



UPR Submission

United States

March 2010

Executive Summary

Drawing on recent Human Rights Watch research, this submission highlights ten concerns regarding the United States' compliance with its international human rights obligations,* namely: racial discrimination in anti-drug laws, failure to house domestic violence victims, discriminatory and dangerous treatment of child farmworkers, unfair immigration detention policies, children sentenced to life in prison without the possibility of parole, failure to test rape evidence, solitary confinement of mentally ill prisoners, inadequate healthcare for detained immigrant women, arbitrary detention and unfair trials of terrorism suspects, and return of persons to torture.

Equality and Discrimination

1a. Racial Discrimination in Anti-Drug Laws.¹ US anti-drug efforts have long prioritized incarceration of suppliers over substance abuse treatment and prevention. Ostensibly color-blind, these anti-drug efforts have yielded consistently higher rates of arrest and incarceration for black drug offenders than white. According to Human Rights Watch's research, blacks engage in drug offenses at roughly the same rate as whites. But law enforcement has targeted urban minority neighborhoods with the result that drug arrest rates for African American adults were 2.8 to 5.5 times as high as those of whites in every year from 1980 through 2007. One in three of the more than 25.4 million adult drug arrestees during that period was African American. African Americans constitute 53.5 percent of all persons who enter prison because of a drug conviction and they are 10.1 times more likely than whites to enter prison for drug offenses.

1b. Obligations: US drug law enforcement violates the right to be free of racial discrimination, which is protected in Article 26 of the International Covenant on Civil and Political Rights (ICCPR) and Article 2 of International Convention on the Elimination of all Forms of Racial Discrimination (ICERD). The United States is party to both the ICCPR and ICERD.

1c. Recommendation: The US should monitor any disproportionate impact of drug law enforcement on black communities, and identify and eliminate the causes of such disparate impact. In addition, the US should prioritize community based sanctions and other alternatives to incarceration for low-level drug offenders; invest more heavily in substance abuse treatment and prevention outreach; and increase investments in community education, economic, health, and social programs for drug users and offenders.

* Human Rights Watch would like to acknowledge the very comprehensive submissions of our colleague NGOs, which raise grave and important concerns about an enormous range of policies and practices of the United States. Many of those concerns, a number of which we have researched and reported on in the past, are not addressed here. This is no reflection of our view of their importance: we simply have chosen to focus here on concerns arising out of our own recent research and have chosen not to repeat information already before the Committee.

2a. **Failure to House Domestic Violence Victims.** An alarming number of women in the US who flee abusive relationships are turned away from domestic violence shelters due to lack of resources. On a single day in September 2008, 3,286 requests for shelter went unmet.² Although shelters have been a key component of the country's response to domestic violence for four decades, federal funding has stagnated at a level far below levels authorized by the US Congress. The economic crisis has only exacerbated that shortfall, driving demand up and resources down, and leaving more women and children without shelter and faced with a choice between homelessness and further abuse.³

2b. **Obligations:** ICCPR, Article 3 requires that states party "undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant," and Article 6 guarantees that "[e]very human being has the inherent right to life."

2c. **Recommendation:** The US should ensure the ability of every victim to access protective and rehabilitative services, including emergency shelter. Recognizing that domestic violence constitutes a severe form of discrimination against women, it should ratify the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW).

3a. **Discriminatory and Dangerous Treatment of Child Farmworkers.**⁴ Hundreds of thousands of children work on US farms yet are exempt from legal protections granted to all other working children under the 1938 Fair Labor Standards Act (FLSA). In 2009 Human Rights Watch updated our 2000 findings on this issue, and found children as young as 11 and 12 working on commercial farms for 10 or more hours a day, often receiving pay far below the minimum wage, and without access to water or toilets. These children are exposed to dangerous machinery, injuries, and pesticides, fail to attend school regularly, and may even drop out. Girls may be subject to sexual harassment and violence. Farmworker children may work at age 12 with no limit on the number of hours that they work outside of school hours; in other sectors, children may work at age 14, and until age 16 can only work for limited hours. Farmworker children may perform hazardous labor at age 16; in other sectors the age limit is 18. The FLSA's two-tiered scheme of protection—one for farmworker children, one for other working children—corresponds closely with race and ethnicity, as most child farmworkers are Latino.

