

Human Rights Update 2010



Approved by the 219th General Assembly (2010)
Presbyterian Church (U.S.A.)

Developed by
The Advisory Committee on Social Witness Policy (ACSWP)
of the General Assembly Mission Council

Contents

Recommendations.....	1
Rationale	1
I. Introduction	1
II. Human Trafficking: A Human Rights Crisis.....	3
A. The Scope and Definition of Human Trafficking	3
1. Legal Standards	5
2. Who Are Trafficked Persons?	5
B. A Human Rights Based Approach to Addressing Human Trafficking.....	6
C. Preventing Human Trafficking	6
D. The Complexity of Addressing Human Trafficking.....	7
E. Conclusion	8
III. Immigrant Detention and Human Rights.....	9
A. Overview.....	9
B. Historical Background and the Rapidly-Expanding Detention System	9
C. Detention is a Human Rights Issue	10
D. The U. S. Detention System.....	11
E. Immigration Customs and Enforcement.....	11
1. ICE Enforcement—An Overview of Current Structure and Operations	12
2. The Impact of Enforcement.....	12
3. Transfer of Detainees	13
4. Costs of Enforcement	13
5. Local Law Enforcement collaboration with ICE.....	13
F. Related Issues: Border Enforcement, Short-Term Detention, Community Impacts.....	14
1. Border Enforcement	14
2. Short-Term Detention, Dangers of Abuse.....	15
3. Community Impacts	15
4. Economic Interests and Detention Policies	15
5. Conclusion: The Need for Reform of Detention Practices.....	16
IV. Torture and the Need for Truth.....	17
A. Overview.....	17
B. Torture: A Compelling Need for the Truth	19
V. Conclusion: For Future Consideration.....	21
Endnotes.....	22

Human Rights Update (2010)

RECOMMENDATIONS

The 219th General Assembly (2010) approved the following:

The Advisory Committee on Social Witness Policy (ACSWP) recommends that the 219th General Assembly (2010) bring to the attention of the church significant trends and developments in human rights, particularly in the areas of trafficking, detention of immigrants, and the continuing problem of torture, by:

1. Directing the Stated Clerk to post on-line this “Human Rights Update 2010,” include it in the General Assembly social witness policy CD, and encourage its study and use in advocacy on matters of Christian ethical concern and General Assembly action;
2. Requesting that “Human Rights Day,” December 10, be included in the program calendar, liturgical resources, web-postings, and public witness activities of appropriate General Assembly Mission Council offices; and
3. Encouraging members, sessions, and other councils of the church to pray for all victims of human rights violations, and for those who persecute them, while also finding ways to act on behalf of those victims.

Rationale

I. Introduction

These recommendations are in response to the following referrals:

2008 Referral: Item 11-13. Resolution to Expand the Church’s Ministry with and Advocacy Against Human Trafficking, Recommendation 2. Urge the Advisory Committee on Social Witness Policy to Regularly Include Trafficking of Persons in Its Human Rights Updates—From the Advocacy Committee for Women’s Concerns (Minutes, 2008, Part I, pp. 45, 47, 1167–70).

2008 Referral: Item 09-11. A Resolution to Study Immigration Detention in the United States, Recommendation 1. Direct the Advisory Committee on Social Witness Policy, in Consultation with the Appropriate General Assembly Council and Office of the General Assembly Ministries Areas to Analyze the Social Witness Policy of the PC(USA) Regarding Detention in Relation to Immigration in the United States, Giving Attention to the Experiences of Women and Children Detained and Affected and Report Its Findings and Recommendation to the 219th General Assembly (2010)—From the Advocacy Committee for Women’s Concerns (Minutes, 2008, Part I, pp. 54, 55, 958–61).

2008 Referral: Item 07-01. On Calling for Tolerance and Peaceful Relations Between the Christian and Muslim Communities, Recommendation 6. Identify Violations of the Civil Rights of Christians, Jews, and Muslims in the United States and Other Areas of the World, Along with Other Incidents of Violation of Religious Freedoms, as Part of the Regular Human Rights Report to the General Assembly—From the Presbytery of Newton (Minutes, 2008, Part I, pp. 14, 15, 507–10).

Presbyterian General Assemblies have spoken on aspects of human rights since before the passage of the Universal Declaration of Human Rights—which the churches helped bring into being—in 1948. The practice of receiving reports at each General Assembly goes back twenty-two years. As in past years, the Advisory Committee on Social Witness Policy coordinates contributions from staff persons in other parts of the General Assembly Mission Council and the Office of the General Assembly, in this case the Fair Food campaign and the Immigration Office, with additional help from a theologian who is also an expert on the ethics of torture. We thus thank the Reverend Noelle Damico, Julia Thorne, Esq., and Professor George Hunsinger for their contributions. We then look at other developments for consideration by readers.

To speak directly to this third referral, in the case of this General Assembly, the most substantial discussion of Muslim, Jewish, and Christian interreligious incidents is in the historical perspective appendix to the Middle East report. They cite the U.S. State Department Religious Liberty report on Israel and the Occupied Territories, finding discrimination against both Muslims and Christians and neglect of their holy sites.¹ The nature of church/state or religion/state issues differs, of course, in Muslim majority countries and Israel. The instances of torture discussed in the third section of this update largely include Muslim detainees, and certainly religiously linked extremism is affecting the conditions of Christian minorities in certain conflict areas. We expect to do more with this referral in the future.

In previous years, prior to the Internet posting of human rights violations, this update included surveys of human rights situations from each of the World Mission regional liaison offices. The Washington Office provided a brief survey of domestic U.S. criminal justice issues, such as prison overcrowding or needed rehabilitation. And a section from the United Nations Office contained information on significant new treaties or “conventions,” part of the continued construction of moral structures and expectations for the international social order. We continue that practice in the “For Future Consideration” section.

Because of the on-line availability of up-to-date information on human rights abuses, the advisory committee’s current approach to the Human Rights Update focuses on trends. In 2006, this was the acceptance of torture by the United States government, along with indefinite detention without due process and new forms of government surveillance. Five presbyteries also asked for action on this matter and called for an investigation by an independent counsel and possible prosecution by the Department of Justice. In 2008, the committee responded to a referral on human rights in the Philippines that also looked at the use of the “war on terror” as a justification for human rights violations. The General Assembly used part of that report to create an additional short resolution on human rights in Colombia, where similar dynamics are documented. In all such cases, we consulted with indigenous church partners. The Latin America regional office, the Peacemaking Program, and the Presbyterian Peace Fellowship have also continued to monitor the situation in Colombia, and both mission co-workers, volunteers, and notably the Reverend Larry Emery of Walnut Grove (Calif.) Presbyterian Church monitor the Philippine situation.

In the case of human trafficking, we would note that several representatives of the advisory committee visited five “rescue” and rehabilitation programs for women who had been victims of trafficking in Thailand. The concern for “sex tourism,” sometimes involving children, has been addressed by international organizing and then by international law, partly through the leadership of Presbyterian Women and other church groups starting in the 1970s. Representatives of the

ACSWP, including a mission co-worker and one of the committee's co-chairs, visited the Bangkok offices of World Vision, met with a researcher and consultant with the United Nations, and worshiped in a new church that includes many women free from involvement in prostitution (only some of whom were trafficked). As the reader may find, however, trafficking involves many other dimensions of coerced labor. The advisory committee has also met with human rights and immigration reform experts and activists at its regular meetings, but the anti-trafficking visits were part of the hands-on involvement of the committee in this calling to human liberation and justice.

As we turn to the specifics in the several trends that are the focus of this year's report, we acknowledge that the scope of human rights is broad—as broad as what The Confession of 1967 calls “one universal [human] family” (*The Book of Confessions*, 9.44). Strong policy statements by the 1974 (UPC) and 1978 (PCUS) on human rights undergird our application of confessional commitments to respect human conscience and to prevent the violation of human personhood, created in the image of God. May these in-depth, yet still concise studies, guide us in our individual and congregational “facing of this hour.”

II. Human Trafficking: A Human Rights Crisis

A. *The Scope and Definition of Trafficking*

From boys sold into the fishing industry on Lake Volta in Ghana, to girls trafficked into the brothels of Thailand, to domestic workers enslaved and tortured by a husband and wife in their Long Island home or farm workers locked in a box truck, chained, beaten and forced to harvest tomatoes in Florida fields, slavery is alive and well in a new form in the twenty-first century. Poverty, gender discrimination, violence, and conflict create the breeding ground for this phenomenon, which is complex, global, vicious, and profitable.

Human trafficking is a form of modern-day slavery that victimizes vulnerable children, women, and men both in the United States and around the world. The International Labour Organization (ILO) estimates that 12.3 million people are being trafficked for forced labor, bonded labor, forced child labor, and sexual servitude at any given time, 56 percent of these are women and girls.² The U.S. Department of State notes that other estimates range from 4 million to 27 million.³ It is estimated that 1.2 million children are trafficked within and across borders.⁴

The Presbyterian Church (U.S.A.) has been urged by its General Assemblies to become informed about human trafficking, to advocate for the elimination of all forms of human trafficking, and to witness to the fullness of life that God desires for all people.⁵ The General Assembly Mission Council has convened a Human Trafficking Roundtable to assist the church in these efforts.

