

Mandates of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; the Working Group of Experts on People of African Descent; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Independent Expert on the enjoyment of all human rights by older persons and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

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20 May 2024

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; Working Group of Experts on People of African Descent; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Independent Expert on the enjoyment of all human rights by older persons and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 52/36, 45/24, 51/21, 51/4 and 52/7.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received regarding historical and continuing allegations of the **systemic corruption and use of torture or other cruel, inhuman or degrading treatment by law enforcement officials in the Chicago area, resulting in wrongful convictions and unjust incarceration of affected individuals, who are disproportionately of African and Latino/Hispanic descent.**

Concerns about racial disparities within the criminal justice system have been the subject of several previous communications addressed to your Excellency's Government, including in USA 12/2023, which addressed excessively punitive sentences disproportionately affecting people of African descent and from other racial and ethnic groups, including in cases where individuals were allegedly wrongly convicted. Issues relating to racial discrimination in the criminal justice system were also covered in USA 10/2015 and USA 17/2021, which addressed the case of Mr. Mumia Abu-Jamal detained in the State Correctional Institution at Mahanoy, Pennsylvania. We thank your Excellency's Government for its replies to USA 10/2015 of 24 June and 15 September 2015 but note that the allegations of systemic racism within the criminal justice, contained within the communications, were not addressed. We also thank your Excellency's Government for their reply to USA 12/2023.

According to the information received:

Background

Systemic racism and racial discrimination against those of African descent, and those from other racially marginalised groups, within law enforcement and the criminal justice system is a direct legacy of colonialism, the transatlantic slave trade and chattel slavery. It is closely linked to the foundation of the United States of America and

reportedly persists in many different forms across the country.¹ Against this national backdrop, Chicago has a longstanding history and reputation of corruption and misconduct by law enforcement officials, including torture and ill treatment, with a disproportionate impact on people of African and Latino/Hispanic descent.

Synonymous with Chicago's reputation as having a long history of police corruption and misconduct is Jon Burge, a former police commander in the Chicago Police Department, initially appointed as a police officer in 1970. Burge served as a soldier in the Vietnam war, where he is said to have learned various torture techniques that were later introduced into the practices of the Chicago police. He reportedly led a group of law enforcement officers known as the "Midnight Crew" whom he had trained to use the same torture techniques. Burge and the "Midnight Crew" would arrest individuals from poor neighbourhoods inhabited mainly by those of African and Latino/Hispanic descent. They would use torture techniques to force confessions, which would often be used to secure convictions for serious crimes, including homicide. The use of torture and other ill treatment led to the personal advantages for Burge and his associates. They reportedly gained reputations as having high clearance rates for homicides and were promoted based on this.

Reportedly, there have been several high-profile examples of such police misconduct, torture, and ill treatment in Chicago, including the "Marquette Park Four case" and the "Englewood Four Case," in which individuals of African descent were framed for homicides. It is reported that the Chicago Police Department detained and tortured more than 120 individuals, mainly of African and Latino/Hispanic descent, between 1972 and 1991 under the command of Burge and the "Midnight Crew". However, this is likely an underestimate with many more cases being suspected.

The enduring legacy of Burge and the "Midnight Crew" and broader issues in the Chicago Police Department

Whilst Burge and members of the "Midnight Crew" are synonymous with racially discriminatory police misconduct, torture and ill-treatment in Chicago, these practices did not begin or end with them. Burge and the "Midnight Crew" also trained and influenced other officers within the Chicago Police Department and similar patterns of human rights violations are reported to have persisted after the Burge period. Moreover, the inability of the Chicago Police Department to prevent and effectively address and punish the actions of Burge and the "Midnight Crew" indicates longstanding issues with culture and accountability.

After the Burge period, which was between 1991 and 2001, Chicago Police Department officers reportedly obtained confessions in at least 247 murder cases that were eventually dismissed by courts due to tainted evidence. Reportedly, many of these cases included instances of torture to obtain false confessions. The Torture Inquiry and Relief Commission (TIRC), established by legislation in 2019, has also found credible evidence of torture in cases handled by detectives after the Burge period.

¹ A/HRC/54/CRP.7

Racial profiling and violations of due process rights

Chicago Police Department officials reportedly have a long history of deploying racial profiling to determine who to target. Moreover, systemic racial profiling and violations of the due process rights of individuals of African and Latino descent reportedly continues to take place in Chicago. The 2022 Report on Race And Ethnicity-Based Disparities in the Chicago Police Department's Use of Force of the City of Chicago's Office of Inspector General found strong evidence of race-based disparities in the department's use of force over a three-year period. Despite an explicit prohibition of racial profiling in policing in the department's directives, disparities reportedly manifest and compound across multiple phases of use-of-force incidents. The 2022 report stated "at all phases where clear evidence of disparities exists, people of African descent are the most consistently disadvantaged racial/ethnic group." People of African descent in Chicago were reportedly subjected to 72% of all traffic stops yet constitute 32% of the city's population.²

Reportedly, Chicago Police Department officials have repeatedly failed to read detainees their Miranda rights, held detainees for up to 55 hours without access to legal counsel, and denied children and teenagers their right to see parents, legal guardians and/or an attorney while detained. People of African descent and individuals from other racially marginalised groups are reportedly significantly more vulnerable to violations of their Miranda rights. Not only are arrests made without warrants, it is reported that the officers also often refuse detainees the right to counsel and to make phone calls.

Chicago Police Department Law enforcement officers have also been reported to have planted drugs on suspects and disregarded valid alibis. In one case, a detective reportedly showed the only known witness, who was alleged to have been intoxicated at the time of the shooting, a photo line-up and a live line-up. The detained suspect was the only person to appear in both line-ups, which is a technique that is now linked with faulty identifications. Similarly, the same detective allegedly manipulated an identification by showing the witness photographs of the accused before the actual line-up. Line-up manipulation has also manifested in officers placing a red X on an individual to signal who the witness must or should select from the line-up.

Torture, ill-treatment and forced confessions

Chicago Police Department Officers have reportedly subjected detained individuals to acts that could constitute torture or other cruel, inhuman or degrading treatment in order to force the interviewee to confess to serious violent crimes, including homicide. Implicated officers reportedly used different methods of torture and ill treatment, including verbal abuse and insults; the utilization of what they called their "n***** box," an electrocution machine that they would connect to fingers, genitals, gums, earlobes; mock executions; threats to cut off toes; punching; choking; kicking; slapping; suffocating; beatings with phone books; beatings with flashlights; pulling hair out of the scalp; locking individuals in cold storerooms for extended periods of time; threats to throw individuals out of windows; dragging individuals up and down staircases; withholding access to food and water; burning individuals with

² American Civil Liberties Union (ACLU) of Illinois, "Stop and Frisk in Chicago," March 2015. Available at https://www.aclu-il.org/sites/default/files/wp-content/uploads/2015/03/ACLU_StopandFrisk_6.pdf

cigarettes; waterboarding; and/or denial of medical attention. This abuse would typically include racial and derogatory slurs, most commonly the use of the N-word.

These acts of torture, ill treatment and other abuse would reportedly continue for hours and sometimes over several days. During these periods, officers would reportedly often threaten to harm the spouses and family members of persons deprived of liberty to secure confessions. These officers also reportedly threatened to take the children of mothers from them if they would not testify against a detained individual. A national study by Steven A. Drizin of the Center on Wrongful Convictions and Richard A. Leo of the University of California-Irvine found that 84% of false confessions occurred after interrogations of six hours or longer.³ Chicago Police Department officers reportedly targeted children and teenagers who were illiterate or with learning disabilities and mental illness. A Chicago Police Department officer is reported to have withheld essential medication from individuals with life threatening medical conditions, such as asthma and diabetes, to coerce confessions. Reportedly, the injuries suffered by individuals as a result of torture and ill treatment often resulted in hospitalisation for kidney damage, diabetic and other injury induced comas, chest trauma, broken limbs and heart attacks.