3b. **Obligations:** ICCPR, Article 26, prohibits discrimination. The International Labour Organization Convention No. 182 prohibits work likely to harm the health, safety, or morals of children under age 18.

3c. **Recommendation:** The United States Congress should pass the Children's Act for Responsible Employment (CARE), which would amend US law and apply the same age and hour requirements and restrictions on hazardous work to children working in agriculture as for children working in other occupations.

Right to Life, Liberty, and Security of Person

4a. **Unfair Immigration Detention Policies.**⁵ The United States detains large numbers of non-citizens, including those for whom there is little justification for the deprivation of liberty. Human Rights Watch has found that between 1997 and 2007, 20 percent of the persons deported from the United States for crimes and subject to detention were in the country legally, sometimes for decades, and therefore had connections to the community. Moreover, 72 percent of those deported from the United States for crimes and subject to

detention had served criminal sentences for nonviolent offenses. Since these people had ties to the community and were not violent, we question the US government's claim that these detentions were necessary in order to ensure appearances at hearings and in order to protect the community from danger. Human Rights Watch is further concerned about the impact of current detention policies on persons with mental disabilities, for whom detention interrupts mental health treatment in the community and may exacerbate symptoms and suffering related to mental illness. Finally, between 1998 and 2008, 1.4 million transfers of detainees occurred, often to remote facilities. These transfers separate immigrants from their attorneys and the evidence they need to present in immigration court.

4b. **Obligations:** ICCPR, Article 9.4 requires that persons should not be unnecessarily or arbitrarily detained, and Article 13 establishes that detained persons should be able to access counsel.

4c. **Recommendation:** The United States should ensure that there are individual and justifiable reasons for any deprivation of liberty imposed on a non-citizen and that the transfers of detainees to remote locations separating them from attorneys and evidence stops.

Administration of Justice

5a. **Children Sentenced to Life in Prison without Possibility of Parole.**⁶ The United States is the only country in the world that sentences persons under the age of 18 to life in prison without possibility of parole or release (known as LWOP). Among the 2,574 US prisoners currently serving LWOP for crimes they committed as children, black youth are serving LWOP at a per capita rate 10 times higher than white youth.⁷ Human Rights Watch's findings contradict the United States government's claim that blacks are more likely to be incarcerated due to a greater tendency to commit crimes.⁸ To test this claim, Human Rights Watch looked at youth who were arrested for murder, the crime that most often results in a sentence of LWOP. Human Rights Watch found that in 10 US states, black youth who are arrested for murder are significantly more likely to be sentenced to LWOP than are white youth arrested for the same crime. In California, black youth who are arrested for murder are almost six times more likely to ultimately receive a sentence of LWOP than are white youth arrested for murder.⁹

5b. **Obligations.** Article 37 of the Convention on the Rights of the Child (CRC) prohibits sentencing children to LWOP. ICCPR, Articles 10.3 and 14.4 require that juvenile offenders be treated in accordance with their age and the desirability of promoting their rehabilitation. ICERD, Article 5(a) requires states party to eliminate racial discrimination in the administration of justice.

5c. **Recommendation:** The United States should discontinue the use of life sentences without parole for all persons below the age of 18 at the time the offence was committed, and review the situation of persons already serving such sentences. The United States should ratify the CRC.

6a. **Failure to Test Rape Evidence.**¹⁰ In the United States there are thousands of rape kits collected from victims, stored by police, but never sent to crime labs for testing. Testing a rape kit—which holds DNA collected from a victim's body during a 4-6 hour forensic exam—can identify an unknown rapist, confirm a suspect's presence, link crime scene evidence, and exonerate innocent suspects. National studies have shown that testing a rape kit can increase a rape case's chances of moving successfully through the criminal justice system. Yet, Human Rights Watch research in March 2009 revealed 12,500 untested

rape kits in Los Angeles, while news reports found 10,000 untested rape kits in Detroit and 4,000 in Houston. Ongoing Human Rights Watch research in Illinois has found that of 5,000 rape kits collected from rape victims, only 1,000 were tested. Rape victims in the United States have no right to know whether or not their rape kit was tested, nor do they have the right to have their kit tested. The rape kit backlog inhibits investigation of rape cases, bars rape victims from obtaining redress through the criminal justice system, prevents assailants from facing justice, and fails to protect potential rape victims in the future.

