



International Covenant on Civil and Political Rights

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Summary record of 3045th meeting

Held at the Palais Wilson, Geneva, on Friday, 14 March 2014, at 10 a.m.

Chairperson: Sir Nigel Rodley

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The meeting was called to order at 10.05 a.m.

Consideration of reports submitted by States parties under article 40 of the Covenant
(continued)

Fourth periodic report of the United States of America (continued)
(CCPR/C/USA/4; CCPR/C/USA/Q/4 and Add.1; HRI/CORE/USA/2011)

1. *At the invitation of the Chairperson, the delegation of the United States of America took places at the Committee table.*
2. **The Chairperson** invited the delegation to reply to the questions asked by the Committee at the previous meeting.
3. **Mr. Hood** (United States of America) said that, since 2012, the substance injected in death row inmates in Mississippi was pentobarbital, an anaesthetic commonly used in surgery. Thanks to the current widespread recourse to DNA testing by the courts, victims of miscarriages of justice had been able to obtain justice. Each year, the sum of \$50,000 in damages was paid to those wrongfully convicted or their relatives.
4. **Mr. Austin** (United States of America) said that, over the previous five years, 246 law-enforcement officers had been convicted of offences, while others were being prosecuted for racial profiling across the country. Regarding the case of the students killed or injured on the Kent State University campus during anti-Viet Nam war protests, in 1970 he said that eight public officials involved in the shooting had been tried in 1974 and had been acquitted for lack of evidence. Although new evidence had come to light that could undermine the ruling, the case could not be reopened because the statute of limitations had expired. Since 2011, five police officers had been prosecuted for misuse of an electroshock (Taser) weapon. In Pennsylvania, a police officer who had used one against a suspect in handcuffs had been sentenced to prison. The National Institute of Justice was currently researching the dangers associated with the use of such weapons. In 2013, the Department of Justice had criticized the self-defence laws adopted by some states, on the grounds that they unduly broadened the concept and aggravated inter-community tensions. The United States Commission on Civil Rights was currently reviewing those laws to determine whether their provisions were discriminatory.
5. **Ms. Mack** (United States of America) said that 1,700 incidents had been reported since 2010, in which stones had been thrown at customs and border protection agents of the Department of Homeland Security. In 43 cases, the agents had responded with lethal force, killing 10 people. The Department had very recently issued guidelines clearly stating to personnel that firearms could be used only in case of imminent danger of death or grievous bodily harm. An emergency hotline had been set up for individuals to submit different types of complaints, including racial profiling by the police. Complaints were then referred to the Department's Office for Civil Rights and Civil Liberties. A number of awareness-raising activities had been carried out to ensure that the programme to increase community security and the agreements concluded pursuant to section 287 (g) of the Immigration and Nationality Act did not encourage more widespread racial profiling. The cases reported in the media of migrants in an irregular situation being repatriated while in hospital were the result of decisions taken by the hospitals concerned and did not in any way stem from government policy.
6. **Ms. Jones** (United States of America) said that the federal Government was taking steps to ensure that the Arizona law forcing civil servants to report migrants in an irregular situation did not dissuade such migrants from claiming the services and medical care to which they were entitled.

7. **Mr. Gross** (United States of America), recalling that the United States considered itself to be at war with Al-Qaida, the Taliban and associated forces and to be acting in self-defence, explained that targeted attacks were carried out against terrorists based abroad in a bid to prevent the perpetration of attacks on American soil. Outside of war zones the policy was to aim only at targets that represented a constant threat to the American people and to carry out the strikes only when there was no other effective means of neutralizing the threat. When the American armed forces were found responsible for collateral damage, the Government agreed with local authorities on compensation for the families of the civilians who were killed. Allegations that the army selected its targets based on criteria such as age, gender and proximity to a suspicious location were unfounded. The armed forces were prohibited from torturing and mistreating their detainees, including during operations abroad. Since 2001, the Department of Homeland Security had conducted thousands of investigations and hundreds of members of the armed forces had been prosecuted for offences. In that period, interrogation methods had been regularly reviewed and aligned with national and international law.

8. **Mr. Swartz** (United States of America) said that the current administration continued to advocate a federal arms law that would provide inter alia for the obligation to check the criminal records of potential buyers. In 2013, the Department of Justice reviewed the guidelines for prosecutors with a view to ensuring the strict enforcement of the law banning persons convicted of domestic violence from owning a weapon — known as the “Lautenberg amendment” — and of weapons legislation in general. Recalling that President Obama had stated that water boarding was a form of torture, he said that thorough investigations had been conducted into cases involving interrogation methods used under the Bush administration, but that the individuals under investigation had never been prosecuted for lack of sufficient evidence. In 2009, the Department of Justice had set up new procedures designed to ensure that official secrecy could not be unduly invoked when members of the armed forces were brought to trial. Lastly, following the *Medellin v. Texas* case, the Government had taken measures to cooperate with countries that requested the return of their nationals sentenced to death in the United States.