It is report that after being subject to hours or even days of abuse and torture or ill-treatment, often compounded by deprivation of sleep, inadequate food and water, many detained individuals signed written confessions.

Falsified evidence, fair trial rights and sentencing

Confessions obtained through torture and other ill treatment were reportedly considered to be admissible into the court proceedings in many cases in Chicago. Reportedly, other forms of coerced and/or falsified evidence were also used to convict individuals. Chicago Police Department officers reportedly coerced witnesses forcing them to give false or anonymous testimonies in court to incriminate people. In many cases witnesses reportedly later recanted or withdrew their testimony and alleged that Chicago Police Department officers had coerced them. Many individuals would have been convicted solely based on forced confessions and coerced testimony of eyewitnesses, with a total absence of physical evidence linking them to the crimes they were accused of. Survivors have launched a number of appeals, alleging that their proceedings failed to take into account evidence concerning police abuse and torture, failed to call relevant witnesses, or to deal with allegations of witness tampering, suppressing evidence, line-up manipulation and jury selection bias. witnesses, witness tampering, suppressing evidence, line-up manipulation and jury selection bias. Moreover, Chicago Police Department officers were accused of routinely committing perjury in court to secure convictions, further undermining the fair trial rights of victims. Reportedly, there are also cases in which racially discriminatory gang databases were used as evidence by the prosecution to establish that defendants who lived in areas were gang members. These issues have been compounded in many cases by the lack of access amongst defendants to effective counsel.

Reportedly, the sentences received by individuals convicted based on false confessions as a result of torture and ill-treatment by Chicago Police Department

³ Steven A. Drizin & Richard A. Leo, The Problem of False Confessions in the Post-DNA World, 82 N.C. L. Rev. 891 (2004). Available at: <https://scholarship.law.unc.edu/nclr/vol82/iss3/3>

officers and other forms of falsified, coerced and/or racially discriminatory evidence have often been very lengthy, from 15 and up to 125 years in prison as well as the death penalty. Reportedly, Chicago Police Department officers targeted individuals of African and Latino/Hispanic descent. Those from racially marginalised groups are more at risk of lengthy custodial sentencing within the United States of America due to systemic racial discrimination in the criminal justice system. People of African descent make up 46% of the prison population serving life sentences nationwide even though they comprise only 12% of the general population.⁴

Lack of adequate access to recourse and remedy

On 6 May 2015, after publicly acknowledging the pattern of torture and ill treatment, the City of Chicago passed an Ordinance authorizing reparations for Burge survivors and other measures, including a public apology, access to education amongst survivors and psychosocial support. Despite such efforts to address reparations for systemic torture and ill-treatment that occurred under Jon Burge, there are significant gaps in the measures taken and the City of Chicago and State of Illinois are said to be acting too slowly to in reviewing and addressing cases. Many individuals detained on the basis of the torture and ill treatment by Chicago Police Department officers remain imprisoned after over 20 years of imprisonment for crimes that followed flawed criminal proceedings that used unlawful means, and they risk dying in prison if adequate action is not taken.

Following the passing of the Torture Inquiry and Relief Commission (TIRC) Act in 2009, it was determined that an independent body named the Torture Inquiry and Relief Commission (TIRC) would be responsible for investigating claims of torture within Cook County and to determine whether there is sufficient credible evidence of torture to merit judicial review. There are however limitations in the scope of the TIRC's mandate, which have constrained the ability of affected individuals to access justice. To fall within the jurisdiction of the Commission, the claim must be that "an officer coerced a confession that was used against the defendant to obtain his conviction." The claim before the TIRC must be made by or on behalf of a living person, convicted in the Cook County Courts of a felony in Illinois, and who claims he or she was tortured into confessing to the crime of conviction. The tortured confession must have been used to obtain the conviction, and there must be some credible evidence of torture. Without all these requirements, the claim may not be accepted. As such, many claims that have come before the TIRC have been dismissed, particularly where such cases do not meet the jurisdictional requirements.

If the Commission determines, on a preponderance of the evidence, that there is sufficient credible evidence of torture to merit judicial review it may refer the case to the appropriate authorities, or it may refer the case to the Circuit Court to determine whether the suppression of a statement or a new trial is warranted. In the Illinois Supreme Court's decision in *People v. Wrice*,⁵ a judicial finding by a Circuit Court found that a confession coerced by torture would likely lead to a new trial for the defendant, if the State Attorney chooses to seek a new trial.

⁴ The Sentencing Project, "No End in Sight: America's Enduring Reliance on Life Imprisonment (footnote 5)"

⁵ *People v. Wrice*, 962 N.E.2d 934 (Ill. 2012)

In additions to limitations in the scope of the mandate of the TIRC, the body has limited resources. Reportedly, as of October 2021, the TIRC had only completed the review of 134 cases, and it currently has a very large backlog of cases. Individuals who have suffered abuse and torture reportedly also struggle to obtain reports on the status of their cases. In addition, it is reported that there are cases in which the TIRC have deemed that there is sufficient evidence of torture, but the victim remains in prison on the basis of the confession obtained using torture and ill treatment.

There have also been efforts to improve the capacity of the Office of the Illinois Attorney General to address wrongful conviction through the development of the Conviction Review Unit, formally known as the Conviction Integrity Unit. However, it is unclear if the unit has the capacity to effectively review cases in a timely manner. Other avenues for affected victims to secure recourse through release from incarceration, including the pardoning power of the Illinois Governor and the United States President, do not appear to have been used even though systemic police misconduct, torture and ill treatment in Chicago has been publicly acknowledged and there is a risk that affected individuals may die in prison if necessary action is not taken.

In cases where it is found that individuals were victims of police misconduct, torture or ill-treatment and they were released from prison, not all have reportedly been offered adequate access to psychosocial support and other forms of remedy. The 2015 reparations ordinance included access to psychological support for some victims of torture. However, the duration of services is limited and many victims of torture by Chicago Police Department are said to not be in a position to access this support. The United States of America reportedly lacks rehabilitative or psychological services to people who have been tortured by U.S. law enforcement officers. Reportedly, another serious issue faced by those that have been released from prison following the vacation of their sentences is the inability to secure a certificate of innocence. This document is very important when individuals seek to expunge their criminal records and/or claim compensation.

Reportedly, another significant gap in efforts to provide access to justice and remedy for victims of torture by Chicago Police Department officers is the lack of accountability for officers implicated in these grave human rights violations and criminal conduct. For example, Burge faced criminal proceedings and served four years for perjury, but this conviction and sentence were not proportionate to the scope and gravity of his crimes and the impact on the lives of his survivors and their family members. Burge and other Chicago Police Department officers could not be prosecuted for torture due to the statute of limitations. Reportedly, many officers implicated in testimonies of torture survivors still serve as officers within the Chicago Police Department or have retired without any penalties. This limits the ability of survivors to feel closure and creates a culture of impunity for serious human rights violations.

Conditions of detention, particularly lack of adequate access to healthcare services

Reportedly, many survivors of torture by Chicago Police Department officers are imprisoned and are placed in inadequate conditions of detention, particularly with regard to access to healthcare services. Many detained individuals have mental and physical health problems, in many cases reportedly as a result of the torture they have

endured and lack access to adequate mental and physical healthcare. For example, it is reported that on 3 October 1990, an individual was arrested by Chicago officers of the Midnight Crew who beat and kicked him repeatedly in custody, resulting in a broken femur and a metal rod that was in his thigh holding it in place due to a prior gunshot wound. After he signed a false confession, he was convicted and had to wait 26 years to receive one of the many surgeries necessary to repair the damage he suffered from the torture. At this time, he also suffered a heart attack and fell into a coma after contracting influenza during the COVID-19 pandemic. There are cases in which terminally ill individuals, whose conditions have been caused and/or exacerbated due to torture and ill and/or inadequate conditions of detention, have been denied medical release. This is despite the enactment of the Joe Coleman Act, which became effective on 1 January 2022. The Joe Coleman Act is designed to provide relief for terminally ill people in Illinois Department of Corrections.

