



JANUARY 2009

COUNTRY SUMMARY

## United States

US criminal justice policy continues to raise serious human rights concerns. 2008 saw the resumption of executions after a seven-month hiatus and continued growth of the US prison population, already the world's largest. Also in 2008, Human Rights Watch confirmed that there are more than 2,500 US prisoners serving sentences of life without possibility of parole for crimes committed when they were under 18; no other country imposes this penalty on juvenile offenders.

In positive developments, the US Supreme Court struck down a law that barred Guantanamo detainees from challenging the legality of their detention, and the Department of Justice brought its first prosecution under a 1994 law allowing courts to try torture committed abroad by US citizens or anyone present in the United States.

### Death Penalty

From September 2007 until May 2008 there were no executions in the United States while the Supreme Court considered whether lethal injection—the method used by all US death penalty jurisdictions—constitutes cruel and unusual punishment. In April 2008 the Court ruled in *Baze v. Rees* that it does not, and executions quickly resumed. Between May and October 2008 there were 30 executions, half of which were in Texas.

Nevertheless, courts and legislatures continue to narrow the scope of capital punishment. In December 2007 New Jersey abolished the death penalty, becoming the first state in more than 40 years to do so. In June 2008 in *Kennedy v. Louisiana* the US Supreme Court ruled that the death penalty may not be imposed for any crime against another person that does not result in death. US courts pronounced 110 new death sentences in 2007, the lowest number since capital punishment was reinstated in 1976.

Between January and October 2008, four prisoners were exonerated and released from death row, bringing to 130 the number of death-sentenced prisoners released since 1973 due to evidence of their innocence.

2008 saw a step backward for non-citizens sentenced to death without being allowed to contact their consular officials as required by the Vienna Convention on Consular Relations. On August 5, Texas executed Mexican national José Medellín despite an International Court of Justice (ICJ) decision directing the United States to reexamine such cases, and a directive from President George W. Bush that state courts comply with the ICJ ruling.

### **Juvenile Life without Parole**

In 2008 Human Rights Watch revised upward to 2,502 our estimate of the number of persons in the United States sentenced to life without the possibility of parole for crimes committed when they were under age 18. We also verified that there are no juvenile offenders serving this sentence anywhere else in the world.

Efforts to end juvenile life without parole in the United States continue with reform legislation pending in Congress and in state legislatures in California, Florida, Louisiana, Michigan, and Nebraska. In 2008 the United Nations Committee on the Elimination of Racial Discrimination recommended that the United States, “in light of the disproportionate imposition” of the sentence on racial minorities, discontinue its use for crimes committed by individuals under 18 and review the status of people already serving such sentences.

### **Incarceration**

A June 2008 report by the US Justice Department’s Bureau of Justice Statistics found that the incarcerated population had reached an all-time high of 2.3 million, or 762 per 100,000 residents. The United States continues to have both the largest incarcerated population and the highest per capita incarceration rate in the world.

The burden of incarceration falls disproportionately on members of racial and ethnic minorities. Black men are incarcerated at six times the rate of white men, and 10.7

percent of *all* black males age 30 to 34 are behind bars on any given day. A 2008 Human Rights Watch report, “Targeting Blacks,” found that racial disparities are even worse for drug offenders, with a black man almost 12 times more likely than a white man to enter prison with a new drug conviction, despite similar rates of drug use among blacks and whites.

In March 2008 the United Nations Committee on the Elimination of Racial Discrimination expressed “concern with regard to the persistent racial disparities in the criminal justice system ... including the disproportionate number of persons belonging to racial, ethnic and national minorities in the prison population,” and urged the United States to “take all necessary steps to guarantee the right of everyone to equal treatment before tribunals and all other organs administering justice.”

One out of five state prisoners in the United States is incarcerated for a drug-related offense. Many prisoners, particularly those convicted of drug possession or property crimes, have histories of substance use and addiction. The prevalence of diseases related to injection drug use such as HIV/AIDS and hepatitis C is significantly greater among prisoners than in the general population. Yet US prisons and jails remain resistant, even hostile, to evidence-based practices such as condom distribution or methadone therapy, which have proven to reduce transmission of HIV, hepatitis C, and sexually transmitted diseases and to treat drug addiction.

The Prison Litigation Reform Act (PLRA) of 1996 creates a variety of obstacles for prisoners seeking to vindicate their rights in court. These restrictions—which apply only to prisoners—have resulted in dismissal of lawsuits alleging sexual abuse and other significant injuries. In November 2007 a bill was introduced in the House of Representatives to amend or repeal some provisions of the PLRA.

### **Corporal Punishment in Public Schools**

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 on the buttocks with a wooden paddle—is legal in public schools in 21 states. A 2008

Human Rights Watch report, “A Violent Education,” focuses on corporal punishment in Texas and Mississippi, two of the states where it is most prevalent. The report found that corporal punishment can result in serious injury and is used disproportionately against black students and special education students.