Human trafficking is the recruitment, harboring, transporting, providing, or obtaining, by any means, any person for forced labor, slavery, or servitude in any industry or site such as agriculture, construction, prostitution, manufacturing, begging, domestic service, or marriage. Recent trends have also shown persons trafficked for organs and body parts.⁶

While much of the public focus on human trafficking has been on the trafficking of children and women for sexual purposes, the International Labour Organization (ILO) asserts that the majority of human trafficking in the world takes the form of forced labor. Forced labor or

involuntary servitude affects men, women, and children alike. Of course many are often subjected to sexual exploitation as well. Forced labor can be far harder to identify than sex trafficking because it may not involve the same kinds of criminal networks but rather individuals in domestic work, smaller scale businesses like nail salons, or landscaping. Forced labor also happens at the base of corporate supply chains by employers in factories, mines, and fields. Further its products may be sitting right on our kitchen tables (tomatoes, coffee, fish, and chocolate) or imbedded in the wedding band or necklace we are wearing (gold).⁷

The use of the legal term “human trafficking” can mislead the public into thinking that the phenomenon is principally about the transport of persons for profit. It is much more than that. It involves all aspects of this exploitative process from recruitment to forcing a person through violence or threat of violence to labor against their will. Also the media often wrongly equates human trafficking with smuggling, where a person consents to be moved across an international border. “The critical additional factor that distinguishes trafficking from migrant smuggling is the presence of force, coercion, and/or deception throughout or at some stage in the process—such deception, force, or coercion being used for the purpose of exploitation” explains the Office of the United Nations High Commissioner for Human Rights.⁸

It is imperative to understand that trafficked persons can be citizens of their country as well as either authorized migrants or unauthorized migrants. Neither the country in which a person resides nor a person’s residential status are litmus tests for whether they are a trafficked person. The central component of human-trafficking is the total control exercised over all aspects of people’s lives, that is solidified through coercion, threat, and violence. The U.S. Department of State is clear, “Human trafficking is, in essence, a modern-day form of slavery.”⁹

Modern-day slavery is neither an exaggeration nor a metaphor. It is, as the name suggests, a new form of slavery that involves the complete control of one person by another through the use of physical or psychological violence, hard labor for little or no pay, all for the purpose of profit for the slaveholder.¹⁰ Such servitude is illegal under U.S. and international law. Depending on the form of servitude, there are others who profit as well: corporations and employers who benefit from the artificially low cost of labor and consumers who have access to cheap goods.¹¹

Trafficking is a grave violation of human rights, most obviously the right to liberty and not to be held in involuntary servitude. But trafficking is related to a range of violations of other human rights including the right to be free from cruel and inhumane treatment and the right to health. The violation of human rights is both a cause and a consequence of trafficking. The widespread lack of basic economic rights like the right to food, to housing, to sustainable-wage jobs, and the right to safe migration all foster an environment ripe for slavery. Women and children are particularly vulnerable because of the multiple violations of economic, civil, cultural, and social rights that they experience.

Furthermore the human rights of trafficked persons are often violated in the very acts of investigating, identifying, freeing, and assisting them and prosecuting their traffickers. Migrants are at particularly high risk of misidentification, inappropriate detention, lack of translation and legal services, and deportation even in nations, such as the U.S., that place a high priority on combating human trafficking. Women who have been trafficked into prostitution have been misidentified as prostitutes and released on bail back to their traffickers or imprisoned for the crime of prostitution without having access to necessary social or legal services they deserve as

trafficking victims. Children trafficked for sexual purposes have too often been returned to a family member who may have been the very adult who sold them into sexual servitude.

1. *Legal Standards*

Human trafficking is a violation of the 13th Amendment of the Constitution. The U.S. Department of Justice Civil Rights Division has prosecuted cases in the U.S. either under laws forbidding peonage and indentured servitude passed just after the American Civil War during Reconstruction (18 U.S.C. Sections 1581-9) or under the 2000 Victims of Trafficking and Violence Protection Act (TVPA), which was subsequently reauthorized in 2003, 2005, and 2008.¹²

Human trafficking is also prohibited under international law. The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children supplementing the United Nations Convention against Transnational Organized Crime came into force on 25 December 2003. Referred to as the “Palermo Protocol,” it is the main legal and normative framework to combat human trafficking. As of September 2008, 119 nations have ratified the Palermo Protocol. Many, like the United States, have passed their own human trafficking/modern-day slavery laws. Numerous regions and subregions have also passed their own instruments. From South Asia to the African Union, Europe, and the Americas, specific regional initiatives strengthen and instantiate the principles imbedded in the Palermo Protocol.¹³

Human trafficking is a twenty-first century human rights crisis requiring cooperation and collaboration among all sectors of our society—governments, judiciary, law enforcement, religious bodies, nongovernmental organizations (NGOs), corporations, and international organizations—if we are to successfully put an end to this brutal crime that violates human rights and devastates lives.

2. *Who Are Trafficked Persons?*

Trafficked persons may be women and men, children and adults, citizens and migrants; all are people whose human rights have been fundamentally violated.

Children are often trafficked for sexual purposes as well as for labor in domestic service, fishing, mining, agricultural work, child soldiering, and the drug trade. Both boys and girls are affected.¹⁴ One new area in which the trafficking and sexual exploitation of boys is occurring is in sports, reports Joy Ngozi Ezielo, the UN Special Rapporteur on trafficking in persons. The UNICEF notes boys have been trafficked to labor as camel jockeys.¹⁵ Women and girls are trafficked into forced marriage, domestic service, the agricultural and mining industries, as well as forced prostitution and other forms of sexual exploitation. Ngozi adds that though little attention has been paid to men who are trafficked, that it is “becoming rampant,” particularly in the agricultural, mining, and fishing industries.¹⁶

People can be trafficked within their country of origin, across national borders, or across multiple national borders until they reach their final destination. Citizens and both authorized and undocumented migrants, are trafficked both here in the U.S. and around the world.¹⁷ Some examples: Jamaican men brought to New Hampshire under the H2 guestworker program to cut trees were enslaved, Ugandan boys kidnapped by militia and forced to train as child soldiers and torture and kill others, children from Mali trafficked to work in gold mines in Cote D’Ivoire,

young women abducted in Azerbaijan and forced into prostitution in Turkey, homeless African American men who are U.S. citizens trafficked within Florida and to North Carolina to harvest produce.

B. *A Human-Rights Based Approach to Addressing Human Trafficking*

Modern-day slavery is the extreme point on a continuum of the degradation of rights among groups of people or in the workplace itself. Jesus Christ came that we might have life and have it abundantly. Scripture witnesses to God's intention that our world be characterized by shalom, the just, harmonious well-being of all. The Presbyterian Church (U.S.A.) has joined the United States and the United Nations in affirming that modern-day slavery is first and foremost a violation of human rights.

Adopting a human rights-based approach to addressing human trafficking means that upholding the human rights of trafficked persons is at the center of all our efforts. Therefore, any process of identifying or assisting trafficked persons that violates their human rights must be ceased or revised.

The human rights of trafficked persons can be violated during government interventions to stop trafficking. For example, many governments still prosecute trafficked people for crimes they were forced to commit while being trafficked, such as prostitution or drug dealing. In other instances governments simply consider trafficked people criminals if they are undocumented and summarily deport them. Here in the U.S., federal law provides for T visas for trafficked noncitizens that allow them to remain in the U.S. (if they so choose) and U visas for noncitizens that have been forced to commit crimes. However to qualify for a T or U visa, trafficked persons must cooperate with law enforcement in the prosecution of their traffickers. The Special Rapporteur for Human Trafficking explains trafficked persons are not given sufficient time for reflection or counseling before they have to agree to cooperate. "It is very wrong to have this condition. Countries must avoid that."¹⁸

Some organizations advocate buying people out of slavery, which may sound good because it removes a person from a situation of enslavement. But the questions are: remove them how and to what? Buying people out of slavery does not ensure that trafficked persons will receive needed services, that their choices will be respected by those who have just bought them, or that slavers will be prosecuted. Further it perpetuates the slave economy; other vulnerable people will take the place of the person who is "rescued."

Even in assisting trafficked persons after they've been freed, governments and NGOs must take great care not to again violate trafficked persons human rights. Persons who have been enslaved have been under extreme control of others. Yet trafficked persons are too often kept in jails and locked shelters under constant watch. Such conditions replicate conditions of slavery. If such immediate shelter is all that is available, trafficked persons must be moved as quickly as possible to other safe locations where they can exercise control over their "assistance" including their desire to leave if that should be the case.

C. *Preventing Human Trafficking: Examples of Tourism with MRTI and Agriculture with Fair Food*

Identifying trafficked persons, assisting them, and prosecuting their traffickers is really dealing with modern-day slavery after the fact; after lives have been devastated, rights have been violated, and profits have been made. While the church has an important role to play within a broader community-based response to help identify and assist trafficked persons, Holy Scripture testifies to God's covenant vision of well-being for our world and the confessions of the PC(USA) demand that we also adopt human rights based efforts to eliminate the conditions in which slavery flourishes. Here are two ways that the PC(USA) General Assembly has been working to address the causes and demand for trafficked persons.

Along with ecumenical partners, the Presbyterian Church (U.S.A.), through its Committee on Mission Responsibility Through Investment (MRTI), has worked to promote corporate social responsibility in the travel and tourism industry. Hotel chains, airlines, and cruise lines are urged to adopt The Code (www.thecode.org) committing to develop a corporate policy against child sex trafficking, train their employees on how to recognize problematic situations and what to do, educate customers, and report on corporate performance.

In the United States, few companies have signed The Code (an exception is Carlson, a company that has been exemplary in promoting responsible tourism), but some have implemented aspects of it following dialogues with religious investors. Continental Airlines and U.S. Airways have adopted policy statements, and worked to educate their customers. The MRTI worked hard to get Hilton Hotels to respond to the issue without much success. The company declined to meet about the issue, but finally said it would include a reference to its opposition to child sex trafficking in its operations manual. Following the sale of Hilton to The Blackstone Group, no further communication was received. With ECPAT-USA (End Child Prostitution and Trafficking), MRTI will continue to promote The Code, and encourage consumers to patronize responsible tourism companies.

Since 2002 the PC(USA) has worked in partnership with the Coalition of Immokalee Workers (CIW) through the Campaign for Fair Food to address modern-day slavery in U.S. agriculture by insisting the major retail food corporations work with the community-based farmworker organization to establish codes of conduct with a zero-tolerance policy for modern-day slavery in their suppliers' fields. When a case of slavery occurred and was successfully prosecuted in November 2008, six corporations either cut or suspended their purchasing from the two growers in whose fields enslaved farmworkers harvested. This is the first time the U.S. agricultural industry has faced market consequences for turning a blind eye to human trafficking.