Many of those arrested, tortured, and imprisoned by Chicago Police Department officers, who are still imprisoned are reaching the later stages of their lives. “Elderly prisoners,” that is, individuals 50 years or older, account for 20 percent of the Illinois state’s prison population. This population group is expected to grow to 30 percent by 2030. Due to hard living conditions and the stress of confinement, combined with exposure to other manifestations of systemic racism, a detained individual may display physiological signs of ageing much earlier than their contemporaries.⁶

Individual cases

We wish to bring your attention to the individual cases of the following affected individuals directly affected by the alleged systemic issues outlined above: Tamon Russell; Antonio Porter; Johnny Borizov; Matthew Echevarria; Nick Escamilla; Robert Ornelas; Micheail Ward; Michael Carter; Lamont Donegam; Keith Pikes; Lester Owens; Rico Clark; Enrique Valdez; Johnny Plummer; Yohn Zapada; Gerald Reed; Clayborn Smith; Javan Deloney; Ivan Smith; George Anderson; Darrell Fair; Michelle Clopton; Duel Thomas; Robert Allen; and Kilroy Watkins. A summary outlining the details of most of these individual cases is below:

Tamon Russell is currently incarcerated, serving 45-year sentence after being arrested in May 2001. Russell, who was 19 years old at the time, was arrested for the murder of one man and attempted murder of two others in a drive-by shooting in 2001. Russell was allegedly hit and assaulted multiple times, he was not read his rights or told why he was arrested. He was also denied a lawyer despite repeated requests for one. During the interrogation police officers continued to assault him and refused him access to a bathroom. The police ignored statements from Russell’s mother and sister proving he was at home at the time of the crime. No forensic testing on his hands or clothes was conducted. There was also no physical evidence linking him to the crime. Russell was convicted of homicide and attempted homicide in 2004 and sentenced to 45 years in prison. Russell maintains his innocence and has been through a long process of post-conviction appeals. Russell remains incarcerated. Police officer [REDACTED] was allegedly involved.

⁶ A/HRC/51/27.

Russell has filed a petition of actual innocence, and his case is in second stage of hearings in the Cook County Circuit Court, under Judge [REDACTED]

Antonio Porter is currently incarcerated, serving 71-year sentence after being arrested in August 2002. Porter was arrested for the murder of a man during a dice game at a school in 2002. Four witnesses for the prosecutor, who initially identified Porter, later recanted their statements during the trial, including that Porter did not match the description of the gunman. The witnesses claimed that they were coerced and tortured by police officers to identify Porter as the gunman. After a jury trial, Porter was sentenced to 71 years imprisonment in 2003. In total, six witnesses indicated that Porter was not the murderer. There was no material evidence connecting Porter to the murder, and DNA analysis of three \$5 bills dropped by the gunman excluded Porter. The Conviction Integrity Unit reviewed the case but found that the DNA results were not exonerating and that there was insufficient new evidence. Porter, who has maintained his innocence throughout, is not eligible for parole until 2070. He has continued to appeal and remains incarcerated. Police Officer [REDACTED] was allegedly involved.

Porter has filed for clemency through the Governor. His post-conviction petition Case No. 02CR27018(01) was filed and is being reviewed in the Cook County Circuit Court under Judge [REDACTED]

Matthew Echevarria is currently incarcerated, serving a 50-year sentence after being arrested in June 1999. Echevarria was arrested when he was 17 years old for the murder of a man outside a restaurant on the Northwest side of Chicago on 30 June 1999. He was identified in a line-up and subsequently convicted, despite the description of the shooter by witnesses did not match Echevarria and a lack of physical evidence. Echevarria also had an alibi at the time of the shooting. The basis of the arrest was an anonymous tip to police. Echevarria has consistently maintained his innocence and remains incarcerated. Echevarria is expected to file a petition of actual innocence in early 2024.

Johnny Borizov is currently incarcerated, after being sentenced to three consecutive life sentences in 2013 based on coerced testimony. To this day, Borizov continues to maintain his innocence. Today, Borizov suffers from over 27 medical challenges, including heart and kidney failure. In the last ten years, Borizov has faced severe medical neglect within detention. On multiple occasions, he has been forced to take unspecified medication without his consent. His dialysis has been unexpectedly cancelled and he has periodically slipped into multiple comas. It is suspected that the medical negligence Borizov has suffered may be seen in part as a reprisal for the advocacy and awareness raising undertaken by Borizov's family. Borizov's 2023 petition for medical release under the Joe Coleman Act, was denied by the Prisoner Review Board despite the severity of Borizov's medical conditions.

Robert Ornelas is currently incarcerated, serving a life-sentence after being arrested in November 1990. Ornelas, who was 18 years old at the time, was arrested for the murder of two people in 1990. He was allegedly abused and beaten by police officers until he confessed. Ornelas had taken drugs and was not coherent. The police officers cuffed his ears, kicked him in the shins, slapped and punched him several times, and squeezed his testicles. To stop the abuse, Ornelas signed a statement of what

the police told him to say. Ornelas was convicted 6 years later, in May 1996, in a bench trial and sentenced to life imprisonment. At a post-conviction evidentiary hearing a witness for the prosecution testified that police physically abused him to get him to say that Ornelas had committed the murders. When he refused, he was told police would implicate him in the murders. The witness' mother also testified and described injuries she saw on his body when she had picked him up at the police station. This witness later committed suicide. All the files in Ornelas's case are now missing. Police officers [REDACTED] were allegedly involved.

The Torture Inquiry and Relief Commission (TIRC) considered a claim of torture by Ornelas and concluded that there was insufficient evidence to conclude that Ornelas's claim was credible in July 2013. Ornelas has been incarcerated since 1990 and is serving a natural life sentence. In August 2023, then Judge [REDACTED] denied Ornelas' motion for resentencing. Robert is appealing this and seeking a new trial.

Micheail Ward is currently incarcerated, serving an 84-year sentence after being arrested in February 2013. Ward, who was 18 years old at the time, was arrested for the murder of a 15-year-old teenage girl in Chicago on 22 February 2013 in a case that received a significant amount of media attention. Initially pulled over by police for a broken taillight, Ward was subsequently taken into custody. Ward was held for 23 hours without being able to eat, sleep, or contact his family or a lawyer, despite repeated requests. He was coerced into signing a false confession and subsequently convicted of murder with a sentence of 84 years in prison on 22 August 2018. Ward had four alibi witnesses that were not permitted to testify, and one of the prosecution's witnesses recanted his testimony. No murder weapon or other physical evidence tied Ward to the murder. The fact that Ward and his co-defendant lived in an area defined as SUWU gang territory, as designed by a database, was perceived as evidence of their involvement during trial and in the media. The database used to identify gang areas has been reported to have multiple errors and to contain racially discriminatory algorithm bias. Police officer [REDACTED] was allegedly involved.

The judge who presided over Ward's case, was a former prosecutor of the Burge era and is alleged to have presided over the case prejudicially. In March 2023, the Illinois Appellate Court reversed Ward's conviction, ruling that his confession should not have been considered at trial. The State's Attorney's office appealed the Appellate Court's ruling in spring of 2023, sending the case to the Illinois Supreme Court. This hearing is expected to be in May 2024. Ward continues to be medically neglected and targeted for other abuse by Illinois Department of Corrections staff at Pontiac.