## **Women’s Rights**

Struggles to achieve pay equity for women continued in 2008, with members of Congress working to overturn a 2007 Supreme Court decision that narrowly construed the statute of limitations for pay discrimination lawsuits against employers. Despite widespread mobilization by women’s rights groups, the Lilly Ledbetter Fair Pay Act died in the Senate after passing the House of Representatives. Nonetheless, the gender pay gap narrowed to its smallest size in history, with women earning 78 cents for every dollar earned by men.

US international aid remains laden with restrictions that undermine the sexual and reproductive rights of women. Congress in 2008 reauthorized the President's Emergency Plan for AIDS Relief for another five years, but continued to direct funding toward abstinence-only programs and retained the requirement that organizations pledge their opposition to sex work before receiving US funds. Similarly, the “global gag rule” continues to prohibit foreign organizations receiving US funding from providing abortions, counseling women about abortion, or engaging in advocacy for abortion rights, even if no US funds would be used in those efforts.

## **Sexual Violence**

In the United States, the crime of rape has one of the lowest arrest, prosecution, and conviction rates among serious violent crimes. In 2008 Human Rights Watch began an investigation into the failure of law enforcement authorities to preserve and test evidence in rape cases. When reporting a sexually violent crime, a victim is asked to submit to a four- to six-hour exam to collect DNA evidence that, if tested, may aid in the criminal investigation. But the Justice Department estimates that up to 500,000 of these rape kits sit untested in crime labs and police storage facilities across the United States. In Los Angeles alone there are over 7,300 untested rape kits, with the backlog growing by about 30 a month.

## **Discrimination Based on Sexual Orientation and Gender Identity**

US law continues to offer no national protections against discrimination based on sexual orientation or gender identity, in employment or other areas of life. The Defense of Marriage Act, which prohibits the federal government from recognizing the relationships formed by same-sex couples, remains in force. In 2008 the California and Connecticut supreme courts ruled in favor of equal access to marriage for same-sex couples in those states, but a statewide referendum in November overturned the California ruling. The Uniting American Families Act, which would allow same-sex relationships between a US citizen and a foreign national to be recognized for immigration purposes, did not advance in Congress.

## **Rights of Non-Citizens**

There are some 38 million non-citizens living in the United States, of whom nearly 12 million are undocumented. In 2008 this population faced human rights problems largely similar to those in previous years.

As documented in our 2007 report, “Forced Apart,” legal immigrants who have lived in the United States for decades, including lawful permanent residents, are summarily deported under laws passed in 1996 if they have been convicted of a crime, even a non-violent offense such as shoplifting or low-level drug possession. During the deportation proceedings, judges are not permitted to balance the seriousness of a non-citizen’s crime against his lawful presence in the US, family relationships (including with a US citizen spouse and minor children), business ownership, tax payments, service in the US military, or likelihood of persecution after deportation. In 2006, the most recent year for which data are available, the number of non-citizens deported increased yet again, to 95,752 from 90,426 in 2005, bringing the total number of persons deported under these laws to 768,345.

In 2008 US Immigration and Customs Enforcement continued a pattern begun in 2007 of large-scale workplace raids in search of undocumented workers. In August 2008, in the largest such raid in US history; nearly 600 non-citizens were arrested in Laurel, Mississippi.

Similarly, in May 2008 immigration agents rounded up 389 undocumented workers at a meatpacking plant in Postville, Iowa. After the raids, Iowa's attorney general filed more than 9,300 criminal misdemeanor charges against the plant's owners and managers for labor law violations including child labor and long shifts without overtime pay. Prosecutors, however, also threatened to charge workers—some of whom had used false IDs to obtain work—with aggravated identity theft, a charge that carries severe penalties and is aimed at persons committing theft by fraud rather than undocumented immigrants seeking jobs.

The United States detains approximately 300,000 non-citizens each year at an annual cost of US\$1.8 billion, according to Immigration and Customs Enforcement (ICE). Non-citizens are held in some 300 detention facilities: about two dozen are directly under the control of ICE, although some are operated by private companies, and the remainder are state and local prisons and jails that contract with ICE to provide bed space for ICE detainees.

The large number of detained non-citizens in the United States raises multiple human rights concerns. In a December 2007 report, "Chronic Indifference," we found that ICE fails to monitor adequately the medical care of detainees with HIV, and does not comply with international or national guidelines for appropriate HIV treatment. Research by Human Rights Watch into medical care for women in immigration detention facilities similarly found 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.

A series of articles published in the *Washington Post* in May 2008 revealed that 30 non-citizens died in detention between 2003 and 2008 as a result of actions taken or not taken by medical staff.

In a positive step, Congress repealed the 15-year-old law barring HIV-positive non-citizens from entering the United States. Although President Bush has signed the bill, at this writing the administration had not yet passed regulations to fully implement repeal of the travel ban.

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

Although President Bush said he would like to see the detention facility at Guantanamo Bay closed, 255 men remained there at this writing, and no steps to close the facility were expected before the end of the administration. The vast majority of these detainees have been held for nearly seven years without charge. More than half are held in high-security facilities where they spend 22 hours a day in small cells with no natural light or fresh air and few diversions.