In addition to addressing particular cases, the Fair Food Codes of Conduct also require retail food corporations to pay an increase per pound of tomatoes purchased, directly to farmworkers to improve their wages. This is to correct the downward pressure the companies' high-volume/low-cost purchasing contracts have had on workers' wage—they've been stagnant for thirty years. Consumer action together with farmworkers has ensured that farmworkers themselves are establishing and ensuring their own human rights together with other necessary partners in the food industry.¹⁹

D. *The Complexity of Addressing Human Trafficking; Testing the Helpers, Too*

Human trafficking is a highly complex phenomenon demanding rigor and care from the church as it endeavors to understand its dimensions, assist trafficked persons, and eliminate the conditions that produce it. For the purposes of this report, many aspects of human trafficking

have necessarily received abbreviated treatment and some are not discussed at all. But here is a glimpse of the complexity involved in identifying and assisting persons who have been trafficked as well as working to end modern-day slavery.

Pastors are often on the front lines of meeting trafficked persons; one place traffickers will bring their slaves is to church. Most pastors aren't looking for trafficked persons, and few know the signs for which to look. Traditional pastoral care approaches coupled with the desire to help can endanger the trafficked person and complicate possibilities for assisting them and prosecuting of their traffickers. This is why the General Assembly is partnering with presbyteries to sponsor Human Trafficking Awareness training events where clergy and other religious leaders are trained together with professionals from the U.S. Department of Justice, U.S. Department of Labor, law enforcement, FBI, social services, medical professionals, and others to promote a collaborative, effective response.²⁰

A further example, some organizations unhelpfully conflate adult prostitution with human trafficking. But it is imperative to distinguish between adult prostitution and adults who are trafficked into prostitution if we are to be effective in identifying and assisting victims here in the U.S. and around the world. While all child prostitution is human trafficking, all adult prostitution is not human trafficking. For various reasons some women (and men) want to remain in prostitution and some trafficked persons once coerced into that trade may return to prostitution after being rescued. Sex workers have been instrumental in leading investigators to women, children, and men who have been trafficked into prostitution.

A final consideration; with the rise of public awareness around human trafficking, many NGOs have sprung up making many different sorts of claims about how to end human trafficking and offering projects and advocacy to assist people who have been trafficked. We urge individuals and congregations to carefully assess groups, their claims and their work. A central question must always be, do these efforts put the human-rights of trafficked persons first and foremost? For example, there are dizzying array of charities that offer jobs to people who have been trafficked. While employment is needed by people who have been trafficked, it is important to ask if trafficked persons are paid a living wage for their labor (according to the country), if they are able to leave this place of employment if they desire, if they have to pay for their housing, whether a reliable party other than the employer guarantees the fair and safe treatment of workers among other questions. Many NGOs are trying hard with little resources to make a difference, but we must make sure that at base, the partners with whom we choose to work put the human rights of trafficked persons first. The General Assembly Roundtable on Human Trafficking is preparing materials to assist congregations in discerning with whom and how to partner.

E. *Conclusion*

The PC(USA) congregations, presbyteries, organizations, mission partners, and the General Assembly have been actively seeking a greater understanding of human trafficking, its causes, and how we can best work to ensure the human rights of trafficked persons. Simultaneously our global society is endeavoring to better identify, address, and prevent human trafficking. As the church, may we continue to witness to the creation of humanity in God's image by upholding human rights and ending human trafficking. For further resources and information, please visit www.pcusa.org/humantrafficking.

III. Immigrant Detention and Human Rights

A. *Overview*

Responding to the request of the 218th General Assembly (2008) cited in I. Introduction, this survey supplements the most recent Presbyterian immigration policy approved in 2004, the *Resolution Calling for a Comprehensive Legalization Program for Immigrants Living and Working in the U.S.A.*, particular presenting concern was the break-up of families and in some cases the detention of minor children in the detention system. After noting late nineteenth and early twentieth century immigration detention history, this report focuses on the period after 1980 and particularly the period since 1996, and then describes the human rights issues present in this large-scale detention and deportation bureaucracy. The workings of the detention system are outlined, as are the related processes and costs of this enforcement, including local law-enforcement and short-term detention. The role of for-profit prisons is also noted, as this is a concern of the assembly's 2003 *Resolution on the Abolition of For-Profit Private Prisons*. In terms of context, the economic downturn has reportedly led to a decline in the numbers of undocumented immigrants but the new administration has also begun a reform process and indicated plans to return to immigration reform efforts in the coming year.

B. *Historical Background and the Rapidly-Expanding Detention System*

The detention of immigrants pending the resolution of their legal status and potential deportation was not always the norm. Immigrants were not detained at all until the 1890s when the United States opened its first federal immigration detention center in Ellis Island, New York. A shift in immigration policy occurred in 1952 when Congress passed the Immigration and Nationality Act (INA), which eliminated detention except in cases in which an individual was a flight risk or posed a serious risk to society. Ellis Island subsequently closed.

While the U.S. government suspended the widespread use of immigration detention between the 1950s and 1980s, the country has a long history of immigration restrictions and quotas that spans the detention and exile of Native Americans since colonial times to detentions at Ellis and Angel Islands in New York and California in the early twentieth century. Health concerns were very real, as were concerns for various classes of immigrant (more well-to-do immigrants did not go through Ellis Island).

The 1980s saw the beginnings of a shift in detention policy, largely influenced by Cuban, Haitian, and Central American refugees. The Presbyterian church and others, concerned that many Central Americans were fleeing massive human rights violations in their countries that were unrecognized by the U.S. immigration process of that time, supported a "Sanctuary Movement" that protected those fleeing repression in churches. Churches have also supported fairness in the treatment of Haitian would-be immigrants, whose welcome is very different than that of Cubans.

In the 1990s, the United States made a monumental shift in immigration policy, using detention as a primary means of enforcing immigration law, regardless of whether or not the individual was a flight risk or serious risk to society. In 1996, the United States enacted legislation that dramatically expanded the use of detention. The Antiterrorism and Effective Death Penalty Act (AEDPA)²¹ and the Illegal Immigrant Reform and Immigrant Responsibility Act (IIRIRA)²² expanded mandatory detention without bond to large categories of noncitizens,

including those convicted of crimes, including misdemeanors, and all applicants for asylum. These immigrants are not entitled to a bond hearing (as criminal defendants are) to determine whether they are actual flight risks.

The drastic expansion of mandatory detention has resulted in the rapidly increasing number of individuals detained since the 1990s. In 2001, the U.S. detained approximately 95,000 individuals. By 2009, the Department of Homeland Security is estimated to have detained 369,483. The average daily population of detained immigrants has grown from approximately 5,000 in 1994, to 19,000 in 2001, and to 32,000 by the end of 2008. In 2004, Congress authorized the creation of 40,000 new detention beds by 2010, which will bring detention capacity close to 62,000.²³

The 1996 laws also established a new procedure called Expedited Removal that allows immigration inspectors to summarily remove immigrants arriving at a U.S. border or airport without proper documentation. This is done without a hearing, and detention is mandated for the time it takes to remove that person from the United States. The U.S. government maintains that detention is the only way to ensure that immigrants appear for their immigration court proceedings. The government considers immigrants to be “flight risk,” and labels others a “danger” to their communities if they have previous criminal records, without any individualized assessment.²⁴

C. *Detention Is a Human Rights Issue*

International law prohibits arbitrary detention. The International Covenant on Civil and Political Rights (ICCPR), art. 9, requires that anyone who is deprived of liberty by arrest or detention shall be entitled to take proceedings before a court, in order that the court may decide without delay on the lawfulness of the detention and order release if the detention is not lawful.²⁵ This right is guaranteed regardless of national origin. International law also requires that anyone deprived of liberty must be treated with humanity and respect for the inherent dignity of the person (ICCPR, art. 10.).

Detention places extreme financial and emotional burdens on families by separating children, parents, siblings, and spouses from one another. As many as a fifth of American families are of “mixed” status with U.S. citizens, legal permanent residents, and undocumented family members in one household. When someone is detained it impacts families and local communities—children become parentless and families lose their breadwinners. International law requires that the United States protect the family as the natural and fundamental group unit of society (ICCPR, art. 23.).

Being in violation of immigration laws is not a crime. It is a civil violation for which immigrants go through a process to see whether they have a right to stay in the United States. Immigrants detained during this process are in noncriminal custody. The Department of Homeland Security (DHS) is the agency responsible for detaining immigrants through its subagency for Immigration and Customs Enforcement (ICE). Yet the obstacles for immigrants seeking a fair process are daunting.

Detention and deportation are themselves extreme and punitive measures for individuals going through a civil administrative process. The very act of detention attaches the stigma of criminalization to immigrants and enmeshes them in the U.S. criminal justice system.

Immigration detention facilities look, feel, and operate like jails—which many are. The human rights abuses that sometimes occur in these environments, such as a lack of access to proper nutrition and exercise, medical care, legal and educational materials, phones, and visitation, are exacerbated in cases where immigration detainees are held for long periods of time in facilities designed for short-term detention. Reports of physical and sexual abuse, sleep deprivation, and isolation are common.²⁶

The detention system is virtually invisible. Many detention centers have few markings and are in remote and isolated locations. As a result, the public is generally unaware of the high numbers of immigrants that are detained across the nation and in their local communities. The detention system is vast, ever-changing, and shrouded in secrecy. The ICE frequently refuses to share information or allow visits to facilities, resulting in the public having little knowledge of harsh conditions and rights abuses within the system while U.S. immigration agencies remain unaccountable.²⁷

Just as incarceration in our jails and prisons is thought to influence criminal behavior, detention is used to deter immigrants from coming to the United States. United States policymakers have seen detention and deportation as a politically acceptable “quick fix” to broken immigration policies and to the complex issues of global and regional poverty and instability. Instead of recognizing and addressing larger economic and political structures that cause people to migrate, politicians focus on interior and border enforcement as a way to repel people from migrating.²⁸

The reputation of the detention and deportation system prompts many immigrants in the U.S. to go into hiding and live in fear. Undocumented persons—as many as twelve million is the common estimate—often do not seek help in emergencies or report crimes for fear of exposing themselves to immigration authorities, making communities more unsafe. Those escaping persecution in their home countries may also be deterred from applying for asylum, putting them at grave risk.