Michael Carter is currently incarcerated, serving a 30-year sentence after being arrested in February 1999. Carter was arrested for assault and battery on 12 February 1999 following the shooting of a man in a heated argument between multiple men. His charges were then upgraded to first degree murder when the man who had been shot, died. Following the altercation, Chicago Police Department detectives forced entry into Carter's girlfriend's apartment where he was arrested without a warrant and was not read his Miranda rights. During Carter's interrogation, he was denied sleep, water, food, access to the bathroom, and a phone call. He was beaten, kicked, spit on, called racial slurs and threatened during the interrogation. When Carter's mother arrived at the police station, she could hear her son screaming in distress during the interrogation by Chicago Police Department detectives. She was

told she would be charged with obstructing justice if she did not go home and was not allowed access to her son. Carter ultimately signed a false statement implicating one of his co-defendants ██████████ for the murder. Carter was tried alongside his brother and another co-defendant, in a single trial.

The prosecution presented an accountability theory whereby it is argued that the individuals involved did not have to shoot the deceased to be guilty. Carter reportedly did not receive effective counsel during his trial. Despite significant inconsistency in the statements of the witnesses for the prosecution, a lack of physical evidence implicating Carter and the testimony of a co-defendant indicating that he alone shot the deceased in self-defence, Carter was convicted of murder and sentenced to 30 years in prison. Carter has filed various petitions following his conviction and maintains his innocence; he remains incarcerated. Police officers ██████████, ██████████ were allegedly involved.

Carter filed for clemency via commutation of sentence through the Governor-Docket #36107- and a post-conviction petition, which is being reviewed in the Cook County Circuit Court under ██████████; hearings are expected to begin in April 2024.

Gerald “Elijah” Reed was released in 2021 and his sentence commuted, after being arrested in October 1990. Reed, who was 27 years old at the time, was arrested and questioned in October 1990 for two murders. Reed was allegedly beaten by police officers into confessing to two murders. He was beaten and kicked repeatedly causing a broken femur and excruciating pain due to a metal rod located in his right thigh from a prior gunshot wound. There was no other material evidence against Reed at his trial, yet he was convicted of both murders and sentenced to natural life in prison without the possibility of parole. Reed was unable to walk and denied adequate medical attention, having to wait 27 years to receive just one of the multiple surgeries necessary to repair the extensive damage to his leg from the torture. He also had to endure additional medical crises over the years, including a heart attack and falling into a coma after contracting influenza. Police officers ██████████ were allegedly involved.

The Torture Inquiry and Relief Commission found that his claim of torture was credible in a decision rendered in 2012 that there was a "preponderance of evidence" that Reed had been tortured and forced to confess. In 2018, after hearing the evidence of torture used against Reed, Judge ██████████ vacated his conviction and ordered a new trial. Reed's case then went to Judge ██████████ (after Judge ██████████ retired), who reversed Judge ██████████ order after 14 months of back-and-forth proceedings and sent him back to prison for life, ignoring the decision of the TIRC and findings of Judge ██████████. Reed was incarcerated for 30 years but he was ultimately commuted by Governor ██████████ in April 2021, and the Illinois Supreme Court vacated Reed's conviction and ordered a new trial. He was released in 2021.

Nick Escamilla was released in 2008, after being arrested in February 1993 and completing his sentence. Escamilla, who was 20 years old at the time, was arrested for murder in 1993. Police officers allegedly broke into and searched Escamilla's house without a warrant, while he was held in custody. He was kicked, punched, slapped, and spit on by detectives, who also threatened to send his pregnant wife to prison and send

his children to Department of Children and Family Services (D.C.F.S.) custody if he did not confess to the crime. Escamilla was tortured and threatened for 18 hours, without access to counsel or a phone call, until he signed a false confession. Despite the lack of physical evidence linking him to the crime or any eyewitness testimony, Escamilla was found guilty and sentenced to 29 years. After several appeals and having served almost 15 years of a 29-year sentence, Escamilla was released in 2008 but has not received remedy for his treatment. He has not been pardoned for the crime that he did not commit and the officers responsible for the harm remain unaccountable. Police officers [REDACTED] were allegedly involved. Escamilla's conviction was vacated by the Cook County Circuit Court Judge [REDACTED] on 31 October 2023.

Johnny Plummer is currently incarcerated after being arrested in August 1991. Plummer, who was 15 years old at the time, was arrested for murder in August 1990. He was allegedly interrogated for 36 hours, without his parents and beaten until police officers obtained a false confession. Plummer consistently maintains that detectives hit him with a flashlight; punched him in the face; pulled his hair; handcuffed him to a radiator and ring in the wall; and threatened he would be raped in prison. He subsequently confessed to the murder. In 1995, the key piece of evidence used to convict him of this murder was this coerced confession. He was sentenced to 50 years in prison. In 2016, Plummer filed several post-conviction petitions in support of his claims that 72 people have accused the same Detectives [REDACTED] of using torture and abuse to extract their confessions. In August 2021, the Illinois Appellate Court found that Plummer had presented evidence of a systematic pattern of similar abuse by Detectives [REDACTED]. There was no physical evidence linking Plummer to the crime, and his conviction was predicated upon his alleged coerced confession. Plummer has been granted a new hearing but remains incarcerated. Police officers [REDACTED] were allegedly involved. Plummer's case is currently before the Cook County Circuit Court.

Yohn Zapada is currently incarcerated, serving a 50-year sentence after being arrested in June 2001. Zapada was arrested for the murder of a man on 18 June 2001. During his interrogation, Zapada alleges that he was hit, slapped, shouted at, and harassed while in police custody over a period of 72 hours. He denies that he ever confessed to any participation in the crime for which he was convicted, however, Chicago Police Department detectives testified to the contrary. Zapada was also positively identified in a line-up by several witnesses. Zapada was convicted and sentenced to 50 years in prison, where he remains. Police officers [REDACTED] were allegedly involved.

Zapada's post-conviction petition alleging actual innocence is advancing to a post-conviction evidentiary hearing in the Cook County Circuit Court.

Clayborn Smith was released under the conditions of electronic monitoring in 2023, after being arrested in 1992. Smith was arrested for the murder of his grandfather and great aunt in October 1992. He was interrogated for over 39 hours and threatened, intimidated, and beaten by police officers until he signed a confession. Detectives allegedly threatened and intimidated him, punched him, slapped him, pulled back his fingers, and repeatedly and forcefully jerked him around by his hair braids. His request

for counsel was ignored. The police officers allegedly took Smith's pregnant girlfriend into custody and threatened to send her to jail and that she would lose the baby if Smith did not confess. He was later sentenced to life in prison in July 1994. Police officers [REDACTED] were allegedly involved.

Smith has filed numerous appeals over 10 years in which he described his treatment by police. Some of the witnesses who identified Smith later testified that the police officers pressured them to do so and admitted that they had lied when they made the statements demanded by police to the grand jury. He filed a claim with the TIRC, which found his case credible in May 2013 and referred the case to the Circuit Court for review. On 20 September 2019 Smith was granted a new trial. The judge held that because the detectives denied that they had engaged in torture, it nullified Smith's claim. Smith is appealing Judge [REDACTED] ruling. Smith also filed an emergency petition for Executive Clemency. Smith was then released on electronic monitoring in August 2023, while awaiting the State's response to a new trial.

Enrique R. Valdez was arrested on 24 August 1991, and released in June 2007, for time served. Valdez was convicted of murder and then sentenced to 30 years, although he only served 15 years and was released on 29 June 2007. The arresting officers were allegedly [REDACTED]. Presiding Judge [REDACTED] signed an order allowing an investigator from the public defender office to photograph Valdez on 26 August 1991. Valdez reportedly had visible injuries present on this body. Members of the judiciary and public defenders allegedly had knowledge that Valdez was beaten while in Chicago Police Department custody and/or during interrogation but never filed anything past the order to have photographs taken; his injuries were never mentioned elsewhere in the case. Valdez is currently waiting for an independent review of his case through the Conviction Integrity Unit (Case # 91 Cr21961).

