



**JANUARY 2010**

**COUNTRY SUMMARY**

## **United States**

US citizens enjoy a broad range of civil liberties and have recourse to a strong system of independent federal and state courts, but serious human rights concerns remain, particularly in criminal justice, immigration, and counterterrorism law and policy. The Obama administration has said it will address many of these concerns but, at this writing nearly one year into Barack Obama's presidency, it had taken few concrete steps.

Domestically, 2009 saw an increase in executions and continued growth in the US incarcerated population, already the world's largest. Black men and members of other racial and ethnic minorities make up a disproportionate share of that population.

Other longstanding problems include the sentencing of individuals to life imprisonment without parole for crimes committed as children (the US is the only country in the world to do so), the use of corporal punishment in schools, inadequate protections for child laborers and pregnant women, inadequate responses to rape and domestic violence, and violations of the rights of non-citizens.

In a positive development, President Obama signaled his intention to break with the Bush administration's abusive counterterrorism policies. On his second full day in office, Obama issued executive orders to close the CIA's secret prisons, ban torture and other mistreatment, and set a one-year deadline for closing the military prison at Guantanamo Bay. After that promising start, his administration backtracked on counterterrorism, taking a number of disturbing decisions relating to detention policy, trials, and government secrecy.

### **Death Penalty**

As of November 2009 there had been 45 executions in the United States in 2009, up from 37 in all of 2008. In March 2009 New Mexico abolished capital punishment, bringing to 15 the number of US states that do not impose the death penalty.

Between January and November 2009, nine prisoners were exonerated and released from death row, bringing to 139 the number of death-sentenced prisoners released since 1973 due to evidence of their innocence.

Ohio's September 2009 attempt to execute Romell Broom by lethal injection failed after executioners tried unsuccessfully for more than two hours to locate a suitable vein, with Broom reportedly grimacing and crying as executioners stuck him with the execution needle at least 18 times. The botched execution attempt led Ohio's governor to impose a moratorium on executions pending review of the state's lethal injection protocol.

### **Juvenile Life without Parole**

In May 2009 Human Rights Watch revised upward to 2,574 its estimate of the number of US prisoners serving sentences of life without the possibility of parole for crimes committed when they were under age 18. There are no persons known to be serving life without parole sentences for crimes committed as children anywhere else in the world.

At year's end, legislation was pending to end juvenile life without parole in the US Congress and in the legislatures of Alabama, California, Florida, Iowa, Michigan, Missouri, Nebraska, and Pennsylvania. In November the US Supreme Court heard two cases challenging the constitutionality of sentencing juveniles to life without parole for non-homicide crimes.

### **Incarceration**

A March 2009 report by the US Justice Department's Bureau of Justice Statistics found that the incarcerated population had reached an all-time high of nearly 2.4 million. The United States continues to have both the largest incarcerated population and the highest incarceration rate in the world.

In many states prison crowding has led to serious threats to prisoner health and safety. The California prison system, with nearly 160,000 prisoners, is operating at almost double its intended capacity; some facilities have populations approaching 300 percent of their intended capacity. In August 2009 after finding that this crowding results in unconstitutionally deficient medical and mental health care for prisoners, a panel of federal judges ordered the state to devise a plan to reduce its prison population by approximately 40,000 within two years.

The burden of incarceration continues to fall disproportionately on members of racial and ethnic minorities. Black men are incarcerated at 6.6 times the rate of white men, and more than 10 percent of all black men ages 25 to 39 are behind bars on any given day. Human Rights Watch's March 2009 report *Decades of Disparity: Drug Arrests and Race in the United States* found that in every year from 1980 to 2007, blacks were arrested on drug charges at

rates that were 2.8 to 5.5 times higher than white arrest rates, despite the fact that blacks and whites engaged in illegal drug behavior at similar rates.

Incarcerated pregnant women saw increasing, but still insufficient, recognition of their rights. The number of states restricting the shackling of pregnant prisoners grew from three to six, and a federal appeals court ruled that shackling women during labor and childbirth violates the US Constitution. The Federal Bureau of Prisons and the US Marshals Service limited this practice in 2008; US Immigration and Customs Enforcement (ICE) still lacks sufficient restrictions.