D. *The U. S. Detention System*

Immigrants in detention include families, both undocumented and documented immigrants, many who have been in the U.S. for years and are now facing exile, survivors of torture, asylum seekers, and other vulnerable groups including pregnant women, the elderly, children, and individuals who are seriously ill without proper medication or care.²⁹

Although DHS owns and operates its own detention centers, it also “buys” bed space from more than 312 county and city prisons nationwide to hold the majority of those who are detained (more than 67 percent). Immigrants detained in these local jails are mixed in with the local prison population, sometimes in considerable danger. Well under half of all immigrants held in detention have no criminal record at all. The rest may have committed some crime in their past, but they have already paid their debt to society. They are being detained for immigration purposes only.³⁰ Torture survivors, applicants for asylum, victims of human trafficking, and other vulnerable groups can be detained for months or even years, further aggravating their isolation, depression, and other mental health problems associated with their past trauma.³¹

E. *Immigration Customs and Enforcement*

1. *ICE Enforcement—An Overview of Current Structure and Operations*

Immigration and Customs Enforcement (ICE) is part of The Department of Homeland Security. It is the second largest law-enforcement agency in the country with vast resources and infrastructure, including as many guns as the FBI. The ICE is in charge of the investigations, arrests, detention, and deportation of noncitizens both at the border and throughout the interior of the country. Because immigration policies already enmeshed people in the criminal justice system, and the 1996 immigration laws already involved concern for terrorism (from the first World Trade Center bombing, Oklahoma Federal Building, etc.), the concern that detention and deportation would be considered part of the “war on terror” was heightened by the amalgamation of federal agencies.

- March 2003—Department of Homeland Security Act: This act dismantled the Immigration and Naturalization Service (INS) and transferred its responsibilities to a Department of Homeland Security (DHS), with three bureaus: Immigration and Customs Enforcement (ICE), U.S. Customs and Border Protection (CBP), and Citizenship and Immigration Services (USCIS).

- March 2004—Operation Endgame: This strategic plan from DHS’s Bureau of Immigration and Customs Enforcement (ICE) set out a ten-year goal to “remove all removable aliens” from the United States.

- August 2006—DHS Secretary Michael Chertoff announced the replacement of ICE’s practice of “catch and release,” in which non-Mexican immigrants who were apprehended along the border were eligible to be released on bond, with a policy of mandatory detention for anyone apprehended within one hundred miles of the border within fourteen days of entry into the U.S. This policy shift greatly added to the accelerating use of detention.³²

2. *The Impact of Enforcement*

The recent impact of ICE enforcement includes:

- The average length of detention is currently 30.49 days.
- More than 349,000 immigrants were deported in 2008, a record for the agency and a 20 percent increase over the previous year.
- The DHS has spent more than \$2.8 billion on efforts to deport immigrants since the creation of ICE in 2003.

In total, 2.2 million immigrants have been deported since 1994.

- A twelve-fold increase in worksite arrests between 2002 and 2008. A trend was to use “identify theft” charges to put immigrants in the category of “criminal alien” to make it easier to deport them.

- More than 100 “Fugitive Operations Teams” and the development of other specialized operations. The ICE claims these are focused on specific groups but they are often used as a pretext for wide-scale arrests in apartment complexes, workplaces, and public spaces.

- 67 percent of ICE detainees are housed in local and county jail facilities, 17 percent in contract detention facilities, 13 percent in ICE-owned facilities, and 3 percent in other facilities such as those run by the Bureau of Prisons.

- The government holds more detainees a night than Clarion Hotels have guests, operates nearly as many vehicles as Greyhound has buses and flies more people each day than do many small U.S. airlines.”³³

3. *Transfer of Detainees*

The DHS’s practice of regularly transferring immigration detainees from one jail to another, often far from where they were initially arrested, have a devastating effect on a person’s ability to retain counsel and maintain an attorney-client relationship, present a defense to deportation, and obtain release from detention. Recently revealed statistics show that more than half of all people detained by DHM are transferred from one detention center or jail to another. In 2008, one out of every four detainees was transferred multiple times. Ten years ago the government transferred only one in every five detainees.³⁴

Although the government does not appoint a lawyer for people facing removal proceedings, some people are able to retain their own lawyer. When they are transferred to a jail hundreds or thousands of miles away, attorney-client communication and adequate case preparation are severely compromised. Typically, there is no advance notice that the person is being moved, and after the transfer, lawyers often are unable to locate their clients. Moreover, even if a lawyer is willing and able to maintain long-distance representation, the immigration courts often are not accommodating. Some immigration judges preclude lawyers from appearing by phone or video, and many detainees simply cannot afford to pay for their attorney to travel to the new location. For individuals who are unrepresented, transfers hinder their ability to retain a lawyer. Not only are they far from families and friends who could have assisted these efforts, but there are far fewer lawyers and pro bono resources in many of the remote locations where DHS transfers detainees.

4. *Costs of Enforcement*

In 1996, before enactment of mandatory detention laws, the budget of the entire Immigration and Naturalization Service was \$2.6 billion. This included not only the functions now carried out by Immigration and Customs Enforcement (ICE), but also the immigration services sector (now DHS’s Citizenship and Immigration Services), and border enforcement (now DHS’s Customs and Border Protection), which at that time fell under the INS umbrella.

In 2009, the United States is expected to have spent nearly \$6 billion on ICE operations alone. Government funding for ICE continues to increase almost exponentially. The total budget for ICE in the 2008 fiscal year is \$5.58 billion and \$5.93 billion for 2009. The average cost of detaining an immigrant is \$95 per person/per day. Alternatives to detention, which generally include a combination of reporting and electronic monitoring, are effective and significantly cheaper, with some programs costing as little as \$12 per day. These alternatives to detention still yield an estimated 93 percent appearance rate before the immigration courts.³⁵

5. *Local Law Enforcement Collaboration with ICE*

The ICE embarked on a trend of collaborating with local law enforcement through its ICE Agreements of Cooperation in Communities to Enhance Safety and Security (ACCESS) program. Authorized through INA, Section 287(g) allows local law enforcement to arrest and detain anyone suspected of violating federal immigration laws. The DHS has also expanded a program [called Secure Communities](#), started by the Bush administration, which requires local police to check the immigration status of everyone booked into a local jail, matching fingerprints to other data.³⁶ Undocumented immigrants can eventually be deported, regardless of whether they are convicted on criminal charges. Those convicted are deported after serving their sentences. The DHS, which [recently received \\$200 million](#) to expand Secure Communities, has estimated that “tens of thousands” more immigrants will be deported under the Secure Communities program next year.³⁷

In addition to the ACCESS program, a recent proliferation of state and local laws barring undocumented immigrants from working, obtaining housing, or using public benefits has created a disturbing intrusion into what has historically been a federal responsibility and has created widespread fear and disruption in communities. On the enforcement side, local agencies often do not have the resources to exercise this dual unfunded mandate and find that it suppresses crime reporting by immigrants as well as alerts to emergency situations. It can also further politicize local immigration debates.

F. *Related Issues: Border Enforcement, Short-Term Detention, and Community Impacts*

1. *Border Enforcement*

Since 1994, the U.S. government has spent an estimated \$35 billion to “secure” the U.S.-Mexico border. From 1993 to 2008, the number of Border Patrol agents has exploded from approximately 4,000 to 18,049 and the amount of spending on border enforcement has increased tenfold from \$1 to \$10.2 billion per year. The U.S. Border Patrol’s annual budget for 2009 has risen to \$2.7 billion from \$326 million in 1992. United States Customs and Border Protection (CBP) is now the largest arms-bearing branch of the U.S. government, excluding the military. Militarization of the U.S. border continues to accelerate. Instead of providing effective measures to ensure safety, recent enforcement trends utilized by CBP tend to further the linkage between immigration enforcement and human rights abuses.³⁸

Despite exponential increases in enforcement spending and the number of border agents in recent years, there is no evidence that increased CBP funding has limited the number of unauthorized migrants entering the U.S. According to new data from the Center for American Progress, a think-tank, the cost of apprehending immigrants is rising. In fact, the number of migrants crossing the border has more than doubled since 1993, from 400,000 a year to almost one million. Apprehensions have not increased, either. There were 1,031,668 border apprehensions in 1993, 931,557 in 2003, and 1,020,438 in 2008 at a cost of just over \$3,000 for each arrest.³⁹

Building fences along the border merely channels migration to other places, usually more remote and dangerous terrain, and results in increased deaths and cases of human smuggling. For example, after triple-fencing was constructed in San Diego, arrests of undocumented immigrants there dropped 300 percent between 1994–2002, but arrests in the Tucson, Arizona, sector increased 342 percent during this same period. Some have claimed victory for reducing unlawful immigration in San Diego when, in reality, it appears to have moved elsewhere. Between 1994

and 2006, more than 4,000 people have died trying to cross the U.S. border. This is fifteen times more lives than the Berlin Wall claimed in its twenty-eight years of existence.

2. *Short-Term Detention, Dangers of Abuse*

Border militarization hurts the 11.8 million people living along the border. Border communities experience what some report as systematic harassment, racial profiling, and human and civil rights violations by CBP agents and armed civilian vigilante groups that were alleged to operate with impunity. Individuals held in short-term custody (under seventy-two hours) by CBP for immediate deportation are most vulnerable to harsh conditions, forced exercise, and abuse, without safeguards assuring them food, water, or basic medical care during their detention.⁴⁰

3. *Community Impacts*

As this study approaches its close, the testimony of church groups and others speaks to needed shifts in emphasis. Communities are more secure when border enforcement policies focus on criminal activities going in both directions. Community security is an integral part of national and border security, but this would put the emphasis on dangerous criminals, traffickers, and exploiters rather than immigrants per se. Communities themselves could benefit from greater involvement and oversight of border enforcement activity and encourage improved human rights training of officers, strengthened complaint procedures, and measures to end racial profiling in the borderlands.

