



The Center for Human Rights and Global Justice
Submission to the Office of the High Commissioner for Human Rights
Universal Periodic Review of the United States of America
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The Center for Human Rights and Global Justice (CHRGJ) at New York University School of Law submits this report to the Office of the High Commissioner for Human Rights for consideration in its summary of stakeholder submissions for the United States of America's appearance before the ninth Universal Periodic Review session. This submission summarizes CHRGJ's key concerns regarding the United States' compliance with its international human rights obligations, namely: violations of the rights to food and water in other countries through U.S. policies in international financial institutions and bilateral development assistance; gendered abuses in counter-terrorism actions; racial profiling as part of counter-terrorism policy; and the U.S. policy of rendition and lack of accountability for secret detention.

I. Violations of the rights to food and water in other countries through U.S. policies in international financial institutions and bilateral development assistance

1. In several instances documented by CHRGJ, U.S. engagement in international financial institutions and in development assistance to other countries has negatively affected the rights to water and food. As a party to the International Covenant on Civil and Political Rights (ICCPR), the United States has obligations with regard to the right to life, including rights necessary for survival, such as food and water. The United States has also signed the International Covenant on Economic, Social and Cultural Rights (ICESCR) and thus must refrain from acting in a manner that would frustrate the object and purpose of the treaty. At a bare minimum, as a State involved in assistance to other countries, the United States has a duty to respect human rights, that is, to do no harm.
2. CHRGJ has investigated and reported on the negative effects of U.S. action on **the human right to water** in the specific context of Haiti. In July 1998, the Inter-American Development Bank (IDB) approved \$54 million in loans for, *inter alia*, water and sanitation improvements in a number of cities, including Port-de-Paix. The impact on social and economic rights was expected to be overwhelmingly positive, alleviating dangerous water-related illnesses, improving quality of life, and significantly reducing poverty. Despite the enormous potential human rights benefits, the United States blocked the scheduled disbursement in 2001 to put political pressure on the Haitian government.
3. As a result, in 2007, almost ten years after the IDB loans were first approved, the water projects had yet to be implemented. The vast majority of people in Port-de-Paix continued to suffer violations of every dimension of the human right to water: 14 out of 19 water sources tested were contaminated with coliform bacteria; and 86.7 percent of people said at times they could not afford to buy water.
4. The United States' blocking of the loans represents a violation of its obligations to respect human rights. The United States actively impeded the Haitian State's ability to fulfill the Haitian people's human right to water. Such blatant frustration of the object and purpose of

human rights treaties to which the United States is a signatory or State Party is a violation of international law.

5. In addition, U.S. food aid policies have resulted in negative effects on **the right to food** in countries like Haiti. The United States procures virtually all food aid domestically, rather than locally or regionally. This harms local traders and farmers by flooding markets with artificially cheap goods. It also means U.S. food aid may be culturally unacceptable: in a survey done in Haiti in 2009, 62 percent of food aid recipients reported they did not know how to prepare the food because it was unfamiliar. U.S. food aid may also spoil during transport and storage: in the same survey, 10 percent of recipients reported receiving spoiled or rotten food aid. Similarly, U.S. monetization of food aid—which requires NGOs or governments to sell U.S. food aid in the country to generate funds for development programs—seriously harms the right to food, undermining small farmers and traders.
6. CHRGG recommends the United States:
 - Ratify the ICESCR;
 - Adopt a human rights-based approach to international assistance, fulfilling goals of participation, transparency, accountability, capacity-building, and non-discrimination; *and*
 - End international aid practices known to negatively affect the right to food, such as monetization and tying of food aid, as well as the political blocking of loans or aid.

II. Counter-terrorism and human rights violations

The United States has violated its international human rights obligations through gender-related abuses, racial profiling, and rendition and secret detention in the implementation of counter-terrorism strategies.

A. Gender-related abuses and U.S. counter-terrorism strategy

7. Many U.S. counter-terrorism policies have resulted in gender-related abuses in the United States and abroad. In particular, the United States has developed overbroad counter-terrorism measures that collectively discriminate against women and lesbian, gay, transgender, and intersex (LGBTI) individuals in areas where protection is most needed, for instance, terrorism financing laws, immigration, and asylum. As a party to the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) and the ICCPR, the United States is obligated to ensure the right to be free from both direct and indirect discrimination on the basis of sex. As a signatory to the ICESCR and the Convention for the Elimination of all forms of Discrimination Against Women (CEDAW), the United States must also refrain from acting in a manner that would frustrate the object and purpose of these treaties.
8. At the domestic level, **U.S. counter-terrorism measures in the immigration context** have had several adverse gender impacts. The expanded definition of “material support” to terrorism in the USA Patriot Act of 2001, the Intelligence Reform and Terrorism Prevention Act of 2004, and the Real ID Act of 2005 has resulted in women asylum-seekers in the United States having their petitions denied because forced domestic service for actors considered to be terrorists has been understood to amount to “material support” to terrorism. In addition, as part of its counter-terrorism strategy, the United States now permits local law enforcement agencies to enforce civil immigration rules (under the 287(g) program). As a result, immigrant women avoid reporting abuse, such as domestic violence, to the police out of fear that they or their family members might be deported.