Tens of thousands of prisoners in the United States are sexually abused by staff or other prisoners each year because officials have not instituted basic measures to protect them. In 2003 Congress passed the Prison Rape Elimination Act (PREA), which created the National Prison Rape Elimination Commission, charged with studying the causes and consequences of prison rape. In June 2009 the Commission presented its findings and recommended standards for all federal, state, and local confinement facilities, including public and privately run prisons, jails, lockups, juvenile facilities, immigration detention facilities, and community corrections settings. Under PREA, the US attorney general has until June 2010 to adopt national prison rape standards that will immediately be binding on federal facilities; states will have a year to comply with the standards or forfeit a portion of the federal corrections funding they receive.

Despite the large number of prisoners with histories of substance use and addiction, US prisons and jails remain resistant, even hostile, to evidence-based treatment. Human Rights Watch's March 2009 report *Barred from Treatment: Punishment of Drug Users in New York State Prisons* found that evidence-based treatment is available only on a limited basis to the substantial population of New York prisoners whom prison officials have identified as needing treatment. Medication-assisted therapy with methadone or buprenorphine, proven to be the most effective treatment for opioid dependence, is unavailable in most prisons. Prisoners who use drugs—including those who relapse, a common symptom of drug dependence—are penalized with disproportionate severity, facing months, even years, locked down in harsh conditions which often amount to cruel and inhuman punishment.

A number of states impose mandatory HIV testing upon prisoners at entry or upon release, a practice that violates their right to informed consent and can result in discrimination in prison employment, programming, and work release opportunities. In Alabama, South Carolina, and Mississippi, HIV-positive prisoners continue to be segregated from the general population, forcing involuntary disclosure of their HIV status and promoting discrimination.

The Prison Litigation Reform Act (PLRA), enacted by Congress in 1996, creates a variety of obstacles for prisoners seeking to vindicate their rights in court. In its June 2009 report *No Equal Justice: The Prison Litigation Reform Act in the United States*, Human Rights Watch found that the PLRA's restrictions have resulted in dismissal of lawsuits alleging sexual abuse and other significant injuries, and constitute a significant barrier to the protection of prisoners' health and safety.

## **Drug Policy**

While the Obama administration has made efforts to address the health and human rights of people who use drugs and to reduce barriers to treatment, much remains to be done. The administration sent an important signal by announcing that it accepts the scientific evidence behind needle exchanges, but its failure to support the elimination of funding bans on domestic and international needle exchanges, or to support other evidence-based interventions, has impeded progress.

## **Rights of Non-Citizens**

There are some 38 million non-citizens living in the United States, of whom approximately 12 million are undocumented. In 2009 the US government took some preliminary positive steps but largely failed to resolve the myriad human rights problems faced by this population.

In 2009, nearly 100,000 non-citizens, including many lawfully present immigrants, were deported from the United States after serving prison sentences, often for minor nonviolent crimes such as marijuana possession. Under restrictive laws passed in 1996, judges in many such cases are given no discretion to allow the immigrants to remain, regardless of their lawful presence in the country, status as a spouse or parent of a US citizen, economic contributions, service in the US military, or likelihood of persecution after deportation.

Human Rights Watch's April 2009 report *Forced Apart (By the Numbers)* analyzed government data and disproved the popular belief that US deportation policy focuses almost exclusively on undocumented (or illegally present) non-citizens with violent criminal histories. In reality, three-quarters of non-citizens deported from the United States over the last decade had criminal histories limited to nonviolent offenses and one in five had been in the country legally, sometimes for decades. At least one million spouses and children, many of whom are US citizens, were separated from their family members by these deportations.