In June 2008 the Supreme Court in *Boumediene v. Bush* struck down a law that denied Guantanamo detainees the right to bring federal habeas corpus challenges to the legality of their detention. Nearly all of the detainees filed habeas petitions, but these cases have been delayed by a host of procedural and legal questions such as whether hearings can be conducted in secret.

More than two dozen detainees who were cleared for release cannot be returned to their home countries due to the likelihood that they would face torture upon return. In October 2008 a federal court ruled that the United States must release 17 Chinese Uighurs detained at Guantanamo into the United States. The US government had acknowledged that the men posed no threat but could not be returned to China because they face persecution there. A federal appeals court issued a stay of that order, and the fate of these men remained undecided at this writing.

The United States has continued to repatriate other Guantanamo detainees without meaningful or independent assessment of the risk of torture or abuse they faced upon return. While some detainees obtained court orders requiring advance notice of any transfer, many detainees do not have such orders in place. The United States has claimed that “diplomatic assurances”—promises of humane treatment—from the receiving governments are sufficient protection against abuse, despite compelling evidence to the contrary.

The US government continues to detain Qatari citizen Ali Saheh Kahlah al-Marri in the United States as an “enemy combatant” without charge or trial. Al-Marri was first declared an enemy combatant in 2003, just weeks before his scheduled trial for financial fraud and giving false statements. In 2007 a federal appeals court panel

ruled that al-Marri's detention was unlawful, but the full court overturned the decision. Al-Marri has appealed that ruling to the US Supreme Court.

Meanwhile, the administration continues to prosecute Guantanamo detainees before military commissions that lack fundamental due process guarantees. In May 2008 the US government filed military commission charges seeking the death penalty against Khalid Sheikh Mohammed and four other detainees accused of responsibility for the September 11 attacks. All five were held in secret CIA prisons before they were brought to Guantanamo, and were reportedly subject to years of torture and other abuse. No trial date has been set. The United States is also pursuing cases against 15 other detainees, including Omar Khadr and Mohammed Jawad, who were juveniles when they were first brought to Guantanamo nearly seven years ago.

Only three detainees had been convicted by military commissions at this writing. Australian David Hicks was convicted by plea agreement in March 2007 and is now free in Australia. The first military commission trial took place in July 2008 against Salim Ahmed Hamdan, Osama bin Laden's former driver. Hamdan was acquitted of conspiracy and convicted of providing material support to terrorism, and sentenced to five-and-a-half years with credit for five years' time served. As it has said with respect to all Guantanamo detainees, the Bush administration contends that Hamdan can be detained even after his sentence is completed. In November 2008 Ali Hamza al Bahlul was convicted on terrorism charges and sentenced to life in prison.

## **Torture Policy**

Over the past three years Congress and the courts have repudiated the Bush administration's reliance on torture as an interrogation technique. In September 2006 the Pentagon announced new rules applicable to all US military interrogations and disavowed abusive techniques, such as waterboarding, forced nudity, and induced hypothermia. In February 2008 Congress passed legislation mandating that the CIA adhere to these same rules, but it was vetoed by President Bush.

## **Secret CIA Prisons**

In April 2008 the Department of Defense announced the transfer to Guantanamo of a detainee previously held in CIA custody, indicating that the CIA's secret prisons were still operational as of that time. Two to three dozen former CIA detainees remain "disappeared," their whereabouts unknown. Many of them are believed to have been unlawfully rendered to countries such as Syria, Libya, Pakistan, and Algeria.

## **Denial of Refugee Protection**

US law allows authorities to deny refugee protection to persons believed to have associated with or provided "material support" to certain armed groups. The broad terms of the law have led authorities to bar persons who qualify as refugees under international law, including rape victims forced into domestic servitude by rebel groups. In January 2008 Congress passed legislation that gave the administration the power to waive these bars in deserving cases, but the exercise of this discretion has been painstakingly slow.

## **Domestic Prosecution of Torture Abroad**

In a positive development, the Department of Justice brought its first case under a 1994 law allowing courts to try torture committed abroad by US citizens or anyone present in the US. A Miami jury in October 2008 convicted Charles "Chuckie" Taylor, Jr., the son of the former Liberian president and a US citizen, on several counts of torture for crimes committed by the elite military unit he headed in Liberia from 1997 to 2003.

## **Key International Actors**

At the conclusion of his June 2008 visit, the UN special rapporteur on extrajudicial, summary or arbitrary executions called on the United States to improve its military justice system and to ensure that the death penalty is applied fairly and without racial discrimination. The special rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance expressed concern about residential racial segregation and the poor state of public education after his visit in mid-2008.

Although the European Union has called on the United States to close the Guantanamo detention facility, it has not publicly criticized the military commissions or made concrete proposals regarding trial or release of Guantanamo detainees. By contrast, the EU and member states have intervened and attempted to halt executions in a number of US death penalty cases.