Javan Deloney is currently incarcerated, service a life-sentence after being arrested in August 1991. Deloney, who was 18 years old at the time, was arrested for triple homicide following a drive-by shooting in August 1991. During interrogation, police officers allegedly tortured Deloney as he was slapped, punched in the chest, beaten and threatened by policer officers. Deloney continually denied any involvement in the crimes and that he was at his grandmother's house at the time of the shooting. He also asked for a lawyer and to take a lie detector test. Deloney was eventually knocked to the ground while the officers repeatedly punched and kicked him in the chest, sides and legs. Deloney was not read his Miranda rights until approximately 2 a.m. when he was told to sign a confession prepared by the officers interrogating him. Police officers [REDACTED] were allegedly involved.

In January 2017, Deloney's case was taken under review by the TIRC which found that there was sufficient evidence of torture of Deloney to merit judicial review, but this is still pending. Deloney has suffered over 30 years in prison and remains in prison at Menard Correctional Centre.

Ivan Smith is currently incarcerated, serving a life-sentence after being arrested in November 1991. Smith, who was 18 years old at the time, was arrested

while at his mother's home in Tennessee in November 1991 by local police officers for gang-related drive-by shootings in Chicago that left 3 people dead. During his interrogation Smith was struck in the back of the head, choked, punched, pinned down with a phonebook and beaten with a stick. Smith remained silent through 2 hours of torture when detectives let him know he would be taken back to Chicago, and they would "do it the right way." Smith's repeated requests for his mother and his lawyer were denied. He was not read his Miranda rights. He was lied to about the presence of his fingerprints in the vehicle involved in the crime. He ultimately signed a 21-page confession. Police officers [REDACTED] were allegedly involved.

In Chicago, Smith's requests for medical attention were denied by prison guards. Smith was later found guilty of three counts of murder and two counts of attempted murder and sentenced to life in prison. Smith's co-defendant also alleged that he had been slapped in the face and kicked in the testicles during his interrogation. Much of the evidence presented against Smith was based on eyewitness accounts, many of which were later recanted. On 20 January 2016, the TIRC found Smith's claim of torture credible. However, Ivan Smith remains imprisoned at Hill Correctional Centre.

George Anderson is currently incarcerated, serving a 40-year sentence after being arrested in August 1991. Anderson, who was 29 years old at the time, was arrested for two homicides in 1991. He was handcuffed to a wall for over twelve hours with no food or sleep while the detectives demanded that he "tell them about what he did." Anderson asked for an attorney and the detectives beat him, kicking him on the wrists while he was handcuffed to the wall. Anderson was also punched in the head, face, and chest. He was told he could stop the beatings by signing a confession, which he ultimately signed. After Anderson signed the first confession, he was taken to another room, and questioned about a second murder. When he claimed he had no knowledge of the crime, he was beaten again and held for over 48 hours in a freezing cold room with no food or water. He signed another handwritten confession.

Anderson was sent to Cook County Jail where he became chronically ill every few weeks with fever, blood in his urine, and pain in his side. He was treated with antibiotics without a proper diagnosis. After 3 visits to the hospital, the doctors found that Anderson had a ureteropelvic junction obstruction caused by trauma to the kidney. Anderson continues to suffer from the damage to his kidneys from the blunt force trauma caused by the torture. Police officers [REDACTED], [REDACTED] were allegedly involved.

The TIRC reviewed Anderson's case and found that there was sufficient evidence of torture to merit a new hearing. Anderson refused the plea deals offered by the prosecution. Anderson has been incarcerated for over 29 years and remains in prison.

Darrell Fair is currently incarcerated, serving a 50-year sentence after being arrested in September 1998. Fair, who was 31 years old at the time, was arrested for a shooting during an armed robbery and charged with the murder of a man in September 1998. Fair was interrogated for 30 hours by police officers, during which time, Fair was kicked in the leg and threatened with being shot while one of the detectives held his service weapon. He was also denied food and his asthma medication. Fair claims

he was never read his rights properly, and had asked to see a lawyer, but was refused. A confession was written implicating Fair, but he never signed it. Fair's co-defendant signed a detailed statement but described the events of the crime in a completely different manner. Even without any physical evidence linking Fair to the crime, his unsigned confession resulted in his conviction of 50 years in prison. Police officers [REDACTED] were allegedly involved.

Fair filed a motion in 2016 to have his case reviewed by the TIRC, which subsequently found that there was sufficient evidence of torture for judicial review. He remains incarcerated at Stateville Correctional Centre.

Michelle Clopton was arrested in 1996 and released in 2023. Clopton, who was 26 years old at the time, was arrested for murder of a woman in May 1996. Police officers allegedly conducted a 38-hour interrogation during which the police officers yelled at her, spat on her, insulted her; kicked her leg and her chair, grabbed and forcefully turned her head, pulled her hair, pushed her shoulder, and threatened her with the death penalty. After 38 hours of brutality, insults, and threats Clopton confessed to participating in the murder. Her co-defendants were also tortured and gave false confessions.

In fear of being sentenced to death, Clopton took a guilty plea and was sentenced to 60 years in prison. The TIRC found that some of Clopton's suppression testimony regarding coercive tactics was credible, however the claim of torture was ultimately denied. Clopton was 3 months pregnant when she was arrested. Police officers [REDACTED] were allegedly involved. Clopton was released on parole on 8 March 2023.

Duel Thomas is currently incarcerated, serving a 60-year sentence after being arrested in 1999. Thomas was arrested for aggravated kidnapping and murder in March 1999. During his interrogation, Thomas alleges that he was kicked, punched, beaten and forced to confess to the crime. This interrogation continued for 72 hours. His injuries were so obvious that they were able to be detected by the judge two days after he had been charged with the offense. Despite this, Thomas was convicted of murder and sentenced to 60 years in prison. Despite maintaining his innocence, Thomas remains in prison. Police officer [REDACTED] was allegedly involved.

Kilroy Watkins was arrested in January 1992 and released in 2019 after completing his sentence. Watkins, who was 21 years old, was arrested in connection two-armed robberies and murder of a man in January 1992. After 36 hours of interrogation by police officers, Watkins confessed to the crime. He later testified at a hearing that [REDACTED] had tortured him, which was denied by the detectives. [REDACTED] claimed Watkins did not invoke the right to remain silent during their interrogation, yet police records confirm Watkins had invoked this right. The only material evidence against Watkins at trial was the written statement of a witness, who was 15 at time, which implicated Watkins and his co-defendant. This statement was allegedly obtained by [REDACTED], both of whom have been implicated in torturing suspects. The witness later recanted her statement at Watkins' trial. Police officers [REDACTED] were allegedly involved.

Despite contradictory evidence in the trial, Watkins was sentenced to 55 years in prison. On 15 August 2011, Watkins filed a claim of torture with the TIRC, in which he alleged that [REDACTED] had physically and psychologically tortured him and coerced his confession. More than 8 years later, Watkins' case was deemed credible by the TIRC and voted unanimously to refer his case for review to the Chief Judge of the Circuit Court. In its decision the TIRC noted that "there exists, for both [REDACTED], a substantial body of allegations of engaging in systematic conduct aimed at obtaining confessions by torture..."

Watkins was paroled in 2019, 10 months prior to the TIRC ruling. Watkins has had a post-conviction petition for relief (PCP) pending in the Circuit Court since 1999. Watkins spent 28 years of his life in prison, and still has the status of convicted felon. A post-conviction petition (Case 92 Cr0283401) alleging torture is still pending in the Cook County Circuit Court.

