

## United States

The United States has a vibrant civil society and media that enjoy strong constitutional protections. Yet its rights record is marred by abuses related to criminal justice, immigration, national security, and drug policy. Within these areas, victims are often the most vulnerable members of society: racial and ethnic minorities, immigrants, children, the elderly, the poor, and prisoners.

Revelations in 2013 of extensive government surveillance and aggressive prosecutions of whistleblowers raised concerns about infringement of privacy rights and freedom of expression, generating a firestorm of international protest against US practices.

Federal policymakers proposed reforms to harmful longstanding immigration and sentencing laws and policies. The outcome of these initiatives was uncertain at time of writing.

A renewed commitment by President Barack Obama to close the Guantanamo Bay detention facility remained unfulfilled. Lack of transparency made it impossible to assess the implementation of promised reforms to the practice of “targeted killings” abroad, including through use of unmanned aerial drones; new information on individual strikes found instances of violations of international humanitarian and human rights law.

### Harsh Sentencing

The US has the largest reported incarcerated population in the world, and by far the highest rate of imprisonment, holding 2.2 million people in adult prisons or jails as of year-end 2011.

Mass incarceration reflects three decades of harsh state and federal sentencing regimes, including increased use of life and life without parole sentences, high mandatory minimum sentences, and “three strikes” laws. The Sentencing Project reported that one in nine US prisoners are serving a life sentence.

The growing number of elderly prisoners poses a serious challenge to correctional authorities: as of 2011, the latest year for which complete numbers are available, 26,136 persons aged 65 and older were incarcerated in state and federal prisons, up 62 percent in five years.

In a positive step, the US Department of Justice in August announced revisions to its rules for reviewing requests for compassionate release of elderly or disabled prisoners, making more federal inmates eligible for this rarely used mechanism.

Also in August, US Attorney General Eric Holder instructed federal prosecutors to try to avoid charges carrying mandatory minimum sentences for certain low-level, nonviolent drug offenders. Though welcome, this policy change still leaves many drug offenders subject to disproportionately long mandatory sentences. Legislative efforts to grant judges more discretion in such cases are under debate.

In 2013, Maryland joined 17 other states and the District of Columbia in abolishing the death penalty, but 32 states still allow it. At time of writing, 34 people had been executed in the US in 2013. North Carolina repealed its 2009 Racial Justice Act, which allowed death row prisoners to appeal their sentences on the basis of racial discrimination.

## **Racial Disparities in Criminal Justice**

Whites, African Americans, and Latinos have comparable rates of drug use but are arrested, prosecuted, and incarcerated for drug offenses at vastly different rates. For example, African Americans are nearly four times more likely to be arrested for marijuana possession than whites, even though their rates of marijuana use are roughly equivalent. While only 13 percent of the US population, African Americans represent 41 percent of state prisoners, and 44 percent of federal prisoners serving time for drug offenses.

Because they are disproportionately likely to have criminal records, members of racial and ethnic minorities are more likely than whites to experience stigma and legal discrimination in employment, housing, education, public benefits, jury service, and the right to vote.

In August, a federal court found that the “stop and frisk” policy of the New York City Police Department (NYPD) violated the rights of minorities. A disproportionate share of people “stopped and frisked” under the policy are African American or Latino, and the New York Civil Liberties Union reports that 89 percent of those stopped are innocent of any wrongdoing. The NYPD appealed the ruling.

## **Drug Policy Reform**

In recent decades the US has spent hundreds of billions of dollars to arrest and incarcerate drug offenders in the US. Its heavy reliance on criminal laws for drug control has had serious human rights costs, including infringement of the autonomy and privacy rights of those who simply possess or use drugs.

In a welcome shift, the US Department of Justice announced in August that it would not interfere with states’ legalization of marijuana so long as states comply with certain federal priorities, such as prohibiting sale of drugs to children or transport of drugs across state lines. It also noted that a robust state regulatory approach to marijuana may prevent organized crime from benefiting from the illicit marijuana trade.

Washington and Colorado moved forward with implementation of state ballot initiatives to legalize the recreational use of marijuana, as well as to regulate its production, sale, and distribution. Twenty other US states have legalized marijuana for medical purposes.

## **Prison Conditions**

September 2013 marked the 10-year anniversary of the passage of the Prison Rape Elimination Act (PREA), which resulted in the development of national standards to detect, prevent, and punish prison rape. Implementation remains a challenge: approximately 4 percent of state and federal prison inmates and 3 percent of jail inmates report having experienced one or more incidents of sexual abuse in 2011-2012, and many incidents continue to go unreported. Transgender prisoners continue to experience high levels of violence in detention.