9. **Ms. McLeod** (United States of America) said that the United States had no intention of acceding to the Optional Protocol or withdrawing its reservations to the Covenant and did not think it necessary for the national courts to apply the Covenant directly. The United States did not consider itself obliged under either the Covenant or the Convention against Torture to adopt a specific law on torture, especially since the components of that offence were satisfactorily covered in existing national legislation. The American authorities observed the principle of non-refoulement and did not extradite or transfer individuals to other States until they had considered all requisite information, including diplomatic assurances from the State concerned, and had ascertained that the individual would not be tortured on return there. That approach had been followed in the cases of the three Guantanamo detainees mentioned by Mr. Rodríguez-Rescia. Mr. Belbacha, who had been repatriated to Algeria at his request, had been the twelfth Guantanamo detainee to be transferred since the summer of 2013. For the past few years, either humanitarian organizations or representatives of the United States Government visited detainees after their transfer.

10. **Mr. Busby** (United States of America) said that an inter-agency working group tasked with implementing international human rights instruments coordinated the preparation and submission of reports to treaty bodies and the Human Rights Council. The working group consulted civil society organizations on a regular basis. The United States did not yet have a national human rights institution, but there were many institutions and mechanisms that dealt with human rights at the federal and state levels.

11. **Mr. Becker** (United States of America) said that municipalities played a growing role in combating inequalities in education between minorities and the white majority population. In Salt Lake City, of which he was mayor, 68 per cent of students belonged to ethnic minorities. Some 70 per cent of white students successfully completed high school, compared with only 50 per cent of Latin-American and African-American students. In order to improve the situation, municipalities had set up learning centres, preschool and after-school support programmes and health-care services.

12. **Mr. Austin** (United States of America) admitted that, all too often, young African-Americans and Latin-Americans lived in unstable conditions and became delinquents. The Departments of Education and Justice would be studying inequalities with regard to school discipline and, in cooperation with schools, would take steps to improve the situation of those youths at the national level. Existing guidelines already clearly stated that students should not be expelled from school for minor offences. The law on primary and secondary education offered financial support to schools that took in a high proportion of students from low-income families. According to federal guidelines, no children residing on American soil could be denied access to public schools, regardless of their immigration status. Schools must take care not to prevent or discourage students in an irregular situation from enrolling in school. That was why the law passed by Alabama, namely House Bill 56, had been blocked by the federal authorities. Regarding racial profiling, the Department of Justice had not taken a stance on “stop-and-frisk” practices by the New York City Police Department, but the responsibility of the city authorities was committed and an independent body should be charged with monitoring any corrective and reparation measures taken.

13. **The Chairperson** invited Committee members to ask follow-up questions.

14. **Mr. Rodríguez-Rescia** asked why the State party refused to accede to the extradition requests concerning the former Bolivian president Gonzalo Sánchez de Lozada, who was accused of over 60 serious offences, including a massacre. That interpretation of cooperation in investigations into human rights violations did not seem compatible with article 9 of the Covenant. Regarding the prevention of corporal punishment in schools and other establishments for minors, he pointed out that the “zero tolerance” policy was more reactive than preventive and could lead to the exclusion of students with discipline problems. Such a rigid case-by-case approach did not contribute to the education of the children concerned, who often were either African-American or suffered from a disability. Moreover, exclusion tended to aggravate insecurity in underprivileged neighbourhoods.

15. Noting the lack of a preventive approach to domestic violence, he regretted that a man who was under a restraining order had been able to legally access a firearm which he had then used to kill his children. Given that the United States was a country of destination for human trafficking, he also drew attention to the lack of preventive measures in that regard. It seemed that victims were sometimes treated as offenders. The situation of guest workers should be monitored more closely after their arrival in the country because they often fell prey to exploitation. It was also necessary for the trade unions rights of agricultural workers to be recognized.

16. **Ms. Majodina** asked what the Government’s position was regarding the administration of medication, particularly neuroleptic drugs, without patient consent, and whether there were plans to implement the relevant recommendations of the Special Rapporteur on the question of torture. Recalling that some individuals held in solitary confinement had been “forgotten” for years, including civil rights defenders, she asked what measures were being taken or were planned to end or limit the practice. She also asked what measures had been taken to rectify the fact that persons detained in Guantanamo were unable to exercise their right to habeas corpus, or to have access to justice or to counsel. She wished to know whether a deadline had been set to close that prison and what steps were being taken to ensure that it was met. She enquired whether

there was any plan for releasing the prisoners, especially in the case of Yemeni detainees who might pose a security risk. Regarding the military commissions charged with reviewing the detainees' files, she asked whether there were cases in which coerced confessions were admissible, whether the accused were personally allowed to see all the evidence against them and whether the commissions in their mode of operation remained compatible with article 14 of the Covenant. Recent information about the fate of those on hunger strike in Guantanamo would be welcome. Lastly, she asked what measures the federal Government intended to take to encourage certain states to change their legislation and practices to avoid minors being tried as adults or imprisoned alongside adults.