Rico Clark is currently incarcerated, serving a 55-year sentence after being arrested in March 2007. Clark, who was 19 years old at the time, was arrested for the murder of one man in March 2007. Several witnesses positively identified Clark as the shooter in police line-ups. Despite the lack of any physical evidence linking Clark to the crime, he was convicted of murder and sentenced to 55 years in prison. Only one witness testified consistently with his written statement, while the two other key witnesses recanted their statements and testified that their identifications were coerced by detectives [REDACTED]. Clark has maintained his innocence and remains in prison.

Robert Allen is currently incarcerated, serving concurrent sentences of 125 years after his arrest in April 1990. Allen was arrested for 3 armed robberies and attempted murder in April 1990. He and his co-defendant [REDACTED] were allegedly threatened and beaten for two days by Detective [REDACTED]. (Both these detectives testified in the trial of Jon Burge that they engaged in torture, in exchange for immunity from prosecution.) Allen was never read his Miranda rights and maintained his innocence throughout and did not confess to the crimes. He was, however, eventually convicted of attempted first-degree murder and armed robbery. Police officers [REDACTED], [REDACTED] were allegedly involved.

Allen was sentenced to a total of 125 years based on the detectives' testimony, inconsistent testimony by witnesses, and a coerced confession given by his co-defendant. The co-defendant claimed that one police officer placed a gun to his head and threatened to "blow his damn brains out" if he did not confess. Allen was therefore charged only because his co-defendant implicated him in his tortured confession. After having been incarcerated for almost 30 years, Allen remains in prison. His expected discharge date is 2055 if remedial action is not taken.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide information about limitations to the material scope of the Torture Inquiry and Relief Commission (TIRC), including, and outline how cases falling outside its scope are reviewed to ensure that no affected individuals are excluded from efforts to ensure truth and access to justice.
3. Please provide information about the number of pending cases before the TIRC, as well as data on the staffing and budget provided to the Commission and whether this is adequate to address the pending caseload. Please indicate whether there are any plans to increase the resources available to the TIRC.
4. Please describe what steps have been taken to take appropriate follow-up actions in cases where the Torture Inquiry and Relief Commission (TIRC) have found credible evidence of torture and other ill treatment.
5. Please indicate whether your Excellency's Government has considered application of the Governor of Cook County's and/or President's pardoning powers to cases in which there is credible evidence of the involvement of officers who have engaged in corrupt practices, torture and/or ill treatment, given that egregious police misconduct is a matter of public record and that many were convicted on the basis of the work of Chicago Police Department officers.
6. Please provide information about the work of the Conviction Review Unit, formally known as the Conviction Integrity Unit, to address the consequences of torture and other ill treatment, and other forms of police misconduct.
7. Please describe what efforts have been made to provide access to psychosocial support and legal remedies in cases where individuals who were victims, and implementation of the 2015 Ordinance on reparations, in line with article 14 of the obligations in articles 2 and 15 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), to which the United States is a party.
8. Please provide information about the measures that have been taken to ensure that all those who were wrongly convicted on the basis of forced confessions have had their records expunged or are able to access certificates of innocence.
9. Please describe any measures taken to investigate and, where appropriate, prosecute law enforcement officers within the Chicago

Police Department who have been implicated in allegations of torture, ill treatment and/or misconduct. Please detail the outcome of any such investigations and/or criminal proceedings.

10. Please provide information on what measures have been taken to prevent future incidents of torture or other ill treatment or unlawful conduct, including to prevent the obtainment of confessions or information by unlawful means, in line with the obligations in articles 2 and 15 of the CAT.
11. Please provide information on steps taken to remove the statute of limitations applicable in Chicago relating to torture or other ill-treatment, which is incompatible with the obligations in articles 1, 2, and other relevant articles in the CAT.
12. Please provide detailed information about the status of the individual cases of Tamon Russell; Antonio Porter; Johnny Borizov; Matthew Echevarria; Nick Escamilla; Robert Ornelas; Micheail Ward; Michael Carter; Rico Clark; Enrique Valdez; Johnny Plummer; Yohn Zapada; Gerald Reed; Clayborn Smith; Javan Deloney; Ivan Smith; Darrell Fair; Michelle Clopton; Duel Thomas; Robert Allen; and Kilroy Watkins.

Please ensure that this communication is passed to the relevant State authorities, including Cook County State Attorney Kim Foxx, Illinois Attorney General Kwame Raoul and Illinois Governor J. B. Pritzker.

We would appreciate receiving a response within 60 days. Past this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

Please accept, Excellency, the assurances of our highest consideration.

K.P. Ashwini
Special Rapporteur on contemporary forms of racism, racial discrimination,
xenophobia and related intolerance

Barbara Reynolds
Chair-Rapporteur of the Working Group of Experts on People of African Descent

Tlaleng Mofokeng
Special Rapporteur on the right of everyone to the enjoyment of the highest attainable
standard of physical and mental health

Claudia Mahler
Independent Expert on the enjoyment of all human rights by older persons

Alice Jill Edwards
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or
punishment

Annex I

Reference to international human rights law

In connection with the above alleged facts and concerns, we would like to draw your Excellency's Government's attention to the applicable international human rights norms and standards, as well as authoritative guidance on their interpretation. We would like to particularly bring your Excellency's attention to the human rights obligations under international human rights instruments and under customary international law binding on the United States of America.

At the outset, we would like to remind to your Excellency's Government of its obligations under the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), which was ratified by the United States on 21 October 1994. Article 1 of ICERD defines prohibited racial discrimination as "any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life". Article 2, paragraph 1, obliges States Parties to condemn racial discrimination and to pursue, by all appropriate means and without delay, a policy of eliminating racial discrimination in all its forms.

In particular, we would like to refer to article 5 which provides that State parties have the obligation to prohibit and eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to the right to security of person and protection by the State against violence or bodily harm. We would also like to recall article 6 of ICERD, which states that State parties shall assure everyone within their jurisdiction effective protection and remedies through the competent national tribunals and State institutions.

We are concerned that the practices and conduct of the Chicago Police Department severely damage the right to equality before the courts and the right to due process law, as guaranteed by article 5 of ICERD. The conclusions and recommendations of the Working Group of Experts on People of African Descent at the conclusion of the country visit to the United States of America in 2017, similarly notes concern at the overrepresentation of African Americans in the penitentiary system, and over sentencing.⁷ The Committee on the Elimination of Racial Discrimination, in its general recommendation 31, states that the mere fact of belonging to a racial or ethnic group is not a sufficient reason, *de jure* or *de facto*, to place a person in pretrial detention; that minority populations enjoy all the guarantees of a fair trial and equality before the law; that States should ensure that the courts do not apply harsher punishments solely because of an accused person's race or ethnicity; and that special attention should be paid to the system of minimum punishments or sentencing, as well as capital punishment, bearing in mind that such punishments are

⁷ A/HRC/33/61/Add.2

more frequently imposed on people belonging to specific racial or ethnic groups.⁸ The Committee also recommends that State parties should prevent and most severely punish violence, acts of torture, cruel, inhuman or degrading treatment and all violations of human rights affecting minority populations which are committed by state officials.⁹ In their 2022 concluding observations, the Committee on the Elimination of Racial Discrimination raised concern about “persons belonging to racial and ethnic minorities, including women, are overrepresented in the criminal justice system and are disproportionately arrested, incarcerated, held in solitary confinement for very long periods, subjected to the use of chemical agents as pepper spray, and subjected to harsher sentences.”¹⁰

