



AMERICAN
PSYCHOLOGICAL
ASSOCIATION

February 12, 2016

President Barack Obama
The White House
1600 Pennsylvania Avenue, N.W.
Washington, DC 20500

Dear President Obama:

We are writing on behalf of the American Psychological Association (APA) to request that the U.S. government withdraw its reservations and understandings to the United Nations (U.N.) Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). Decisive action by the U.S. government toward achieving this goal would send a strong signal to the global community that the U.S. -- both now and in the future -- is committed to safeguarding the welfare of national security detainees in its custody.

APA is a scientific, educational, and professional association, with more than 123,000 members and affiliates. Our primary mission includes the application of psychological knowledge from science, education, and practice to address fundamental matters of human welfare, including the promotion and protection of human rights. Unfortunately, psychological knowledge and techniques have been misused to design and carry out torture and other forms of abusive treatment, and the victims of such treatment often suffer from serious, long-term psychological and physical problems.

Accordingly, APA has longstanding policies dating back to 1985 opposing torture and abusive treatment. This past year, the Council of Representatives (our governing body) adopted a policy related to national security to clarify that the association defines torture and “cruel, inhuman or degrading treatment or punishment” (CIDTP) in conformity with the CAT. This provision is intended to ensure that APA policy offers protections to everyone, everywhere, including foreign detainees held outside of the U.S. Such a policy clarification is consistent with APA’s status as an accredited non-governmental organization (NGO) at the U.N. committed to promoting and protecting human rights in keeping with the U.N. Charter and the Universal Declaration of Human Rights. It also conveys that APA is placing human rights standards at the core of the association’s vision for an ethical organization.

The U.S. ratified the CAT in 1994 subject to five understandings related to torture and two reservations related to CIDTP. The understandings related to torture include an interpretation that an act must be “specifically intended to inflict severe physical or mental pain or suffering.” The reservations redefine CIDTP as “cruel, unusual and inhumane treatment or punishment prohibited by the Fifth, Eighth, and/or Fourteenth Amendments to the Constitution of the United

States.” Consequently, this term has limited, if any, applicability to foreign detainees in facilities outside of the U.S. This became apparent when treaty understandings for torture were interpreted to provide a legal justification for the use of “enhanced” interrogation techniques by the U.S. government during the Global War on Terror. These practices were well documented in the recent report of the U.S. Senate Select Committee on Intelligence about the CIA’s detention and interrogation program and widely viewed by the international community as constituting the torture of foreign detainees.

APA believes that it is important to note that significant high visibility steps have been taken to prevent further abuses of national security detainees, including the passage of the Detainee Treatment Act in 2005 and a companion provision in 2015, along with the issuance of three executive orders by President Obama on his first day in office (i.e., Ensuring Lawful Interrogations (13491), Review and Disposition of Individuals Detained at the Guantanamo Bay Naval Base and Closure of Detention Facilities (13492), and Review of Detention Policy Options (13493)). Moreover, the U.S. Supreme Court, in *Boumediene v. Bush*, 553 U.S. 723 (2008), granted the constitutional right of habeas corpus to detainees at the Guantanamo Bay detention facility.

We are concerned that, despite these positive developments, the U.N. Committee against Torture, in its most recent periodic report of the U.S. (November, 2014), called upon our government to “give further consideration to withdrawing its interpretive understandings and reservations. In particular, it should ensure that acts of psychological torture are not qualified as ‘prolonged mental harm.’” The U.N. Committee explained that “the concept of ‘prolonged mental harm’ introduces a subjective non-measurable element which undermines the application of the treaty.”

Of particular concern to APA, the U.N. Committee raises the critical issue that “serious discrepancies between the Convention’s definition and that incorporated into domestic law create actual or potential loopholes for impunity” (see General Comment No. 2 (2007), paragraph 9, on the implementation of article 2 of the Convention by State parties). These loopholes, in turn, “could permit interpretations incompatible with the absolute prohibition of torture and ill-treatment,” as reflected in article 2, paragraph 2, of the Convention. According to this provision, there are “no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency... [including] any threat of terrorist acts or violent crime as well as armed conflict, international or noninternational.” The U.N. Committee further stipulates that “under international law, reservations that are contrary to the object and purpose of a treaty are impermissible” (articles 1 and 2, paragraph 1 and 4).

Based on these serious concerns, APA is requesting that the U.S. government withdraw its interpretive understandings and reservations to the CAT to become a full co-signor of this vital treaty. By so doing, the U.S. would join the community of nations who accept common standards of decency and respect for the inherent dignity of all persons. Moreover, such an act would help to ensure the safety of detainees held in conflicts around the world.

Thank you for your consideration of this matter. For any further information, your staff may contact Dr. Ellen Garrison, APA's Senior Policy Advisor, at egarrison@apa.org or (202) 336-6066.

Sincerely,

A handwritten signature in black ink, reading "Susan H. McDaniel (PhD)". The signature is fluid and cursive, with the letters "S", "M", and "D" being particularly prominent.

Susan H. McDaniel, PhD, ABPP
President

A handwritten signature in black ink, reading "Cynthia D. Belar". The signature is fluid and cursive, with the letters "C", "B", and "D" being particularly prominent.

Cynthia D. Belar, PhD, ABPP
Interim Chief Executive Officer

cc: Secretary of State John F. Kerry
Senate Committee on Foreign Relations