9. The U.S. government's post-September 11, 2001 secret detention, enhanced interrogation, and extraordinary rendition programs have led to lasting and far-reaching gendered impacts. In particular, the absence of male family members caused by enforced disappearances, indefinite detention, and extraordinary rendition has led to great social and economic difficulties for their female family members, undermining their enjoyment of economic, social, and cultural rights. Increased travel restrictions, which include entire families on "no-fly" lists, also penalize female family members of male terrorism suspects and undermine their right to freedom of movement. The United States has also reportedly **detained and ill-treated women and children** who were not themselves terrorism suspects in order to interrogate them about male family members or to compel male terrorism suspects to surrender, provide information, or confess.
10. **Counter-terrorism activities conducted by the U.S. military** in countries like Iraq and Afghanistan have decreased the security of civilians and impeded the delivery of humanitarian assistance to the detriment of women's and LGBTI individuals' enjoyment of human rights. For example, targeting of gay men in Iraq by government and terrorist forces has been on the rise since the U.S. invasion. In Abu Ghraib and other U.S. detention facilities, rape and other forms of gender-based violence have been used to torture detained female terrorism suspects. In addition, the United States has interrogated male Muslim detainees in Iraq and elsewhere using techniques meant to exploit perceived gender-discriminatory attitudes and homophobia among Muslim men. In some instances, the degrading nature of the interrogation has been increased by having female service members administer these techniques.
11. **U.S. terrorist financing regulations** restricting donations to non-profit organizations have particularly impacted women's rights organizations in the Global South. Women's organizations are typically grassroots organizations and are, therefore, considered risky by donors seeking to avoid the possibility of their charitable donations being designated as financing of, or material support to, terrorism. Women human rights defenders have found themselves "squeezed" between the United States and other governments, which use financing laws and other overbroad counter-terrorism laws against them, and terrorist groups, which perpetrate violence against them.
12. CHRGI recommends the United States:
 - Incorporate gender considerations into the planning, assessment, and implementation of U.S. counter-terrorism programs and policies;
 - Monitor and evaluate gender impacts of U.S. counter-terrorism programs and policy using measurable indicators; *and*
 - Provide accountability and redress for gender-based abuses resulting from U.S. counter-terrorism programs and policies.

B. Racial profiling as part of U.S. counter-terrorism policy

13. Since September 11, 2001, the United States has institutionalized discriminatory profiling against members of Muslim, Arab, South Asian, and Middle-Eastern communities. As a State Party to the ICERD and the ICCPR, the United States is obligated to ensure the non-derogable right of all people under its jurisdiction to be free from both direct and indirect discrimination.
14. In 2002, the United States introduced the National Security Entry/Exit Registration Program (**NSEERS**), which required the "special registration" of men between the ages of 16 and 45 on visas from predominantly Muslim countries. Although NSEERS resulted in the interrogation,

detention, and/or deportation of thousands of individuals, it produced no documented counter-terrorism benefits. While the domestic registration component of the program was discontinued, the NSEERS database remains active and was used to identify targets for Operation Front Line, a secretive counter-terrorism initiative aimed primarily at Muslims. The impact of NSEERS also continues today as many registrants, as well as those who “should” have registered, have been denied naturalization or immigration benefits, or deported.