Communities are literally divided by the devastating impact of the border wall. The construction of the border wall has overwhelming social, environmental, and legal impacts. Just from a cost-effectiveness standpoint, the current border wall and fencing projects have not proven successful in stopping immigration flows, while construction costs have nearly doubled from \$4.5 million per mile to \$7.5 million per mile.⁴¹

4. *Economic Interests and Detention Policies*

The detention and deportation of immigrants is a multibillion dollar industry. Many private prison corporations and state and county governments profit from detention. By contracting out detention bed space, the government maintains it is able to save money. However, the regular reports of poor detention conditions and other abuses indicate that facility operators may be cutting financial corners at the expense of immigrants' well-being. These are concerns identified in the General Assembly's recent policy statement, *Resolution Calling for the Abolition of For-Profit Prisons* (2003).

Of the approximately 400 facilities used by the Department of Homeland Security to detain immigrants, only eight of these are ICE-owned and operated. In addition, as noted, ICE contracts with more than 300 local or county facilities through intergovernmental agreements, private prison corporations, and the Federal Bureau of Prisons. Two examples: The Corrections Corporation of America (CCA) is number one in America for detention contracts, and has made record profits every year since 2003. The CCA boasts being the sixth largest corrections system in the U.S., behind only four states and the federal government. The CCA operates sixty-five facilities in nineteen states and the District of Columbia with more than 75,000 beds and nearly 17,000 employees. Twelve of CCA's facilities are used to hold immigration detainees. In 2007, CCA earned \$1.5 billion in revenue with a net income of \$133 million.⁴² Then comes GEO

Group, one of the largest security firms in the world and the nation's second largest for-profit prison operator. The GEO operates fifty facilities in sixteen states and one in Guantanamo Bay. In 2007, GEO Group earned \$1.02 billion in U.S. revenue with a net income of \$41.8 million.⁴³

Similarly, border security has historically been considered the sole responsibility of the federal government. But as part of the government's "Secure Border Initiative," it awarded The Boeing Company a \$2.5 billion contract in 2006 to build a new security system along the U.S.-Mexico border. Boeing's contract bid included plans to build 1,800 towers along the northern and southern borders equipped with radar, cameras, and infrared sensors to detect border crossings at night. The privatization of border security operations provides incentives for the continued build-up of securitization.

The delegation of the federal task of detention to private and local facilities has its origins in the 1980s during a time of accelerated privatization in all sectors. The government's contracting out of detention management is rationalized as more efficient and cost-effective. However, detention and deportation have numerous human costs:

- Detention contracting creates an additional layer of opacity in an already complex and impenetrable detention system, making oversight of detention standards and securing of detainee rights even more difficult.
- Private companies and local governments vie for contracts to expand ICE detention bed space at an average price of \$95 a day per bed in a process that both lines corporate pockets with taxpayer money and turns human beings into commodities.
- Detention contracting allows both the federal government and contract facilities to cut financial corners in providing immigrants with adequate care and basic necessities, resulting in regular reports of egregious detention conditions that violate U.S. and international human rights laws.

5. Conclusion: The Need for Reform of Detention Practices

Reform of the detention and deportation systems are clearly related to the larger need for immigration reform. The Presbyterian Church (U.S.A.) has joined many others in supporting proposals to give immigrants a fair path to citizenship and has recognized the social costs, including the costs in depressed wage levels and exploitation of vulnerable workers. The church has also recognized a legitimate need for security focused on areas of real risk. The Office of Immigration Issues, located in the Office of the General Assembly, provides resources for congregations and individuals, working closely with immigrant fellowships and justice organizations, as well as advising presbyteries and the church's Washington Office.⁴⁴

Yet it is important to recognize that some changes are being made and that there is hope of more. Speaking at the Migration Policy Institute on January 25, 2010, John Morton, assistant secretary of Homeland Security for Immigration and Customs Enforcement, noted the creation of a new Office of Detention Policy and Planning, discussed the investigation and prevention of death and abuse in federal custody, and outlined several reforms:

- An effort to centralize immigration detention facilities in specific hubs where access to legal counsel, families, and medical treatment would be plentiful. In addition, these facilities

would be managed at the top by federal employees subject to clear, transparent, and fully implemented detention standards.

- Medical treatment will be helped along by a planned classification system that all detainees would go through upon intake, as well as “regional case managers” who will be responsible for serious medical issues in detention.

- Reducing the number of detention facilities. The ICE detains 32,000 people per day and around 380,000 per year. Morton stressed the importance of keeping the system compact and organized

- An online detainee locator system, which is expected to be launched in June. Morton also mentioned reducing dependence on contractors, but was quick to say that they would never completely eliminate contractors.

- The ICE’s preference to detain only criminal immigrants. A desire for smart, cost-effective alternatives to detention in order to ensure court appearances for noncriminal immigrants who pose a flight risk. Morton revealed that the Executive Office for Immigration Review is conducting a pilot program for alternatives to detention, and that after testing is complete there could be 16,000–17,000 slots available for immigrants to be placed in these programs.⁴⁵

It will be important for the church and other stakeholders to continue to review progress and to defend the rights of asylum seekers and other immigrants, despite even good promises of assistant secretaries to good Washington think tanks. In all the complexity of international migration and economic inequality, we welcome the stranger because we may see in him or her, not a danger, but a fellow agent of God’s redeeming grace.

IV. Torture and the Need for Truth

A. *Overview*

Valuing human rights means opposing torture. This brief report focuses on an ugly piece of unfinished business that remains before our nation and other nations, the task of seeing that this violation of the person is effectively abolished. We review the action against torture taken by the 217th General Assembly (2006), which was in two parts, and which includes the following

1. That an independent inquiry be conducted into whether any official or officer of the United States government bears direct or command responsibility for having ordered or participated in violations of ... law in the mistreatment of persons detained by the ... United States at Guantanamo Bay, Abu Ghraib Prison, or elsewhere, or in transporting persons into detention in nations with known records of brutality and torture, and that the findings of such inquiry be entered into the public record.

2. That violations of law in the mistreatment of persons detained by the government of the United States or transported by it [into] detention in nations with known records of brutality and torture cease, and be prosecuted and punished regardless of the rank and station of the offender.⁴⁶

The two requests above have not been fulfilled, and although an investigator was appointed by a new administration's attorney general, neither a special prosecutor nor a commission of inquiry has been authorized at the level necessary to pursue the truth, much less prosecute more than the few low-level soldiers who were caught on film. And without justice and real disclosure, there can be no restitution or compensation for the innocent or resolution for their families far away. The chief facility for indefinite detention without trial, Guantanamo Bay prison, has not been closed despite a very public promise by a new president. It's very "extraterritorial" location was intentionally extra-constitutional; undoing the damage in a credible way involves the Department of Justice, the U.S. military, the Central Intelligence Agency (CIA), Congressional oversight committees, special intelligence courts, concern for national and international prosecution, decisions between civilian and military "tribunals." Thus, this section of the Human Rights Update is a summary of some of the developments that have come to light, and a sharpening of the many questions that remain unanswered.

As the 217th General Assembly (2006)'s *Resolution Against Torture* states: "... the purpose of torture is not actually to extract intelligence but to break the sense of self; it is a form of intimate, humiliating terror, a crime against the human spirit and God's image in us. Neither does such torture prevent terrorism" ⁴⁷ Yet we know that our nation's agents engaged in torture since early in 2002 through sometime in 2005—or do we still torture people, or have them tortured for us overseas? One prisoner in Guantanamo, previously held in a secret prison or "black site," Khalid Sheikh Muhammad, was waterboarded 183 times, and allegedly provided information of value sometime in that process. ⁴⁸ Perhaps the most decisive action that the Obama Administration has made was to release four memoranda written by the Justice Department's Office of Legal Counsel in 2002 and 2005 to immunize the CIA and its contractors. ⁴⁹ These memos detail specific techniques for which permission is given by the lawyers Jay S. Bybee, John Yoo, and Steven G. Bradbury, whose actions have been critically evaluated by the Office of Professional Responsibility though without prosecution. ⁵⁰

Since the 2006 statement of the General Assembly, there have been a number of books published, much data retrieved, and key testimony given in several venues both nationally and internationally. The difficulties in assessing the "facts" may be seen in one investigation based on some 1,700 pages of documents from a report by the U.S. Naval Criminal Investigative Service, obtained by Seton Hall University researchers under the Freedom of Information Act. This is the case of three alleged suicides that occurred in the same night, June 9, 2006, which were referred to by the commander of Guantanamo, Rear Admiral Harry Harris, as "asymmetrical warfare waged against us," presumably to de-legitimize the facility. ⁵¹ While much of the documents remains "blacked out," the official reconstruction of events that would allow three tightly supervised men time and concealment to tie themselves up as well as rig nooses through mesh cell fronts has been challenged by four members of the Military Intelligence unit who were on guard that night. "All four soldiers say they were ordered by their commanding officer not to speak out, and all four soldiers provide evidence that the authorities initiated a cover-up within hours of the prisoners' deaths." ⁵² Clearly, these are claims that can only be properly considered in a court of law, but one of the questions is precisely what kind of court, and where? Rules of court procedure, evidence, access to lawyers, and chain of command are very different in the military tribunals from civilian courts, as has been seen in the resignations of military prosecutors and volunteer defense lawyers working with Guantanamo detainees. ⁵³

National security and the dangers of terrorism are the chief justifications for torture, and public opinion polls show considerable support for torture, even among church members.⁵⁴ There is a 20 percent point difference, however, between “mainline” and self-described “evangelical” Protestants in the acceptance of torture, with 53 percent of mainline Protestants generally opposing it while only 33 percent of evangelicals do.⁵⁵ There is no specific claim here for the influence of public statements of church leaders like the Stated Clerk, organizations like No2Torture and the National Religious Campaign Against Torture (NRCAT), and even policies like the 2006 statement quoted above, which came from an overture from five presbyteries. Yet the significance of theological position and frequency of church attendance are relevant factors as people assess the arguments for and against this practice.

In terms of update, given the 217th General Assembly (2006)’s clear position in favor of investigation and accountability, it is significant that on June 11, 2010, eight heads of faith groups and other religious institutions will join with the NRCAT in calling for a Commission of Inquiry on Torture. A clear set of questions on this comes from George Hunsinger, professor of Theology at Princeton Seminary and founder of the National Religious Campaign Against Torture.

