible to merit judicial review. If the Commission makes such a finding, then the individual can request a hearing before a Cook County judge to show by a preponderance of evidence that the confession was coerced, thereby granting a new trial. Since it became operational in 2011, the Commission has received over 200 claims for review, many of which are still pending. The Commission stopped accepting new petitions on August 10, 2014.

In October 2012, a number of prisoners filed a class action lawsuit under the Post-Conviction Hearing Act in response to concerns that the Commission did not have the resources or capacity to handle the petitions it had received in a timely manner. Class certification was denied and their petition was dismissed in March 2014, but Judge Biebel appointed a Special Master to find additional victims who are currently incarcerated. Any valid claims will be forwarded to the Circuit Court of Cook County where the incarcerated individuals will be provided private pro bono counsel for assistance with post-conviction relief.

In 2010, the U.S. Department of Justice [DOJ] successfully prosecuted [REDACTED] on one felony count of perjury and two felony counts of obstruction of justice stemming from statements he made in a 2003 federal civil lawsuit denying his involvement in the torture of suspects during interrogation, ultimately obtaining a judgment in early 2011. [REDACTED] was sentenced to 4 1/2 years in prison and was released in October 2014.

Following this conviction, the Attorney General filed suit on behalf of the People of the State of Illinois seeking an injunction to terminate and recover any payments made to [REDACTED] for his police retirement pension after the conviction. The Illinois Supreme Court decided that the state pension law did not provide the Attorney General with jurisdiction to challenge the payment of pension benefits to a retired police officer convicted of committing a crime arising out of his service as a police officer citation. [REDACTED] As a result, [REDACTED] continues to receive his pension. At the request of the Attorney General, the Illinois General Assembly subsequently passed legislation to clarify that the Attorney General may bring a civil action to enjoin pension payments to a police officer who is convicted of any felony relating to his or her service as an officer.

To prevent further abuse of suspects detained for interrogation, Illinois passed legislation in 2003 to require the video recording of any interrogation of a minor or adult who is a suspect in a homicide. If any such interrogation is done without an electronic recording, any statement made during the interrogation is deemed inadmissible. The OAG was actively involved in the passage of this legislation and in providing training to police departments on the implementation of the new law. This law was expanded in 2013 to cover interrogations for additional offenses, including sexual assault, arson, kidnapping, hijacking, home invasions, armed robbery and aggravated battery with a firearm.

Several civil lawsuits have been filed against [REDACTED] the City of Chicago and various city and county officials based upon allegation[s] of torture-induced criminal confessions. In addition to allegations of torture, various plaintiffs also asserted that exculpatory evidence was suppressed or destroyed by Chicago police officers. Counsel for the plaintiffs in the case of [REDACTED] estimated, on the basis of information obtained in discovery in various cases and through Freedom of Information Act requests, that settlements of such cases as of December 2013 exceeded \$64 million.

The Chicago City Council passed an Ordinance on May 6, 2015, providing for a package of financial and other reparations to individuals who have a credible claim that they were tortured or physically abused by [REDACTED] or one of the officers under his command at Area [REDACTED] or Area [REDACTED] Police Headquarters between May 1, 1972 and November 30, 1991. The City appropriated \$5.5 million for the financial reparations. In addition, the City Council adopted a Resolution offering a formal apology for any and all harm suffered by the torture survivors, their family members, and other individuals and communities."

The United States thanks you for the opportunity to respond to your inquiry.

Sincerely,



Keith M. Harper
Ambassador
U.S. Representative to the Human Rights Council

Attachment:

-- Report of the Special State's Attorneys