15. The United States has also increased reliance on **databases and watch lists** to subject individuals to additional scrutiny in numerous circumstances ranging from ordinary consumer transactions to security checks. The process by which names are added to, and removed from, the various databases and watch lists lacks transparency. Profiling by both State and private actors may be used to populate these records. It appears that many names on the lists are common Muslim, Arab, South Asian, and Middle-Eastern names; as a result, members of these communities are disproportionately vulnerable to having their names register as a “hit” (a potential name match). Government audits confirm that the manner in which names are added to these records is prone to error and many individuals without any links to terrorist activity have been added without justification. Those who have been mistakenly added or wrongly matched have no meaningful redress. Despite these documented problems, the United States is currently considering lowering the criteria for inclusion on the watch lists. U.S. screening of citizenship applications has similarly relied on mismanaged and bloated databases and has lacked transparency, causing lengthy delays.
16. In 2003, the U.S. Department of Justice issued a Guidance Regarding the Use of Race by Federal Law Enforcement Agencies. However, it fails to protect against profiling on the basis of religion or national origin, contains a **blanket exception** for “national security” and “border integrity,” and does not apply to state and local law enforcement agencies, which are increasingly involved in immigration enforcement. Members of the Muslim, Arab, South Asian, and Middle-Eastern communities are subjected to enhanced screening, lengthy delays, intrusive questioning, and invasive searches at **U.S. borders** on the basis of both formal and informal profiling by border agents who have broad discretion to search and question travelers without individualized suspicion. Moreover, the United States’ **use of profiling on the basis of behavior** may act as a proxy for discriminatory profiling, as there is a propensity to use race or other stereotypes to read behavior as criminal or threatening.
17. CHRGI calls for:
 - Federal legislation that prohibits direct and indirect profiling on *all* grounds prohibited by international human rights law, applicable to citizens and non-citizens, with no exceptions for national security;
 - Improved guidelines for border officials, limiting their discretion, and providing training to ensure that officials do not use discriminatory profiling; *and*
 - An in-depth audit and overhaul of government databases and watch lists to ensure the accuracy of the data, and the development of an effective redress mechanism for those who have been either mistakenly placed on a watch list or database, or erroneously linked to one.

C. U.S. policy of rendition and lack of accountability for secret detention

18. The United States continues to engage in a **policy of rendition** that raises significant human rights concerns. In January 2009, President Obama promulgated a number of Executive Orders that created Task Forces to advise him on aspects of U.S. counter-terrorism policy, including

rendition. In August 2009, the Task Force on Interrogations and Transfer Policies recommended the practice of transferring terrorism suspects to third countries for detention and interrogation continue.

19. International refugee law, human rights law, and humanitarian law set out rules relevant to the transfer of individuals outside the United States to U.S. territory or to the custody of another state in the context of counter-terrorism operations. Most relevant here are U.S. obligations as a State Party to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“CAT”), the ICCPR, and the Convention Relating to the Status of Refugees of 1951 and the 1967 Protocol (“the Refugee Convention and Protocol”). As a threshold matter, formal transfer processes may not be intentionally bypassed, and there must be a valid basis for apprehending an individual in contemplation of transfer. The U.S. government may not transfer an individual to the custody of a state where he/she is at a real risk of torture or ill-treatment, persecution, enforced disappearance, or arbitrary deprivation of life. Prior to transfer, an individual must have the ability to challenge before an independent decision-maker the basis for his deprivation of liberty, including on the grounds of fear of being subject to any of the risks protected against by international law.
20. Current U.S. law and practice do not meet these minimum human rights requirements. U.S. jurisprudence fails to require that formal transfer processes not be intentionally bypassed. Moreover, while the U.S. Congress has recognized the application of the rule of *non-refoulement* to extraterritorial transfers, the agencies responsible for such transfers—the Department of Defense and the Central Intelligence Agency (CIA)—have not promulgated regulations implementing the rule or governing the use of diplomatic assurances. Further, in contravention of its international obligations, the United States does not obtain diplomatic assurances using “clear” and established procedures (but rather concludes them informally); does not allow judicial review of assurances; and does not engage in effective post-return monitoring.
21. The U.S. government has also failed to provide **accountability for human rights violations related to secret detention**. From 2002 to 2009, the United States engaged in the rendition, secret detention, and coercive interrogation of many individuals—the vast majority of whom have never had their treatment acknowledged by the United States—in violation of its human rights obligations, including those embodied in the ICCPR, the CAT, and the Refugee Convention and Protocol. The practice ended on January 22, 2009, when President Barack Obama signed Executive Order 13491, ordering the CIA to close any detention facility it operated apart from those used for a short-term period. The United States, however, has failed to acknowledge the identities of former detainees; to initiate effective, independent, impartial, and thorough investigations into serious allegations of human rights violations; or to provide accountability for past human rights abuses against those held in secret detention. These are all essential components of its human rights obligations.
22. CHRGI urges the United States to:
 - Mandate compliance, through legislation or regulation, with a minimum baseline standard whenever the United States carries out the extraterritorial transfer of an individual;
 - Provide a full accounting of all individuals previously held in secret detention or subjected to rendition; *and*
 - Investigate and provide accountability for all human rights abuses committed as part of the U.S. rendition and secret detention programs.