6b. **Obligations.** The Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women requires states party investigate and impose penalties for violence against women. Additionally, CEDAW obliges states party to “take all legal and other measures that are necessary to provide effective protection of women against gender-based violence.”

6c. **Recommendation.** The United States should require local, state, and federal law enforcement to account for the number of untested rape kits in storage, and should ensure testing of every stored and future rape kit. The United States should ratify CEDAW.

7a. **Solitary Confinement of Mentally Ill Prisoners.**¹¹ In recent years, prison officials have increasingly turned to solitary confinement (or segregation or supermaximum security confinement) as a way to manage prisoners deemed difficult or dangerous, including many with mental illness. According to data provided to Human Rights Watch by prison officials in recent years, 25 percent of men in solitary confinement in Washington State have a serious mental illness; in Georgia 33 percent of men and 67 percent of women in solitary confinement have a serious mental illness, and in Colorado 30-35 percent of all prisoners have a serious mental illness. The conditions of social isolation, high security controls, abnormal environmental stimulus, and extremely limited recreational or educational opportunities that characterize solitary confinement can exacerbate mental illness or prevent recovery. Moreover, the rules governing such confinement typically limit the nature and quantity of mental health services that are provided, further jeopardizing the mental health of inmates.

7b. **Obligations.** The prolonged confinement of mentally ill prisoners under such conditions violates the right of prisoners to be treated with respect for their basic dignity and humanity (ICCPR, Article 10), to be free of torture and other cruel, inhuman or degrading treatment or punishment (ICCPR, Article 7 and Convention on the Rights of Persons with Disabilities (CRPD), Article 15), to the highest attainable standard of health, provided for in Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and in Article 25 of the CRPD, to liberty and security of the person (CRPD, Article 14), and to integrity of the person (CRPD, Article 17).

7c. **Recommendation.** The US should not hold any prisoner who has or develops symptoms of a serious mental illness under conditions of solitary confinement for more than a brief period of time; and should carefully monitor the mental health of all prisoners in solitary confinement to detect any deterioration in mental health. The United States should ratify ICESCR and CRPD.

Migrants, Refugees, and Asylum Seekers

8a. **Inadequate Healthcare for Detained Immigrant Women.**¹² Women caught up in the fastest growing form of incarceration in the United States—immigration detention—suffer from inadequate access to medical care and humiliating treatment. Human Rights Watch documented dozens of instances in which women reported struggling to obtain

important services such as Pap smears to detect cervical cancer, mammograms to check for breast cancer, prenatal care, and counseling for survivors of violence, and even basic supplies such as sanitary pads or breast pumps for nursing mothers. While the government has announced its intention to overhaul the immigration detention system, including medical care, the details of reform are still in development and the government has declined to commit to issuing legally enforceable detention standards.

8b. **Obligations.** ICCPR, Article 10 obligates states to ensure that “all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.”

8c. **Recommendation.** The US should institute policies and programs that address the health needs of all persons in immigration detention and the particular needs of women, and establish legally enforceable standards to govern conditions of detention.

Human Rights and Counterterrorism

9a. **Arbitrary Detention and Unfair Trials of Terrorism Suspects.**¹³ The United States is currently holding nearly 200 people without charge in military detention at Guantanamo Bay, including some who have been detained for over eight years. The government has outlined plans to transfer a number of these men in 2010 to a facility in the United States, where they will continue to face indefinite detention without charge. While the US government has declared that, where feasible, it will prosecute terrorism suspects in the federal civilian courts, it simultaneously continues to assert the power to prosecute persons in military commissions that lack the guarantees of fairness found in the US federal courts. Human Rights Watch has monitored nearly every military commission proceeding to date and reported on the commissions’ ongoing failure to provide fair, transparent trials, despite recent amendments to the trial procedures. Of serious concern, they purport to try crimes as violations of the law of war that have not previously been recognized as such, raising problems of retroactivity, and they discriminate on the basis of citizenship by limiting their jurisdiction to foreign nationals. The military commissions also have jurisdiction over juvenile offenders, and the US government has initiated the prosecution of two persons who were children at the time of their alleged crimes, without making appropriate accommodation for their juvenile status.