B. *Torture: A Compelling Need for the Truth*

Here are some of the questions that a commission needs to pursue.

1. *Who authorized the torture program?* When? Were the first Justice Department Office of Legal Counsel opinions authorizing it actually written after the fact? A complete timeline of the official documents authorizing torture needs to be established. Once the torture program was in operation, what was the flow of information and decision-making about how it was going? Did information and decisions go all the way up to the Oval Office—or the vice president’s office—and back down again? Furthermore, how many personnel implicated in the torture program still hold positions, sometimes in very high places, in the government? What does their presence say about our ability to flush torture out of our system?

2. *Who were the prisoners?* Col. Lawrence Wilkerson, former chief of staff in the State Department under Colin Powell, has claimed that “no meaningful attempt” was made to vet the detainees.⁵⁶ He added that “the U.S. leadership became aware of this lack of proper vetting very early on and, thus, of the reality that many of the detainees were innocent of any substantial wrongdoing, had little intelligence value, and should be immediately released.” The U.S. military reported in 2008 that 2,500 youths under the age of eighteen had been detained, almost all in Iraq, for periods up to a year since 2002.⁵⁷ Was their treatment in accord with the Geneva Conventions and the Convention on the Rights of a Child? Was rape ever documented during interrogation, authorized or not? How many female detainees were killed in detention (many are listed as having “died”)? What exactly was done to women and children by U.S. interrogators at Abu Ghraib?

At one point there were believed to be more than one hundred prisoners at black sites. By the time President Bush announced that the high-value detainees were being moved to Guantanamo, there were believed to be thirty-four. Fourteen were moved to Guantanamo. What happened to the rest? Did any of them die?

3. *What has happened to the on-site torturers employed by the U.S.?* From past experience

it is known that many become an ongoing threat to society, and that, among other things, they all need as much healing as the victims. According to researchers Fred Grunfeld and Alette Smeulers, “Some continue to deny or minimize their roles. Others feel guilt, shame, remorse, some suffer nightmares, depression or post traumatic stress disorder. Others can't live with the reality of what they have done.”⁵⁸ Others will commit suicide. Some will find new avenues to continue in their ways.

4. *What use has been made of the information taken in torture?* It is illegal to use information derived from torture in a judicial proceeding. On what authority was it used? How many prisoners have been detained or convicted based on information derived from torture by the U.S. or any collaborating government? Are the highly publicized but authoritatively challenged allegations true that terrorist plots were divulged and prevented because of torture?

5. *What are the loopholes that need to be closed so that the U.S. never resorts to torture again?* The history of U.S. involvement in torture is the history of loopholes. How do we rid our system of the torture bacillus lurking in the shadows of our permanent government? How do we get rid of the loopholes inserted into the Army Field Manual (especially Appendix M)⁵⁹ and in the Military Commissions Act? What are the funding lines, overt and hidden, in the national budget that continue to make torture possible? How can we cut them off?

6. *What kind of example have we set?* What are the costs of allowing torture regimes all over the world to legitimate themselves by our example? Consider Thailand. According to Journalist Shawn W. Crispin, “Rights advocates monitoring southern Thailand’s conflict note a striking similarity between the torture techniques U.S. agents are known to have used ... with those now in practice by Thai security forces against suspected Thai Muslim militants.”⁶⁰ An increasing number of brutal regimes, including China, have defended their use of torture by citing the U.S. example.

7. *What compensation should be provided to the torture victims?* It seems clear that many of them were guilty of no crime. Isn't an official apology and significant monetary compensation the least that could be done for all who were tortured, especially those known to be innocent, and who will suffer untold trauma for the rest of their lives? Monetary compensation, apologies, explanations of why they were tortured, and details of what was done—all these allow the voices of the victims to be heard and provide hope for their treatment and rehabilitation.

In the aftermath of resorting to torture, America is faced with a compelling need for the truth. An increasing number of religious, political, and military leaders agree that a commission of inquiry is indispensable to ensure that this wrongdoing is never sanctioned again. As General Ricardo Sanchez, the former top coalition commander in Iraq, has stated: “If we do not find out what happened, we are doomed to repeat it.”

The conclusion from another statement by Hunsinger may properly close this section. After recalling the Pew Research data cited above, noting where it calculates higher acceptance of torture by those who attend church more regularly of whatever designation, he tells a brief story: In 1948, in the immediate aftermath of the crisis years in Europe, Albert Camus, the French existentialist philosopher, was invited to speak at a Dominican monastery. The friars wanted him to address them about how an “unbeliever” viewed Christians in the light of the era that had just passed.

What the world needs today, Camus told them, are “Christians who remain Christians.” He continued, describing his own loss of faith for moral reasons. Camus then issued an unforgettable appeal:

What the world expects of Christians is that Christians should speak out, loud and clear, and that they should voice their condemnation in such a way that never a doubt, never the slightest doubt, could rise in the heart of the simplest man. That they should get away from abstraction and confront the blood-stained face history has taken on today.

What Camus voiced more than sixty years ago has lost none of its urgency today. The crisis of our national descent into torture is, for our churches, supremely a crisis of faith. If Camus was right about what the world expects of Christians, then how much more must be expected of them, and not just by the world, today?⁶¹

V. Conclusion: For Future Consideration

The recommendation of an impartial “Truth Commission” to bring clarity, accountability, and potential compensation to the victims of torture is one of a number of actions that would help the United States regain its place of leadership in human rights. Cooperation with the International Criminal Court (to which the U.S. now sends observers), steady work to improve the still new UN Human Rights Council (since June 2007, replacing a more-compromised body), quiet and public diplomacy to challenge dictatorial regimes, alternatives to the “militarization” of foreign policy: these are areas where Kenneth Roth, executive director of Human Rights Watch, has identified mixed progress by the Obama Administration.⁶² Roth notes with disappointment “Washington’s strong criticism” of the report by South African jurist Richard Goldstone “that accused Israel (as well as Hamas) of war crimes during its December 2008–January 2009 invasion of the Gaza Strip and called for the perpetrators to be brought to justice.”⁶³

Roth notes two treaties supported by past General Assemblies that have not yet been put before Congress for ratification: the Convention on All Forms of Discrimination Against Women (only U.S., Iran, Somalia, Sudan, Tonga, and Nauru have not joined), the Convention on the Rights of the Child (only U.S. and Somalia), as well as the 1997 treaty banning antipersonnel land mines and the 2008 Convention on Cluster Munitions.⁶⁴ This is the area where human rights can reshape foreign policy and the standing of the United States in the world. In the words of the Social Creed approved by the 218th General Assembly (2008), the Presbyterian Church (U.S.A.) supports “Peacemaking through multilateral diplomacy rather than unilateral force, the abolition of torture, and a strengthening of the United Nations and the rule of international law.”⁶⁵

The role of the church at every level is to be at least part of the conscience of society. The basis for our daring to hold Amos’ plumb line of justice is our understanding that the prophetic role is willing to challenge those in power, kings of Israel then, governments today. The Human Rights Update has always recognized the global scope of God’s justice and honored all of the organizations and individuals who work to bring cruel practices to light and open prison doors. We see God’s spirit leading and calling in the countless acts of conscience to which brief reports can only point. With that awareness, we acknowledge one particular area of concern for renewed witness and ministry by our church and others: reform of the criminal justice system of the United States and the laws and lack of rehabilitation that currently put one in 133 of our citizens in prison, the highest proportion in the world today.⁶⁶ Other international treaties could be mentioned, and domestic initiatives with human trafficking and immigration reform could be

lifted up. But the great cost of the prison system in lives stunted and perhaps made more violent, the cycles of broken families and hurt children, the sick tolerance of sexual abuse in the prisons, the cost in tax moneys put to unproductive use, combined with the actual decline in crime in many areas even in a severe recession: all of these call for the church's heart of conscience and ministry here at home.⁶⁷ May God hold us accountable even as we seek to hold others accountable, and may Christ give us steadfastness and energy as we remember the cross and claim the power of redemption.

Endnotes

1. <http://www.state.gov/g/drl/rls/irf/2009/index.htm>. This is the overall State Department site that lists 199 countries and summarizes the religious liberty situation in each. With this we add a Roman Catholic link that comments on Muslim Christian issues discussed in various country reports: <http://www.zenit.org/article-27483?l=english>.
2. ILO, *Fighting Human Trafficking: The Forced Labor Dimensions*, Background Paper prepared for the Vienna Forum on Human Trafficking, Vienna, 13–15 February 2008.
3. *Trafficking in Persons Report*, U.S. Department of State, 2008, p. 7.
4. Report by the executive director of UNICEF cited in the *Special Rapporteur on Human Trafficking's Report to the Human Rights Council of the UN*, March 2009, p. 6; similar figure cited by the ILO *Action Against Trafficking in Human Beings*, 2008. A CIA report in 2004 estimated that 14,500 to 17,500 people were trafficked into the U.S. every year, but the data upon which this estimation was founded have been seriously questioned. While we know that the problem of human trafficking is global and victimizes millions of people, the data on human trafficking is limited and varies widely. Both the use of different data gathering methodologies as well as different foci make it difficult to reconcile and integrate the data we have. A top priority articulated by the UN Special Rapporteur on human trafficking is to develop a system for coordinated data management and gathering.
5. See *A Resolution to Expand the Churches Ministry with and Advocacy Against Human Trafficking*, 218th General Assembly (2008), *On Preventing the Trafficking of Women Internationally and Nationally*, 218th General Assembly (2008), *Resolution in Support of Ongoing Partnership Work with the Coalition of Immokalee Workers and the Campaign for Fair Food*, 216th General Assembly (2006). General Assembly policy available at <http://www.pcusa.org/humantrafficking/ga-policy.htm>.
6. The major forms of human trafficking are: forced labor, bonded labor, debt-bondage, involuntary domestic servitude, forced child labor, child soldiers, sex trafficking, and child sex trafficking and related abuses. To read more on these forms see the *Trafficking in Persons Report*, U.S. Department of State, 2009 at <http://www.state.gov/g/tip/rls/tiprpt/2009/123126.htm>.
7. See the ILO report, *The Cost of Coersion, 2009*; U.S. Department of State, *Trafficking in Persons*, 2009; U.S. Department of Labor, *Slave Made Goods*, 2009; and U.S. Department of Justice press release on sentencing in *U.S. vs. Navarrete*, 2008 at <http://www.justice.gov/opa/pr/2008/December/08-crt-1134.html>.