17. **Mr. Kälin** noted with regret that the State party was maintaining its position regarding the extraterritorial scope of the Covenant. He requested confirmation that the pentobarbital used in executions was a chemical compound approved for sale in the United States. He said that the requirement for immigration services to fill the 34,000 places at holding centres every day, including with asylum seekers, was problematic in respect of article 9 of the Covenant, which prohibited arbitrary detention. It would be useful to know whether placement in detention was decided on a case-by-case basis and whether the person concerned had access to a lawyer, particularly in remote holding centres. He invited the delegation to comment on the fact that individuals could be detained indefinitely in the absence of a definitive expulsion order. Further details would be helpful regarding the expulsion of permanent residents who committed non-violent offences, in view of the fact that the failure to consider their personal circumstances might constitute a breach of articles 17, 23 or 24 of the Covenant. Lastly, he asked how many minors were still detained in prisons administered by the United States in Iraq, Afghanistan and Guantanamo. Since many of them had not been charged, might the State party consider treating them like former child soldiers in order to facilitate their rehabilitation?

18. **Mr. Iwasawa** asked whether the State party took the view that the Covenant did not in any way restrict the surveillance activities conducted by its intelligence services outside the country. He invited the delegation to explain to what extent the electronic surveillance activities of the National Security Agency (NSA) were necessary and proportional and to comment on the effectiveness of the judicial oversight of activities carried out pursuant to the Foreign Intelligence Surveillance Act. Was the large-scale gathering of personal communication data undertaken pursuant to the Patriot Act truly necessary and were available remedies effective and sufficient? He requested additional information regarding the mechanisms meant to allow indigenous populations the opportunity to give prior and informed consent prior to any activity that might have a direct or indirect impact on the lands they considered sacred. Moreover, since it appeared that the right of indigenous populations to be informed only applied to activities that took place on Native American reservations, in what way was that restriction appropriate?

19. **Mr. Zlătescu** said that the protection of sacred indigenous land should be strengthened and extended. He asked how the situation in the Grand Canyon was monitored and whether the State party intended to adopt the United Nations Declaration on the Rights of Indigenous Peoples.

20. **Mr. Shany** asked whether the State party intended to make public the report of the Police Executive Research Forum regarding the 19 deaths that had occurred along the Mexican border between 2010 and 2012, the findings of which had recently been revealed by the *Los Angeles Times*. In view of the legal interpretation arising from the Charming Betsy canon, he asked whether the Covenant could be considered part of federal legislation. Referring to a question he had asked at the previous meeting, he invited the delegation to describe, in the State party's opinion, what objective criteria made it possible to determine the moment when an armed conflict ended. While he took note of the extra information on the protection of official secrets, he said he was surprised that those grounds could be used

to reject complaints concerning acts of torture outright, and asked whether victims who had not managed to have their complaints investigated could still be compensated.

21. Noting that tens of thousands of prisoners were serving life sentences in the United States and that that sentence was also imposed on minors or for offences of moderate severity, in violation of article 7 of the Covenant, he urged the State party to reconsider its position in that respect. For example, did the Government intend to apply retroactively, to all detainees concerned, the rule established by the Supreme Court in the cases *Graham v. Florida* and *Miller v. Alabama*? He invited the delegation to describe what measures were planned to reinstate former detainees' voting rights and to ensure that to show an identity document containing a photograph as a precondition for voting did not amount to discrimination against ethnic minorities. Lastly, he repeated the Committee's 2006 recommendation to allow Washington residents to exercise their right to vote and elect members to the Senate and the House of Representatives.

22. **Mr. Bouzid** asked what measures were planned to guarantee the freedom of speech of students in favour of the Palestinian cause and who were accused of anti-Semitism, and to shorten trials in such cases.

23. **Mr. Salvioli** said that unilateral interpretations of the Covenant were incompatible with its universal application and recalled that the Committee considered that the Covenant contained an obligation of non-refoulement.

24. **Mr. Flinterman** pointed out that the lack of paid maternity leave could be considered a violation of articles 3, 23 and 26 of the Covenant and that the restrictions placed on the right to abortion in certain states could raise issues in respect of articles 6, 7 and 26.

25. **Ms. Seibert-Fohr**, noting that the federal authorities sometimes claimed that they were not able to enforce the Covenant in areas that did not fall under their exclusive or direct jurisdiction, asked whether the courts might help overcome such obstacles.

26. **The Chairperson** requested further information about the content of self-defence laws. He wished to know whether, despite the delegation's assertion that it had never been the case thus far, it was possible for a whole population group to be considered a legitimate object of targeted strikes. In closing, he asked the delegation to say whether current legislation covered psychological torture.

The meeting rose at 12.55 p.m.