THE UNIVERSAL PERIODIC REVIEW OF THE UNITED STATES OF AMERICA

I. TOPIC: The United States is Obligated to Compensate Victims of Torture

II. ISSUE:

In May 2015 the United States will appear for its second Universal Periodic Review. Principal among the questions raised by States will be whether the United States has provided effective reparation to victims of torture under the CIA’s Rendition, Detention and Interrogation (RDI) program. In order to comply with its obligations under international human rights and humanitarian law to remedy victims, to serve as a model for other countries grappling with acts of torture, and to reassert its global leadership in human rights, the United States must compensate victims of the RDI program.

Despite universal condemnation of torture, the U.S. subjected those it suspected of ties to high-level terrorist cells to secret detention and other forms of torture and cruel, inhuman or degrading treatment between 2001 and 2007. This official program—involving “enhanced interrogation techniques” (“EITs”), extraordinary rendition, and “black site” prisons—was officially ended by President Barack Obama by executive order in January 2009.

Of the 119 acknowledged CIA detainees—a category that is under-inclusive in light of individuals rendered to third countries—the U.S. Senate found that at least 26 were wrongfully held and did not meet the program’s legal standard for detention. President Obama has acknowledged that the United States committed acts of torture,¹ and the United States government has affirmed that it failed to “live up to” the values reflected in the CAT.² However, despite its assertion that U.S. law provides a “wide range of civil remedies,”³ not a single victim of the CIA’s extraordinary rendition program—including those who were “wrongfully detained”—has received compensation. Instead, U.S. courts have thrown out compensation claims on national security grounds.

The United States routinely provides compensation to victims of U.S. conduct in situations of armed conflict, regardless of legal culpability. The United States also compensates victims of negligent acts by its armed forces outside of armed conflict, and reportedly has provided compensation for victims of drone strikes.

The ongoing failure of the United States to compensate victims of official torture gravely impairs the moral authority of the United States as “a leader in respecting, promoting, and defending human rights and the rule of law.”⁴ This is especially true for those it admits it never lawfully detained.

The United States should seize the moral high ground and provide leadership for other nations that seek to reckon with their use of torture. If the U.S. retains any hope of honoring its commitment to “end torture around the world and to address the needs of torture victims,”⁵ it must establish a viable system to compensate victims.

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¹ Press Conference by the President, Aug. 1, 2014.
³ Periodic Report of the USA (2014), UN Committee Against Torture, CAT, paragraph 147, p.53.
⁴ Id.
⁵ Statement by President Barack Obama on the International Day in Support of Victims of Torture, June 24, 2011.
III. RELEVANT HISTORY:

In 2014, as in 2006, the Committee Against Torture called on the United States to ensure that “effective reparation, including adequate compensation, is granted to every victim” of U.S. torture. The Human Rights Council made similar findings in 2011. In 2014, the Human Rights Committee found that the United States had created barriers to accountability and redress for victims, and should provide effective remedies.⁶ Such reparations are required under international law.

Article 14 of the Convention Against Torture requires that a State Party “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.” As the Committee Against Torture and the Human Rights Committee have made clear, States must provide full reparation to victims of torture, including compensation.

The U.S. has taken the position that the CAT Article 14 obligation to provide an enforceable right to compensation for individual victims of torture does not apply in situations of armed conflict. However, the United States simultaneously acknowledged that international humanitarian law requires state-to-state remedies to compensate victims of torture in armed conflict.

The U.S. is incorrect regarding its human rights obligations. A State must provide compensation to all individuals it has tortured, even when the mistreatment occurred during armed conflict. Extensive State practice also demonstrates that States have an obligation to compensate victims of torture in situations of armed conflict. Indeed, Canada, Macedonia, Poland, the United Kingdom, and Sweden have all compensated, or been ordered to compensate, victims for their collusion in acts of torture under the CIA program.

International law requires full reparation for an internationally wrongful act. Torture is a non-derogable violation of the ICCPR, a criminal violation under the CAT, a grave breach under IHL, and customary international law jus cogens prohibition. It is universally recognized as an internationally wrongful act.

IV. ACTION TAKEN OR NOT TAKEN ON RELEVANT HISTORY:

The U.S. has failed to implement the recommendations of the Human Rights Council, the Human Rights Committee, and the CAT Committee by failing to establish a viable compensation system for victims of torture.

V. REQUESTED RECOMMENDATION(S):

The U.S. must provide remedies in the form of compensation to victims of torture.

VI. QUESTION:

Given that no individual has been compensated for acknowledged acts of torture under the CIA program, has the U.S. established a viable system of compensation for victims of torture?

VII. CONTACTS⁷:

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⁷ Communications from the undersigned do not purport to present the universities’ institutional views, if any.