Many prisoners and jail inmates—including youth under age 18—are held in solitary confinement, often for weeks or months on end. In July, an estimated 30,000 inmates in

California's prison system engaged in a hunger strike to protest conditions, including the use of solitary confinement. Prolonged solitary confinement is considered ill-treatment under international law and can amount to torture.

## **Poverty and Criminal Justice**

Poor defendants across the country languish in pretrial detention because they are too poor to post bail. The most recent data indicates 60 percent of jail inmates—at a cost of \$9 billion a year—are confined pending trial, often because they lack the financial resources to secure their release. In 2013, the chief judge of New York supported legislative reforms that would begin to reduce the pretrial incarceration of indigent defendants.

Extremely high court fees and surcharges are also increasingly common, as cash-strapped counties and municipalities often expect their courts to pay for themselves or even tap them as sources of public revenue. The impact on poor defendants is particularly harsh.

Practices that exacerbate and even punish economic hardship are increasingly common. In Arkansas, tenants who fall behind on their rent face criminal prosecution. In states across the US, courts put hundreds of thousands of misdemeanor offenders on probation with private, for-profit companies that charge local authorities nothing for their services but collect tens of millions of dollars in fees each year from the offenders they supervise.

In August, a decade after a group of inmates' families filed a petition challenging the exorbitant rates charged for interstate jail and prison phone calls, the Federal Communications Commission (FCC) voted to cap the cost of the calls.

In cities throughout the US, homeless people are targeted and arrested under laws that prohibit loitering, sitting, and occupying public space.

## **Youth in the Criminal Justice System**

In nearly all US jurisdictions, substantial numbers of youth offenders are tried in adult court and sentenced to serve time in adult jails and prisons.

The widespread practice of sentencing youth offenders to life without the possibility of parole is changing as states grapple with how to comply with recent US Supreme Court decisions. Separate decisions have held that the sentence cannot ever be mandatory for youth offenders, nor can it be imposed on youth offenders convicted of non-homicide crimes. The Supreme Court has not yet abolished application of the sentence to juveniles, however, and youth offenders continue to receive life without parole sentences for homicide crimes. In 2012, Human Rights Watch reported that of 500 youth offenders serving life without parole, nearly every one reported physical violence or sexual abuse by inmates or corrections officers.

Youth are also sentenced to other extreme prison terms that are the functional equivalent of life without parole because the sentence exceeds an average lifespan. In September 2013, California passed a law creating a review process for youth sentenced to adult prison terms, requiring the parole board to provide a meaningful opportunity for release based on the diminished culpability of youth as compared to adults. In many cases this will mean earlier release.

Federal law requires jurisdictions to register juveniles convicted of certain sexual offenses on a national, publicly accessible online registry. Registration impacts youth offenders' access to education, housing, and employment.

## **The Rights of Noncitizens**

There are approximately 25 million noncitizens in the US, nearly 12 million of whom are in the country without authorization.

The vast network of immigration detention centers in the US now holds about 400,000 noncitizens each year. At any given time, hundreds of detainees are held in solitary confinement. In September, US Immigration and Customs Enforcement (ICE) announced it would limit but not ban the use of solitary confinement.

The criminal prosecution of immigration offenses, which historically had been largely dealt with through deportation and other non-criminal sanctions, continues to increase. In 2012, immigration cases constituted 41 percent of all federal criminal cases; illegal reentry is

now the most prosecuted federal crime. Many of those prosecuted have minor or no criminal history and have substantial ties to the US such as US citizen family members they were seeking to rejoin when arrested.

In 2013, after years of inaction, the US Congress began debating a major overhaul of the US immigration system. In June, the Senate passed a bill that would create a path to citizenship for millions of unauthorized immigrants and allow for greater consideration of the right to family unity in some deportation decisions. If enacted into law, the bill would better align immigration enforcement and detention practices with human rights requirements, including eliminating a one-year filing deadline for asylum applicants, though it would continue to mandate the automatic deportation of noncitizens with criminal convictions, even for minor offenses. The bill calls for an additional \$47 billion to be spent on enforcement efforts along the US-Mexico border, including a major increase in federal prosecutions of immigration offenses and substantial increases in penalties for illegal entry and reentry.

At time of writing, the House of Representatives had not made any serious progress on comprehensive immigration reform.

“Secure Communities” and other federal programs involving local law enforcement agencies continued to play an important role in deportations. The federal government has portrayed these programs as focused on dangerous criminals, but most immigrants deported through Secure Communities are non-criminal or lower level offenders. These programs also exacerbate distrust of police in immigrant communities.