8. *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, Office of the United Nations High Commissioner for Human Rights, United Nations, New York and Geneva, 2002, p. 7.
9. U.S. Department of State, *Trafficking in Persons Report*, 2009, p. 15.
10. Dimensions of slavery summarized from Kevin Bales and Ron Soodalter, *The Slave Next Door: Human Trafficking and Slavery in America Today*, Berkeley: University of California Press, 2009, p.13.
11. It should be noted however that a low or high retail price of a good is not necessarily an accurate reflection of whether it has been produced by slave labor. For example, designer clothing may be sewn in a factory by slaves but sold to consumers at very high prices. The UN's Office on Crime and Drugs, which published its second global trends in trafficking in persons report in February 2009, said that the worldwide rise in modern-day slavery is a result of growing demand for cheap goods and services. They expect the impact of the financial crisis to push more business underground to avoid taxes and unionized labor. And they anticipate increasing use of forced, cheap, and child labor by multinational companies strapped by financial struggles. See the report above as well as a discussion of the impact of the financial crisis in the U.S. Department of State, *Trafficking in Persons Report*, 2009, p. 37.
12. The TVPA defines what constitutes trafficking, makes provisions for T and U visas for noncitizens who have been trafficked and who cooperate with law enforcement, allowing them to remain in the U.S. if they so choose, mandates the U.S. Department of State produce an annual Trafficking in Persons report (TIP) assessing countries' efforts to combat human trafficking worldwide and ranking them in tiers, mandates the U.S. Department of Labor produce a report on goods it has reason to believe were produced with child or forced labor, and establishes grants to NGOs working with trafficked persons. To read this law in full as well as its reauthorizations, visit www.pcusa.org/humantrafficking.
13. For the full text of the Palermo Protocol, visit www.pcusa.org/humantrafficking. For a full list of regional initiatives to address human trafficking, please see *Special Rapporteur on Human Trafficking's Report to the Human Rights Council of the UN*, March 2009, pp. 11–12.
14. Because of the particular vulnerability of children, their inability to ever give informed consent as minors, and the massive psychological harm they suffer, the United Nations advocates special measures for the protection and support of child victims of trafficking. See *Human Rights: Recommended Principles and Guidelines on Human Rights and Human Trafficking*, Office of the High Commissioner for Human Rights, 2002, Guideline 8, pp. 17–18.
15. UNICEF, Child Protection Information Sheet, 2006, <http://www.unicef.org/protection/files/Trafficking.pdf>, accessed 1/19/10.
16. *Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development*, report of the special rapporteur for trafficking in persons, especially women and children to the United Nations Human Rights Council, Tenth Session, Agenda Item 3, March 2009, p. 8.
17. Guestworkers here in the U.S. and abroad are vulnerable because guestworker programs typically do not provide portability—the ability for a worker to change employers once they are

in the country. Further the employer is also responsible for the workers' housing and transportation, giving the employer many points of control from which to exert both coercion and force.

18. Laura Bauer, *Sex Slavery: The Desperate Plight of Many Women*, *The Kansas City Star*, 14 December 2009.

19. Learn more about the PC(USA) Campaign for Fair Food at www.pcusa.org/fairfood and read the details of the farmworkers' fair food agreements with the following corporations (as of 1/18/10): Yum! Brands, McDonald's, Burger King, Subway, Whole Foods Market, Bon Appétit, and Compass Group North America.

20. To learn more about human trafficking and how to sponsor a human trafficking awareness training in your presbytery visit www.pcusa.org/humantrafficking.

21. <http://www.fas.org/irp/crs/96-499.htm>. Charles Doyle, American Law Division, June 3, 1996, Antiterrorism and Effective Death Penalty Act of 1996: A Summary. In addition to habeus corpus restrictions (statute of limitations, etc.), this law tightens definitions of financial and material support for possible international terrorism and the most relevant section, "addresses immigration-related terrorism issues. It establishes or adjusts mechanisms to bar (or remove) alien terrorists from the U.S. ... to narrow asylum provisions ..., and to expedite deportation of criminal aliens."

22. <http://www.visaportal.com/keywords/keyword.asp?id=261>. "The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (the 96 Act) Pub L. 104-208, was enacted on September 30, 1996. It includes increases in criminal penalties for immigration-related offenses, authorization for increases in enforcement personnel, and enhanced enforcement authority. There are a number of measures designed to enhance Immigration and Naturalization Service (INS) presence and enforcement at the border. The 96 Act undertakes a comprehensive reorganization of the process of removal for inadmissible and deportable aliens, including a provision for the expedited removal of inadmissible aliens arriving at ports of entry. The 96 Act requires the conducting of three types of employment authorization verification pilot programs. It includes restrictions on the eligibility of aliens for public benefits and imposes new requirements on sponsors of alien relatives for immigration." (The INS has been renamed, Immigration and Customs Enforcement, or ICE.) This entire act is an amendment to the Immigration Nationality Act and it includes a section deputizing local law enforcement to enforce immigration law.

23. Immigration and Naturalization Service, Office of Immigration Statistics, various years, <http://www.dhs.gov/files/statistics/publications/archive.shtm>. Very similar presentation of this data can be found in Immigrant Detention: Can ICE meet its legal imperatives and case management responsibilities, Donald Kerwin & Serena Yi-Ying Lin, Migration Policy Institute, <http://www.migrationpolicy.org/pubs/detentionreportSept1009.pdf>.

24. This is a summary of parts of laws noted at 2 and 3 above.

25. http://www.eisil.org/index.php?t=link_details&id=240&cat=514. The International Covenant on Civil and Political Rights (ICCPR) is one of the basic documents contained in the International Bill of Human Rights. It was adopted and opened for signature by General Assembly resolution 2200A (XXI) of December 16, 1966. Specific civil and political rights are

enumerated in this instrument, such as inherent right to life, right to liberty and security of person, right to a fair trial, and many more important rights. This site provides the text of the instrument, ratification information, declarations and reservations, and a link to the monitoring body.

²⁶. Nina Bernstein, Officials Hid Truth of Immigrant Deaths in Jail, *The New York Times*, Jan 10, 2010, Nina Bernstein, Immigrants in Detention to Be Sent Out of State, *The New York Times*, January 14, 2010. These are two examples of a recent series by an immigration reporter investigating detention facilities.

27. <http://www.hrw.org/en/reports/2009/03/16/detained-and-dismissed>, Detained and Dismissed, Women's Struggles to Obtain Health Care in United States Immigration Detention, March 16, 2009. This seventy-eight-page report by Human Rights Watch is only one of many reports based on visits to facilities. A larger Human Right Watch project in 2008 to visit detention facilities, in which a PC(USA) intern was to have been involved, did not materialize due to difficulties in gaining entry to facilities.

28. <http://ncronline.org/news/politics/toxic-politics-prevent-immigration-reform> Jerry Filteau. "Toxic politics" prevent immigration reform, National Catholic Reporter On-line Nov. 05, 2009. This particular analysis of the U.S. political impasse notably draws on assessments by high level Roman Catholic leaders.

29. http://www.prospect.org/cs/articles?article=the_big_business_of_family_detention. Courtney E. Martin, The Big Business of Family Detention, The American Prospect On-Line, February 2, 2009. This article looks at three current family detention facilities and projections for three more. It also notes work by the Center for Immigration Studies, the American Civil Liberties Union, Lutheran Immigration and Refugee Services, and The Women's Refugee Commission on the issue of children and families in detention. The DHS estimates that one in ten undocumented immigrants is a minor: More Children Held in Detention Centers. La Opinión, Posted: Sep 22, 2009 http://news.newamericamedia.org/news/view_article.html?article_id=c0f833ffdddd440a5554f5e351b6089e.

30. Much of this information is drawn from the website of Detention Watch, the largest association of nongovernmental organizations (NGOs), law firms, churches and other groups: <http://www.detentionwatchnetwork.org/aboutdetention>.

31. Anwen Hughes 'Denial and Delay: The Impact of the Immigration Law's "Terrorism Bars" on Asylum Seekers and Refugees in the United States', *Human Rights First*, Nov. 19, 2009.

32. ICE Budget Factsheets, including 2009: <http://www.ice.gov/pi/news/factsheets/index.htm>.

33. *The Washington Post*, February 2, 2007 (boxed item).

34. <http://trac.syr.edu/immigration/reports/220/>. Huge Increase in Transfers of ICE Detainees. Several organizations, foundations, and Syracuse University were involved in analyzing a large amount of FOI derived ICE data, contributing to other studies as well: "[Locked Up Far Away: The Transfer of Immigrants to Remote Detention Centers in the United States](#),"

Human Rights Watch, December 2, 2009. The Transactional Records Access Clearinghouse under a grant to TRAC from the Four Freedoms Fund prepared an analysis of ICE transfer records, results from which were incorporated by HRW in their report.

35. These paragraphs condense material from *DetentionWatch* (op. cit. at 11) and the ICE budget Factsheets (op. cit. at 13).

36. [Daphne Eviatar, Fingerprinting Plan Will Dramatically Increase Deportations](#): “Secure Communities” Would Ensnare Minor as well as Serious Offenders The Washington Independent, 5/22/09 <http://washingtonindependent.com/44141/fingerprinting-plan-will-dramatically-increase-deportations>. This article also notes the controversial Sheriff Joe Arpaio of the Phoenix area, of whom the Advisory Committee on Social Witness Policy heard in its meetings with local justice advocates in October of 2009. The Obama Administration is reportedly beginning to rein in such local programs despite new money going in—see next item.