Following her 2023 visit to the United States of America, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance stated that she was “appalled at the dehumanizing racial discrimination within law enforcement and at every stage of the criminal justice system particularly impacting Black, Arab, Islamic, indigenous, and Latino individuals.”¹¹ The Expert Mechanism to Advance Racial Justice and Equality in Law Enforcement also visited the United States of America in 2023. In their subsequent report to the Human Rights Council, they stated: “the Mechanism received several testimonies from African American victims of torture, which was inflicted upon the victims between the 1970’s and 1991 in Chicago, including against children. The torture described included electric shocks, burns and mock executions, among other brutal acts, in order to extract confessions. Even though the City of Chicago officially apologized for these events and some victims received compensation in recent years, the police officers were reportedly never charged with crimes directly stemming from the torture inflicted despite reports of at least 118 victims of torture. A victim told the Mechanism he served 25 years in prison following torture with electric shocks at the age of 17, he was ultimately exonerated, but is still waiting for his certificate of innocence. The Mechanism is alarmed at the protracted delays faced by victims seeking justice and by the reports that some remain in prison decades later, under torture confessions. It calls upon the relevant State authorities to ensure that all victims receive justice and full reparations, including those still in prison.”¹²

Furthermore, we would like to draw your Excellency’s Government attention to articles 6, 7, 9, 10, 14, 16, 24 and 26 of the International Covenant on Civil and Political Rights (ICCPR), ratified by the United States of America on 8 June 1992, that guarantee the inherent right to life of every individual, the absolute prohibition of torture, the right to have a fair trial, the right to liberty and security of the person as well as the principle of equality and non-discrimination before law. We would like to highlight that article 14 of the Covenant requires that anyone facing criminal charges shall be granted adequate time and facilities for the preparation of his or her defence, to communicate with counsel of his own choosing, to be tried without undue delay and

⁸ Committee on the Elimination of Racial Discrimination, General recommendation XXXI on the prevention of racial discrimination in the administration and functioning of the criminal justice system

⁹ Ibid.

¹⁰ CERD/C/USA/CO/10-12, para.22

¹¹ Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, “End of visit statement: United States of America, Oct 31-Nov 14, 2023”

¹² A/HRC/54/CRP.7, paras.118-119

not to be compelled to testify against himself or to confess guilt. We would also like to recall article 3 of the Universal Declaration of Human Rights (UDHR) and article 5 which declares that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. Article 9 of ICCPR also states that everyone has the right to liberty and security of person, and that no one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law. The Working Group on Arbitrary Convictions has previously stated that the right to legal assistance is one of the key safeguards in preventing the arbitrary deprivation of liberty.¹³

We wish to draw your Excellency's attention to general comment No. 36 of the Human Rights Committee, which states that the right to life is "the supreme right from which no derogation is permitted. The right to life has crucial importance both for individuals and for society as a whole. It is most precious for its own sake as a right that inheres in every human being, but it also constitutes a fundamental right whose effective protection is the prerequisite for the enjoyment of all other human rights and whose content can be informed by other human rights."¹⁴ The right to life further entitles all individuals "to be free from acts or omissions that are intended or may be expected to cause their unnatural or premature death".¹⁵

The general comment No. 36 further highlights that when the State detains an individual, it has "a heightened duty of care to take any necessary measures to protect the lives of individuals deprived of their liberty by the State, by arrest, detention, imprisonment or otherwise depriving individuals of their liberty. States parties assume the responsibility to care for their life and bodily integrity, and they may not rely on lack of financial resources or other logistical problems to reduce this responsibility."¹⁶ Furthermore, the duty to protect the life of all detained individuals includes providing detainees with the necessary medical care, appropriate and regular monitoring of their health, and providing reasonable accommodation for persons with disabilities.

Moreover, we wish to refer to the report of the former Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, in which the independent expert makes reference to the fact that "[i]n contexts of deprivation of liberty, violations of the right to health interfere with fair trial guarantees, the prohibition of arbitrary detention and of torture and other forms of cruel, inhuman or degrading treatment, and the enjoyment of the right to life" and that "[v]iolations of the right to health emerge as both causes and consequences of deprivation of liberty".¹⁷ The expert adds that "[a]ctual and *de facto* deprivation of liberty has adverse effects on mental health, which may amount to violations of the right to health" and that "protracted or indefinite detainment [...] negatively influence mental health and well-being".¹⁸ In this regard, the Special Rapporteur urges States to

¹³ A/HRC/45/16

¹⁴ CCPR/C/GC/36

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ A/HRC/38/36

¹⁸ Ibid.

“[f]ully abide by, and implement, the Nelson Mandela Rules, in particular as regards the provision of health care in prisons”.¹⁹

In this connection, we would like to refer your Excellency's Government to general comment 14 of the Committee on Economic, Social and Cultural Rights, which indicates that States are under the obligation to *respect* the right to health by, *inter alia*, refraining from denying or limiting equal access for all persons, including prisoners or detainees to preventive, curative and palliative health services.²⁰

The United Nations Standard Minimum Rules for the Treatment of Prisoners (known as the Nelson Mandela Rules) adopted unanimously by the General Assembly on 17 December 2015²¹, recognize the responsibility of States to provide health care for prisoners, free of charge without discrimination, paying special attention to those with special healthcare needs or with health issues that hamper their rehabilitation and indicate that prisoners requiring specialized treatment shall be transferred to specialized institutions or to civil hospitals. We wish to also recall rule 46 that stresses that health-care personnel shall “pay particular attention to the health of prisoners held under any form of involuntary separation, including by visiting such prisoners on a daily basis and providing prompt medical assistance and treatment at the request of such prisoners or prison staff” and that “[h]ealth-care personnel shall report to the prison director, without delay, any adverse effect of disciplinary sanctions or other restrictive measures on the physical or mental health of a prisoner subjected to such sanctions or measures and shall advise the director if they consider it necessary to terminate or alter them for physical or mental health reasons”. Prisoners should enjoy the same standards of health care that are available in the community and should have access to necessary health care services free of charge without discrimination on the grounds of their legal status, particularly in urgent cases.

We also wish to stress that rule 2(2) requires that the administration take account of the individual needs of those who have been detained, including vulnerable persons such as older persons, persons with disabilities, women and children. Older persons and persons with disabilities are often particularly vulnerable to illness, including COVID-19. The infection rate among older persons in prison due to infection by COVID-19 has been reported at twice that of the general population in some contexts²². This is exacerbated by the intersectionality between age and racial discrimination as well as harmful stereotypes.

We would also like to remind your Excellency's Government of the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment which is an international norm of *jus cogens*. The prohibition of torture and other cruel, inhuman or degrading treatment or punishment is reflected *inter alia*, in article 5 of the Universal Declaration of Human Rights, articles 2, 14 and 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which the United States of America ratified on

¹⁹ Ibid.

²⁰ E/C.12/2000/4, para.14

²¹ A/RES/70/175

²² A/HRC/51/27, para. 46

21 October 1994, and article 7 of the International Covenant on Civil and Political Rights.

In particular, States parties to the CAT, have explicit treaty duties to establish all acts of torture as offences under domestic law (art. 4), to exercise jurisdiction over said offences (art. 5), to receive complaints and examine them promptly and impartially (art. 13), and to investigate those allegations promptly and impartially (art. 12).

Defendants cannot rely on orders of a superior or public authority, or states of emergency, to exonerate their actions (art. 2(3) and 2(2)), while any legal mechanisms which interfere with that obligation, such as statutes of limitations, immunities or amnesties, are considered contrary to the non-derogable nature of the prohibition. Amnesties provided at domestic law do not remove criminal liability pursuant to international tribunals or universal jurisdiction (see Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment A/HRC/25/60)²³.

Prosecutors and courts have a duty to refuse evidence obtained, or suspected of having been obtained, through torture or other illicit means (art. 15). Victims are to be protected from reprisals or intimidation during said investigations (art. 13) and they have an enforceable right to fair and adequate compensation including the means for as full rehabilitation as possible (art. 14)²⁴.