Connecticut and California, along with the cities of Newark and New Orleans, have joined a growing number of states and localities that have placed limits on local law enforcement participation in Secure Communities, largely by declining to hold people without charge for federal immigration authorities if they have no or minor criminal history.

## **Labor Rights**

Hundreds of thousands of children work on American farms. The 1938 Fair Labor Standards Act exempts child farmworkers from the minimum age and maximum hour requirements

that apply to other working children. As a result, child farmworkers often work 10 or more hours a day and risk pesticide exposure, nicotine poisoning, heat illness, injuries, life-long disabilities, and death. Seventy-five percent of children under 16 who died from work-related injuries in 2012 worked in agriculture. Federal protections that do exist are often not enforced.

Congress has still not closed a legal loophole allowing children to do hazardous work in agriculture starting at age 16; hazardous work is prohibited in all other jobs until age 18.

Millions of US workers, including parents of infants, are harmed by weak or non-existent laws on paid leave, breastfeeding accommodation, and discrimination against workers with family responsibilities. Inadequate leave contributes to delaying babies' immunizations, postpartum depression, and other health problems, and causes mothers to stop breastfeeding early. In 2013, several federal bills were introduced to improve national work-family policies; Rhode Island joined California and New Jersey in establishing state paid family leave insurance; and several cities adopted paid sick day laws.

In September, the Obama administration issued a regulation ending the exclusion of certain homecare workers from minimum wage and hour protections. These workers, most of whom are women, including many immigrants and minorities, provide essential services to people with disabilities and the elderly.

## **Health Policy**

Sixteen states have refused to expand Medicaid services under the Affordable Care Act, impeding the right to health for the poor, African Americans, and other groups with limited access to medical care.

HIV infections in the US continue to disproportionately affect minority communities, men who have sex with men, and transgender women. Many states continue to undermine human rights and public health through restrictions on sex education, inadequate legal protections for HIV-positive persons, resistance to harm-reduction programs such as syringe exchanges, and failure to fund HIV prevention and care. Harmful criminal justice

measures include laws that target people living with HIV for enhanced penalties and police use of condom possession as evidence of prostitution.

## **The Rights of Women and Girls**

In February, Congress renewed the Violence Against Women Act (VAWA), the primary federal law providing legal protection and services to victims of domestic and sexual violence and stalking. The new law includes enhanced protections for immigrant victims; lesbian, gay, bisexual, and transgender (LGBT) victims; and victims on tribal lands.

In January, a Human Rights Watch report detailed the inadequacy of police response to sexual assaults in the District of Columbia, leading to reforms in that police department's approach to these cases.

Emergency contraception became available without a doctor's prescription to customers of all ages in 2013. According to the Guttmacher Institute, states adopted 43 restrictions on access to abortion in the first half of 2013. These restrictions took a variety of forms, including requiring that abortion providers have admitting privileges at local hospitals, that patients undergo pre-abortion ultrasounds, and banning abortion after a specified number of weeks since the woman's last menstrual period.

In January 2013, the Department of Defense lifted a longstanding ban on women serving in direct combat roles.

Military women and men continue to face high levels of sexual violence. The government estimates that 26,000 sexual assaults took place in the military in 2012, and Defense Department data suggests that 62 percent of those who report such assaults experience retaliation.

## **Sexual Orientation and Gender Identity**

In June, the US Supreme Court invalidated two of the most egregious anti-LGBT initiatives in the country. In *United States v. Windsor*, the court struck down section 3 of the 1996 Defense of Marriage Act (DOMA), which prohibited federal recognition of state-approved same-sex marriages. In *Hollingsworth v. Perry*, the court dismissed an appeal by

proponents of Proposition 8, a 2008 California state referendum that would have revoked the right of same-sex couples to marry. The court has not yet ruled on the constitutionality of state laws that prohibit same-sex marriage.

## **Counterterrorism and Surveillance**

The indefinite detention without charge or trial of detainees at Guantanamo Bay entered its twelfth year, with 162 detainees remaining at the facility. Eighty-two of them have been cleared for transfer to home or third countries by an inter-agency task force since 2009. Though President Barack Obama renewed his pledge to close the prison at Guantanamo in May, at time of writing his administration had only transferred eight detainees from the facility since 2011. Two of them were repatriated to Algeria in August, and two more were repatriated to Algeria in December.

Early in 2013, several detainees at Guantanamo began a hunger strike; at its peak, 106 reportedly participated in some fashion, with 45 being tube-fed twice a day. Medical and human rights groups wrote letters of protest noting that force-feeding of competent prisoners was a violation of medical ethics and human rights norms.