9b. **Obligations:** Article 9 of the ICCPR bars arbitrary detention; Article 10(2)(b) of the ICCPR requires segregation of and speedy trial for accused juveniles; Article 15 of the ICCPR prohibits retrospective or ex post facto punishment; Article 14 of the ICCPR details fair trial requirements; Common Article 3 to the Geneva Conventions requires that all persons be tried by regularly constituted courts; and Article 5 of the Third Geneva Convention requires that a competent tribunal determine the status of detained persons whose status is in doubt, and treat them in the interim as prisoners of war.

9c. **Recommendation:** The United States should continue to repatriate (or, where appropriate, resettle) all detainees not deemed suitable for prosecution, and prosecute the remainder in federal civilian courts.

10a. **Return of Persons to Torture.**¹⁴ As set out in an August 2009 policy statement, the United States still asserts the power to transfer detainees to the custody of foreign governments on the basis of nonbinding diplomatic assurances that the transferred persons will not be subject to torture. Human Rights Watch has grave concerns about the reliability of such assurances, having documented numerous cases of torture or other serious abuse upon transfer. In addition, by asserting an overbroad interpretation of the US

state secrets doctrine in litigation over past renditions to torture, for example, in the case of *Mohamed v. Jeppesen Dataplan, Inc.*, the United States has blocked victims from seeking redress in the courts for the abuses against them.

10b. **Obligations:** Article 3(1) of the Convention Against Torture (CAT) prohibits transfer of any person to a State where there are substantial grounds for believing he would be in danger of being subjected to torture; CAT Article 13 provides the right of an individual allegedly subjected to torture to complain to a competent authority and to have his case heard promptly.

10c. **Recommendation:** The United States should provide any suspects facing transfer to the custody of other governments with a fair process by which that person can challenge the transfer decision; and provide civil or other forms of redress for victims of torture.

Appendix of Human Rights Watch Reports and Research

Equality and Discrimination

¹ Human Rights Watch, *Decades of Disparity: Drug Arrests and Race in the United States*, March 2009, <http://www.hrw.org/en/reports/2009/03/02/decades-disparity-0>; Human Rights Watch, *Targeting Blacks: Drug Law Enforcement and Race in the United States*, May 2008, <http://www.hrw.org/en/reports/2008/05/04/targeting-blacks-0>.

² National Network to End Domestic Violence, “Domestic Violence Counts 2008,” February 2009, available at <http://www.nnedv.org/resources/census/67-census-domestic-violence-counts/232-census2008.html> (accessed February 11, 2010), p. 6.

³ In Oregon alone, where Human Rights Watch conducted research in June 2009, the annual number of unmet requests for shelter from domestic and sexual violence shot up to 19,996 in 2008, a 36 percent increase over 2007, according to state agencies. Letter from Human Rights Watch to the Oregon State Legislature, June 19, 2009, <http://www.hrw.org/en/news/2009/06/19/letter-oregon-state-legislature>.

⁴ Human Rights Watch, *Fingers to the Bone: U.S. Failure to Protect Child Farmworkers*, June 2000, <http://www.hrw.org/en/reports/2000/06/02/fingers-bone>.

⁵ Human Rights Watch, *Locked Up Far Away: The Transfer of Immigrants to Remote Detention Centers in the United States*, December 2009, <http://www.hrw.org/en/reports/2009/12/02/locked-far-away-0>; Human Rights Watch, *Forced Apart (By the Numbers): Non-Citizens Deported Mostly for Nonviolent Offenses*, April 2009, <http://www.hrw.org/en/reports/2009/04/15/forced-apart-numbers-0>.

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⁶ Human Rights Watch, “*When I Die They’ll Send Me Home*”: *Youth Sentenced to Life Without Parole in California*, vol. 20, no. 1(G), January 2008, <http://www.hrw.org/en/reports/2008/01/13/when-i-die-they-ll-send-me-home>; Human Rights Watch, *Executive Summary: The Rest of Their Lives: Life without Parole for Youth Offenders in the United States in 2008*, May 2008, <http://www.hrw.org/en/reports/2008/05/01/executive-summary-rest-their-lives>; Human Rights Watch, *The Rest of Their Lives: Life Without Parole for Child Offenders in the United States*, <http://www.hrw.org/en/reports/2005/10/11/rest-their-lives-0>.