The United States detains approximately 300,000 non-citizens each year in a network of some 300 facilities. Immigrants are often initially detained close to their attorneys and witnesses, in locations such as New York or Los Angeles, only to be transferred later to detention centers in rural Texas or Louisiana. Between 1999 and 2008, 1.4 million detainee transfers occurred. The transfers interfere with detainees' rights to be represented by counsel, to defend against deportation, to present witnesses and other evidence, and to be free from arbitrary and prolonged detention.

Human Rights Watch's March 2009 report, *Detained and Dismissed: Women's Struggles to Obtain Health Care in United States Immigration Detention*, documented inadequate provision of routine gynecological care, cervical and breast cancer screenings and diagnosis, family planning services, pre- and post-natal care, and services for survivors of sexual and gender-based violence. Many of these problems are traceable to official ICE policy that focuses on emergency care and discourages staff from providing certain core women's health services.

In late 2008 ICE revised its detention standards and included some improvements to the medical care provided to detainees but the revisions fell short of reforms that had been sought. In July 2009 ICE officials refused to make the detention standards enforceable regulations, stating that its revised policies were adequate.

In 2008 Congress repealed legislation barring HIV-positive non-citizens from entry, stay, or residence in the United States. In November 2009 the Department of Health and Human Services announced that the ban would be fully lifted effective January 1, 2010.

## **Women's and Girls' Rights**

In his first year in office President Obama signaled his intent to emphasize women's rights in domestic and foreign policy. He created the White House Council on Women and Girls, a coordinating body composed of cabinet members, and established an ambassadorship-at-large on global women's issues. The president also repealed the Global Gag Rule, which had restricted the abortion-related speech and activities of recipients of US reproductive health aid, loosened problematic restrictions on US funding to fight HIV/AIDS, resumed contributions to the United Nations Population Fund, and championed the creation of a senior UN position to address how armed conflict affects women.

Women's status in the US workforce continues to be limited by pregnancy discrimination. The United States is one of only a handful of countries that have no guarantee of paid family

leave, and pregnancy discrimination claims have risen sharply in recent years. A 2009 Supreme Court decision limited remedies for past discrimination but enactment of the Lilly Ledbetter Fair Pay Act removed some barriers to pay discrimination suits.

Thousands of domestic violence survivors' requests for shelter and critical services go unmet every day in the United States, a situation exacerbated by the economic crisis. Shelters reported an increased need for services in 2009 even as key programs remained underfunded, private donations declined, and state and local budget crises jeopardized existing funding, with some shelters forced to close.

In women's health, African-American women face grossly disproportionate rates of HIV/AIDS infection and death, with the disease the leading cause of death among African-American women ages 25 to 34. The reproductive rights of all women remain under attack, with abortion providers burdened by unnecessary regulations, harassment, and physical violence. Dr. George Tiller, one of few late-term abortion providers in the United States, was murdered in May 2009.

## **Sexual Violence**

In the United States the crime of rape has one of the lowest arrest, prosecution, and conviction rates among serious violent crimes. When reporting a sexual assault a victim is asked to submit to a four- to six-hour physical examination to collect DNA evidence that, if tested, may aid in the criminal investigation. Human Rights Watch's March 2009 report *Testing Justice: The Rape Kit Backlog in Los Angeles City and County* found more than 12,500 untested rape kits in law enforcement storage facilities in Los Angeles County alone. Following release of the report the Los Angeles Police and Sheriff's Departments instituted a policy of testing every booked rape kit, and found the resources to hire new crime lab personnel. News reports of 10,000 untested rape kits in Detroit and 4,000 in Houston underscore the national scope of the problem, but comprehensive rape kit data remain elusive because no state or federal agency tracks this information.

## **Children's Rights**

Hundreds of thousands of children work on US farms yet are exempt from the legal protections granted to all other working children in the United States. The 1938 Fair Labor Standards Act specifically exempts farmworker youth from minimum age and maximum hour requirements, exposing them to work at younger ages, for longer hours, and under more hazardous conditions than children in other jobs. Federal protections that do exist are often not enforced and state child labor laws vary in strength and enforcement. As a result, child

farmworkers, most of whom are Latino, often work 12-and-14-hour days, and risk pesticide poisoning, heat illness, injuries, and life-long disabilities. Many drop out of school; girls are sometimes subject to sexual harassment.