The administration continued to use fundamentally flawed military commissions at Guantanamo to prosecute detainees. Pre-trial hearings moved slowly in the only two active commission cases: one against five men accused of plotting the September 11, 2001, attacks and another against a man accused of plotting the bombing of the USS Cole in Yemen in October 2000. The commission's inability to establish rules protecting attorney-client access and communications, among other things, hampered progression of the cases. The prosecution has announced it intends to bring charges against only seven other Guantanamo detainees.

Long after the process was set to begin, the administration began reviewing the cases of Guantanamo detainees not slated for release or facing active charges, an important step towards closing the facility. But guidelines for the reviews fail to safeguard detainees' basic rights—including access to classified information where such information provides the basis for their detention, the right to be present throughout proceedings, and meaningful access to counsel.

In late 2012, the Senate Select Committee on Intelligence completed a comprehensive study of the CIA's post-September 11, 2001 secret detention and interrogation program, which ended in 2009. At time of writing, the report remained classified.

In May, President Obama announced a policy for targeted killings abroad requiring that the target be a continuing, imminent threat to US persons and that there should be near certainty that no civilians would be harmed in the strike. President Obama said the US government preference is to detain rather than kill. The full policy remains classified and no information on compliance has been provided. The administration has also not provided the full legal basis for its targeted killings under US and international law.

In August, Secretary of State John Kerry stated that drone strikes in Pakistan would end "very soon," though he provided no exact timeline.

Classified documents leaked to journalists by former National Security Agency (NSA) contractor Edward Snowden showed that the US has secretly used surveillance powers, granted by Congress to prevent terror attacks, to systematically capture huge streams of data, including emails, Internet searches, phone call information, and other records, from companies and communications nodes located both in the US and abroad, sometimes with the assistance of foreign governments. Most of what it intercepts comes from people not suspected of any wrongdoing, and the government retains substantial amounts of data for various periods of time. Judicial and congressional oversight of the surveillance is minimal and secretive.

People in the US have some legal protection of their privacy interest in the contents of their communications, but not in the "metadata" or details of communications usually shared with companies or other third parties (such as date, time, location, sender, and recipient). US officials assert that collection of communications does not invade privacy until the data is examined, or "queried." US law on surveillance offers little or no privacy protections for non-Americans outside the United States.

Disclosures in 2013 revealed that US officials may also be systematically undermining international encryption standards and security practices adopted by Internet companies, weakening the online security of all Internet users.

Prosecutors filed charges against Snowden under the Espionage Act. US law does not provide adequate legal protections or defenses for whistleblowers who disclose national security or intelligence information to the public, even on matters of pressing public importance. The Obama administration tried to block attempts by Snowden to obtain asylum in various countries. Snowden ultimately obtained temporary asylum in Russia.

In August, a US court martial sentenced Pfc. Chelsea (previously Bradley) Manning to 35 years in prison on Espionage Act and other charges for leaking hundreds of thousands of secret government records to Wikileaks for publication, including some that showed evidence of wrongdoing or possible war crimes. Before the trial, Manning had already pled guilty to charges amounting to 20 years' imprisonment.

## **US Foreign Policy**

In January, US lawmakers discussed whether to send military assistance to Syrian opposition forces in that country's civil war. In February, the administration said that it would begin sending non-lethal aid, including food and medical supplies, to the opposition. In September, the US appeared ready to conduct strikes against Syria in response to the Syrian government's use of chemical weapons near Damascus that killed more than 300 people. Obama had previously indicated that use of chemical weapons in Syria constituted a "red line" that would prompt US action in the conflict.

Obama sought congressional authorization for US military engagement in Syria, but a United Nations Security Council-supported agreement to place Syria's chemical weapons under international control indefinitely delayed a congressional vote

Burma became an important part of Obama's "pivot" toward Asia, with Burma seeking to lessen its reliance on China. The US promoted greater political reform in the country and encouraged US investment in Burma, subject to human rights reporting requirements that went into effect in May. In September, the US restricted military assistance to Burma in light of child soldiers concerns.

Following the July overthrow of President Mohammed Morsi in Egypt, the US condemned the interim military government for declaring a state of emergency and for violations

against civilians, including Muslim Brotherhood supporters. In October 2013, the US suspended some military and economic assistance but did so because the interim government was failing to move the country toward democracy, not because of the ongoing abuses or lack of accountability.

The US continued to play a pivotal role in mobilizing the UN Human Rights Council to respond to egregious human rights violations, including in Sri Lanka, Iran, and North Korea.