37. Appropriations Committee posting is a good summary of the range of programs and costs.

[costshttp://docs.google.com/viewer?a=v&q=cache:D9XnLkxz59kJ:appropriations.house.gov/pdf/Homeland_Security_FY10_Conference.pdf+secure+communities+and+million&hl=en&gl=us&sig=AHIEtbSpPi9dYtXxGLIWjECqscu5tUka1Q](http://docs.google.com/viewer?a=v&q=cache:D9XnLkxz59kJ:appropriations.house.gov/pdf/Homeland_Security_FY10_Conference.pdf+secure+communities+and+million&hl=en&gl=us&sig=AHIEtbSpPi9dYtXxGLIWjECqscu5tUka1Q).

38. Ibid. For the financial numbers; the U.S. Customs and Border Protection’s own site is <http://chp.gov>. A different perspective is provided in a report issued in September of 2008 that includes testimonials of abuse and recommendations for reform by immigrant advocates and rescuers: <http://nomoredeaths.org/index.php/Abuse-Report-Crossing-the-Line/View-category.html>.

39. *Economist*, Jan. 20, 2010.

40. “Unanswered questions remain for U.S. border agent,” *International Herald Tribune*, December 13, 2008, quotes Isabel Garcia, founder of Derechos Humanos: “This climate of impunity for Border Patrol agents and the attitude of total misinformation and lies about immigrants prevent, I think, any real justice.”

41. <http://www.csmonitor.com/USA/2009/0919/p02s09-usgn.html>. Daniel B. Wood, “Billions for a US-Mexico border fence, but is it doing any good?” *Christian Science Monitor*, September 19, 2009.

42. CCA <http://www.correctionscorp.com>.

43. GEO Group, North American Facilities <http://www.geogroup.com>. Other major security firms with ICE contracts are Cornell Corrections, Inc. <http://www.cornellcompanies.com>, and Management and Training Corporation <http://www.mtctrains.com>.

44. See <http://www.pcusa.org/immigration/getinformed.htm> for resources.

45. Travis Packer, “ICE Assistant Secretary Stakes his Legacy on Detention Reform,” Jan 25, 2010, <http://immigrationimpact.com/2010/01/25/ice-assistant-secretary-stakes-his-legacy-on-detention-reform/>.

46. *Minutes*, 2006, Part I, p. 783; Reprinted in booklet, *Resolution Against Torture*, p. 13.

47. Ibid., p. 870; Ibid., p. 31.
48. John Goetz and Britta Sandberg, *New Evidence of Torture Prison in Poland*, Spiegel/Truthout translation by Paul Cohen, April 27, 2009, identifies the site where Sheikh Mohammed's waterboarding probably took place, near Szymany military airbase in northeastern Poland, after his capture in Rawalpindi, Pakistan, and transit through Afghanistan, as part of the extraordinary rendition program.
49. Mark Mazzetti and Scott Shane, "Memos Spell Out Brutal C.I.A. Mode of Interrogation," *The New York Times*, April 17, 2009, pp. 1, 10.
50. Ibid., p. 10. Ray McGovern, twenty-seven-year CIA veteran and briefer of four presidents, underlines the obstacles the new Administration faces in "Torture: The Fault Is Not in Our Stars," Truthout perspective, September 16, 2009, and also discusses the "Special Review" by the CIA's own inspector general, released on August 24, 2009.
51. Scott Horton, "The Guantanamo 'Suicides'": A Camp Delta Sergeant blows the whistle, *Harpers*, March 2010, pp. 27–37. The existence of the "camp within the camp," a black site at Guantanamo, was confirmed earlier: Andrew O. Selsky, "AP Confirms Secret Camp Inside Guantanamo," February 6, 2008. Jane Mayer's *The Dark Side: The Inside Story of How the War on Terror Turned Into a War on American Ideals*, Doubleday, 2008, also inventories the black sites and many still-open questions.
52. Ibid., p. 28. Much of the article is a reconstruction of events based on the four soldiers' accounts and evidence gathered under FOI Act from Guantanamo.
53. William Glaberson, "Ex-Guantanamo Prosecutor to Testify for Detainee," *New York Times*, February 28, 2008, and William Glaberson, "Guantanamo Prosecutor Is Quitting in Dispute Over a Case," *New York Times*, September 25, 2008, (Different men: Morris Davis and Darrel Vandeveld).
54. <http://pewresearch.org/pubs/1210/torture-opinion-religious-differences>. There is further discussion of this Pew Research data at: <http://pewforum.org/docs/?DocID=156>. This datum is borne out by a more specific poll by Public Religion Research Institute: <http://www.publicreligion.org/research/published/?id=136>, which focused on 600 Southern Christian Evangelicals (self-description) and show almost 60 percent holding that torture "can be often (20 percent) or sometimes (37 percent) justified in order to gain important information."
55. Ibid.
56. http://www.thewashingtonnote.com/archives/2009/03/some_truths_abo/. Guest Post by Lawrence Wilkerson: Some Truths About Guantanamo Bay, March 17, 2009.
57. <http://www.crin.org/resources/infodetail.asp?ID=17352>. Child Rights Information Network, USA: 500 youths detained in Iraq; 10 in Afghanistan, May 28, 2008.
58. <http://arno.unimaas.nl/show.cgi?fid=101>. "The Role of the Perpetrator and the Bystander in Human Rights Violations" By Fred Grunfeld and Alette Smeulers, October 12, 1999.
59. <http://www.amnesty.org.au/hrs/comments/20575/>. Amnesty International, The Army Field Manual: Sanctioning Cruelty? March 19, 2009.

60. http://www.atimes.com/atimes/southeast_asia/ja25ae01.html, “U.S. and Thailand: Allies in Torture” by Shawn W. Crispin, *Asia Times*, Jan. 28, 2008.
61. George Hunsinger, “U.S. Torture: The State of the Crisis Today,” paper available from author and ACSWP.
62. Kenneth Roth, “Empty Promises? Obama’s Hesitant Embrace of Human Rights, Foreign Affairs,” March/April 2010, pp. 10–16.
63. *Ibid.*, p. 13.
64. *Ibid.*, pp. 14–15.
65. *Minutes*, 2008, Part I, p. 925; see www.pcusa.org/ascwp for materials on the Social Creed.
66. Associated Press, “U.S. Prison Population Rises Despite a Drop in 20 States,” *The New York Times*, December 9, 2009. The total number of persons in prisons and jails, excluding 34,000 immigrants in detention, was 2.3 million.
67. David Cole, “Can Our Shameful Prisons Be Reformed?” *The New York Review*, Nov. 19, 2009, pp. 41–43, reviews three books on this subject. David Kaiser and Lovisa Stannow, “The Rape of American Prisoners,” *The New York Review*, March 11, 2010, pp. 16–19, review six studies of this epidemic of abuse.

ACREC ADVICE AND COUNSEL ON ITEM 11-04

Advice and Counsel on Item 11-04—From the Advocacy Committee for Racial Ethnic Concerns (ACWC).

Item 11-04 requests the 219th General Assembly (2010) to direct the Stated Clerk to post on line the Human Rights Update 2010 report, to request that Human Rights Day—December 10—be included in the program calendar, liturgical resources, and web-postings, and to encourage various bodies of the church to pray for all victims of human rights violations and their persecutors.

The Advocacy Committee for Racial Ethnic Concerns advises that Item 11-04 be approved.

Rationale

Human trafficking, immigrant detention, and torture are serious human rights concerns of our society today. In March 2009, members of ACREC toured an immigration detention facility near Newark, New Jersey, and witnessed firsthand an out-of-the way detention facility, long-term detention of immigrants, and the resultant separation of families and lack of adequate legal counsel. We are encouraged by some of the reforms being proposed by the Obama administration, but recognize that much more needs to be done to expose the plight of detained immigrants and to prevent any human rights abuses.

ACWC ADVICE AND COUNSEL ON ITEM 11-04

Advice and Counsel on Item 11-04—From the Advocacy Committee for Women’s Concerns (ACWC).

The Advocacy Committee for Women’s Concerns advises that the 219th General Assembly (2010) approve this overture.

Rationale

The ACWC advises approving the Human Rights Update 2010 as a document that upholds the commitments of the PC(USA) to the treatment of all people as image-bearers of the Creator and to the respect of all of humankind as beings worthy of basic respect and humane treatment. As a document that draws attention to the most vulnerable in our world, ACWC supports the update, especially in those places where it lifts up the experiences of women, who in our world always find themselves most vulnerable to exploitation and abuse. In light of this, ACWC would highlight more specifically the experiences of women in situations of trafficking and detention in particular.

Though the report states and repeatedly highlights that there has been an increase in the number of men being trafficked, as a whole, women are still the most vulnerable to being exploited in this way. The report itself cites the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (The Palermo Protocol), and notes that women and children are indeed most susceptible to trafficking. Yet the report repeatedly draws attention to the experiences of trafficked men, particularly in the context of forced labor. While forced labor is indeed becoming the most prevalent form of trafficking of both women and men, the report fails to appropriately emphasize the fact that women, according to the International Labor Organization (ILO) are the majority of people subjected to forced labor or trafficked for sexual exploitation.

Exploitative employers prefer to use trafficked women—traditionally seen as submissive, cheap, and pliable—for simple and repetitive tasks in agriculture, food processing, labor-intensive manufacturing and domestic servitude.¹

The Human Rights Update (2010) unfortunately insinuates that men are the larger group trafficked for labor purposes.

In a similar vein, ACWC notes that in 2008 Referral Item 09-11, ACWC requested and the 218th General Assembly (2008) approved the recommendation to “analyze the Social Witness Policy of the PC(USA) Regarding Detention in Relation to Immigration in the United States, *Giving Attention to the Experiences of Women and Children Detained and Affected* and Report Its Findings and Recommendation to the 219th General Assembly (2010) (*Minutes*, 2008, Part I, p. 958). Unfortunately, the Human Rights Update (2010) fails to mention the particular experiences of women and children as the most vulnerable in society.

The ACWC recommends that the report is approved, but with the advice to those who study the report to explore more fully the experiences of women in particular.

Endnote

1. *Trafficking in Persons Report*, U.S. Department of State, 2009, p. 36.