In particular, the “exclusionary rule is fundamental for upholding the prohibition of torture and other cruel, inhuman or degrading treatment or punishment (other ill-treatment) by providing a disincentive to carry out such acts. It contains an absolute prohibition on the use of statements made as a result of torture or other ill-treatment in any proceedings.²⁵ Furthermore, the Human Rights Council has called on States to hold responsible not only those who perpetrate torture, but also those “who encourage, order, tolerate or perpetrate such acts [...], to have them brought to justice and punished in a manner commensurate with the gravity of the offence, including the officials in charge of the place of detention where the prohibited act is found to have been committed”.²⁶ The Working Group on Arbitrary Detention in its previous jurisprudence has stated that a forced confession taints the entire proceedings, regardless of whether other evidence was available to support the verdict (see opinions 54/2020).

Articles 10 and 11 of CAT call on each State Party to ensure that education and information regarding the prohibition against torture and ill-treatment are included in the training of public officials involved in custody, interrogation, or treatment of any individual to any form of arrest, detention or imprisonment, and included in relevant rules or instructions; and that interrogation methods and arrangements and treatment in custody and imprisonment are kept under periodic review. Article 12 of CAT further requires that “Each State Party shall ensure that its competent authorities proceed to a

²³ <https://documents.un.org/doc/undoc/gen/g23/033/16/pdf/g2303316.pdf?token=qnrE9V2K0a5ZZkgTka&fe=true>

²⁴ Ibid.

²⁵ A/HRC/25/60

²⁶ A/HRC/RES/16/23

prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction. “Wherever there is reasonable grounds to believe that force amounting to torture or other cruel, inhuman or degrading treatment or punishment has been used, States have a duty to conduct a prompt and impartial investigation in order to ensure full accountability for any such act, including, as appropriate, administrative, civil and criminal accountability, and to ensure that victims receive adequate redress and rehabilitation.” Article 14 of CAT outlines that State parties “shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependents shall be entitled to compensation.”. Article 15 of CAT specifically states that “each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings,”

The Committee on the Elimination of Torture has expressed concern “at the reported current police violence in Chicago, especially against African-American and Latino young people, who are allegedly consistently profiled, harassed and subjected to excessive force by Chicago Police Department officers”. The Committee also stated “with regard to the acts of torture committed by former Chicago Police Department Commander Jon Burge and others under his command, between 1972 and 1991, the Committee notes the information provided by the State party that a federal rights investigation did not gather sufficient evidence to prove beyond reasonable doubt that prosecutable constitutional violations had occurred, However, the Committee remains concerned that, despite the fact that Jon Burge was convicted for perjury and obstruction of justice, no police officer has been convicted for the acts of torture due to the statute of limitations. While noting that several victims were ultimately exonerated of the underlying crimes, the vast majority of those tortured — most of them African Americans —, have not received any compensation for the extensive injuries suffered.”²⁷

We also wish to bring to your Excellency’s Government attention the legal and procedural safeguards against torture and ill-treatment, including the right to legal counsel and to contact one’s family from the outset of arrest provided in the UN Body of Principles for the Protection of Persons under Any Form of Detention or Imprisonment (Body of Principles).²⁸ According principle 15 of the Body of Principles the “communication of the detained or imprisoned person with the outside world, and in particular his family ... shall not be denied for more than a matter of days.”²⁹ Detained persons have the right to immediately inform a person of his or her choice of the arrest, and be given adequate opportunity to communicate with the outside world. Moreover, the principles state that all persons under any form of detention or imprisonment shall be treated in a humane manner and with respect for the inherent dignity of the human person.³⁰ Similarly, the General Assembly previously resolved that conditions of detention must respect the dignity and human rights of persons

²⁷ CAT/C/USA/CO/3-5, para.26

²⁸ General Assembly resolution 43/173 of 9 December 1988

²⁹ Ibid.

³⁰ Ibid.

deprived of their liberty and called upon States to address and prevent detention conditions that amount to torture or cruel, inhuman or degrading treatment or punishment.³¹

We would also like to highlight the obligations of States to provide victims of human rights violations with effective remedies. The Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted by the General Assembly in 2006, provide that victims of a gross violation of international human rights law or a serious violation of international humanitarian law should be guaranteed equal and effective access to justice, adequate, effective and prompt reparation for the harm suffered; and access to relevant information about the violations and to redress mechanisms.

In her report on older persons deprived of liberty, the Independent Expert on the enjoyment of all human rights by older persons calls on paying special attention to applying the principles of necessity and proportionality when the deprivation of liberty is decided against older persons in the context of criminal justice, considering the severity of the offence, and whether the dignity of older persons is being protected based on their age and intersectional factors (A/HRC/51/27, para. 17). States must treat older persons with dignity during the entire duration of their detention and must take into consideration their specific needs with respect to their age, health and disability status. Those considerations are especially critical at every stage of the criminal justice process (especially pretrial, trial, sentencing, appeal and post-sentencing detention) (para. 15). The expert warned that older persons face heightened risk of discrimination, abuse and violence at all stages of their incarceration (para. 41).

The report of the Independent Expert further notes that when older persons are detained in the criminal justice system, States have the obligation to uphold and protect their human rights and ensure their safety. As is done in some countries, it is good practice to adopt constitutional and legal age-related provisions ensuring the realization of the special needs of older persons lawfully deprived of liberty, in accordance with international human rights standards (para. 70). States have a positive obligation to protect the liberty of all individuals under their jurisdiction and should take measures to prevent the deprivation of their liberty. As a heterogeneous group with complex needs, alternatives to deprivation of liberty for older persons should be prioritized and encouraged through State actions (para. 71). In the criminal justice context, several promising practices have emerged offering alternative solutions for older persons, such as prioritizing house arrest for persons aged 70 or above during pre-trial and for minor offense convictions; prison sentences carried out (partially or fully) in hospitals, family care, in-home or in institutional care based on various criteria, including age; overruling life imprisonment for persons over age 65 and affording amnesty, parole, compassionate or early conditional release for older persons, based on their age, the time served in prison and health status (chronic and/or life-threatening illnesses); temporary release; pardon or amnesty; or electronic monitoring to track and supervise older persons convicted of minor offenses. Studies show that older persons are far less likely to reoffend following release from prison (para. 72). During the ongoing COVID-19 pandemic and due to the overcrowding in some detention settings, several

³¹ A/RES/68/156

States privileged non-custodial measures and allowed for the early release of older prisoners to ensure their protection and safety, as older age represents a significant risk for contracting the virus (para. 73).

In the context of criminal detention, the Independent Expert makes the following recommendations: (a) States must adopt age-sensitive policies and strategies in the criminal justice context to ensure respect for and protection of the human rights of older persons, in line with international and regional human rights standards regulating the deprivation of liberty; (b) Age-friendly detention environments, including appropriate infrastructure, accommodations and living conditions, and age-sensitive training for custodial staff to foster respectful communication and informed decision-making should be ensured; older persons should have access to age-appropriate services and activities, including opportunities for lifelong learning and vocational training; (c) Appropriate health-care services for older persons should be provided to meet their individual needs, according to the principle of equality in health care; screening upon admission, transition and throughout the period of detention must be in place to identify the risks and specific needs of older detainees; (d) States should ensure that, when released, older persons have benefited from individualized pre-release programmes designed for their specific needs and wishes, including access to medical and mental health care for longstanding, undertreated health conditions, housing solutions, access to pensions and financial support; (e) Intersectional factors should be given due consideration throughout all stages of the criminal justice process, especially when older persons have other intersecting bases for discrimination, such as gender, disability, indigenous or ethnic identities; individual care plans should be created to ensure that older persons at higher risk of violence, ill-treatment and persecution are provided with security in detention, including older women, older lesbian, gay, bisexual, transgender and intersex persons and older persons belonging to ethnic, religious or indigenous groups; (f) States, through their judicial systems, should consider the necessity and proportionality of detaining older persons with complex health conditions and in need of palliative care; States should also examine the possibility of non-custodial alternatives at all stages of detention, including serving sentences in facilities where the needs of older persons would be addressed through or benefit from humanitarian or compassionate release (para. 88).