⁷ Human Rights Watch, *Submission to the Committee on the Elimination of Racial Discrimination, During its Consideration of the Fourth, Fifth, and Sixth Periodic Reports of the United States of America*, CERD 72nd Session, vol. 20, no. 2(G), February 2008, <http://www.hrw.org/en/reports/2008/02/06/submission-committee-elimination-racial-discrimination-0>, pp. 20-21 (cited herein as “Human Rights Watch, Submission to CERD”).

⁸ The United States has responded to the overrepresentation of African Americans in US prisons by suggesting that such racial disparities “are related primarily to differential involvement in crime by the various groups ... rather than to differential handling of persons in the criminal justice system.” United States, Periodic Report of the United States of America to the U.N. Committee on the Elimination of Racial Discrimination Concerning the International Convention on the Elimination of All Forms of Racial Discrimination, April 2007, http://www.state.gov/g/drl/rls/cerd_report/83404.htm (accessed February 11, 2010), para. 165.

⁹ Human Rights Watch, Submission to CERD, pp. 23-25.

¹⁰ Human Rights Watch, *Testing Justice: The Rape Kit Backlog in Los Angeles City and County*, March 2009, <http://www.hrw.org/en/reports/2009/03/31/testing-justice-0>.

¹¹ Human Rights Watch, *Ill-Equipped: U.S. Prisons and Offenders with Mental Illness*, October 2003, <http://www.hrw.org/en/reports/2003/10/21/ill-equipped-0>.

Migrants, Refugees and Asylum Seekers

¹² Human Rights Watch, *Detained and Dismissed: Women's Struggles to Obtain Health Care in United States Immigration Detention*, March 2009, <http://www.hrw.org/en/reports/2009/03/16/detained-and-dismissed>.

Human Rights and Counterterrorism

¹³ “US: New Legislation on Military Commissions Doesn’t Fix Fundamental Flaws,” Human Rights Watch news release, October 8, 2009, <http://www.hrw.org/en/news/2009/10/08/us-new-legislation-military-commissions-doesn-t-fix-fundamental-flaws>; Human Rights Watch, *The Omar Khadr Case: A Teenager Imprisoned at Guantanamo*, June 2007, <http://www.hrw.org/en/reports/2007/06/01/omar-khadr-case>; Andrea Prasow (Human Rights Watch), “Falling Short: Justice in the New Military Commissions,” commentary, *Jurist*, December 8, 2009, <http://www.hrw.org/en/news/2009/12/08/falling-short-justice-new-military-commissions>; Stephen Paul Smith (Human Rights Watch), “The Forgotten Defendant of Guantanamo,” commentary, *The Huffington Post*, November 19, 2009, <http://www.hrw.org/en/news/2009/11/19/forgotten-defendant-guantanamo>.

¹⁴ Human Rights Watch, *The Stamp of Guantanamo: The Story of Seven Men Betrayed by Russia's Diplomatic Assurances to the United States*, vol. 19, no. 2(D), March 2007, <http://www.hrw.org/en/reports/2007/03/28/stamp-guantanamo>; “‘Diplomatic Assurances’ against Torture,” Human Rights Watch questions and answers, November 10, 2006, <http://www.hrw.org/en/news/2006/11/10/diplomatic-assurances-against-torture>; Human Rights Watch, *Still at Risk: Diplomatic Assurances No Safeguard Against Torture*, vol. 17, no. 3(D), April 2005, <http://www.hrw.org/en/reports/2005/04/14/still-risk-0>; Human Rights Watch, *Double Jeopardy: CIA Renditions to Jordan*, April 2008, <http://www.hrw.org/en/reports/2008/04/07/double-jeopardy-0>; Human Rights Watch, *Ill-Fated Homecomings: A Tunisian Case Study of Guantanamo Repatriations*, vol. 19, no. 4(E), September 2007, <http://www.hrw.org/en/reports/2007/09/04/ill-fated-homecomings>.