According to the US Department of Education more than 200,000 public school students received corporal punishment at least once during the 2006-2007 school year. Corporal punishment—which typically takes the form of one or more blows to the buttocks with a wooden paddle—is legal in public schools in 20 states; Ohio banned corporal punishment in its public schools in July 2009. An August 2009 Human Rights Watch report, *Impairing Education: Corporal Punishment of Students with Disabilities in US Public Schools*, found that students with mental and physical disabilities are subjected to corporal punishment at disproportionately high rates.

### **Guantanamo, Indefinite Detention, and Military Commissions**

When President Obama took office, there were 242 prisoners at Guantanamo, approximately 50 of whom had been cleared to leave but could not be sent to their home countries due to credible fears of abuse. Although a number of European countries have agreed to accept a small number of detainees for resettlement, the US government's refusal to do so itself has hindered resettlement efforts. At this writing only 20 Guantanamo detainees have been transferred or released since President Obama's inauguration, and the administration now concedes that it is unlikely to meet the January 2010 closure deadline.

Even more worrying than delays in closing Guantanamo is the possibility that the administration will continue to hold prisoners indefinitely without trial. Although the administration appears to have scrapped plans to ask Congress to enact preventive detention legislation, it has continued to rely on the Bush-era wartime rationale as a justification for holding suspected terrorists indefinitely without trial.

The Obama administration sent a positive signal that it would provide fair trials to suspected terrorists when it announced federal indictments against two men formerly held without charge as "enemy combatants." In May, however, President Obama announced that he planned to revive the system of military commissions to try Guantanamo detainees. Working with Congress, the administration signed legislation providing greater protections for suspects tried in such commissions, including banning evidence obtained through coercion and tightening hearsay rules. The commissions, however, remain a substandard system of justice that lacks legitimacy; their continued use will result in needless litigation, delays, and flawed trials.

## **Accounting for Past Abuses**

Although there is overwhelming evidence that senior Bush administration officials approved brutal and illegal interrogation methods, the Obama administration showed little enthusiasm for initiating a thorough investigation of these abuses. In an important step, Attorney General Eric Holder appointed a federal prosecutor to review post-9/11 interrogation practices. By all indications, however, the investigation was narrowly circumscribed and unlikely to examine the responsibility of senior officials who set the policies and authorized abuses.

## **Secrecy**

The Obama administration has invoked an overly broad understanding of the “state secrets” privilege, arguing that litigation related to the US secret detention and rendition program, as well as lawsuits filed by victims of torture and illegal surveillance, should be dismissed because they might divulge classified information. While it released several important Bush-era interrogation-related memoranda, the administration backtracked on a commitment to release photographs depicting detainee abuse, claiming that doing so could jeopardize US troops abroad.

## **Renditions**

The Obama administration has said that it will continue to rely on “diplomatic assurances”—non-binding promises from the receiving country that detainees will be treated humanely—in carrying out prisoner transfers. Human Rights Watch research has found that such assurances against torture are unreliable and has urged the administration to reconsider this position.

## **Key International Actors**

In his May 2009 report the UN special rapporteur on extrajudicial, summary, or arbitrary executions called on the United States to improve due process protections in its application of the death penalty, finding that the current system’s flaws increase the likelihood that innocent persons will be executed. The UN special rapporteur on contemporary forms of racism, racial discrimination, xenophobia, and related intolerance called in his April 2009 report for the establishment of a commission to evaluate progress and failures, and recommend action, in the fight against racism and what he called “the ongoing process of resegregation” in housing and education.

In November, a Milan court found 23 Americans, including 22 alleged CIA operatives, guilty of kidnapping an Egyptian cleric in 2003. A landmark judgment, it was the first time that a court had assessed the legality of the CIA's rendition program. In Spain, a criminal case was filed in March against six lawyers believed responsible for formulating the legal justifications for Bush-era abuses.