



JANUARY 2007

COUNTRY SUMMARY

United States

In our World Report 2004, Human Rights Watch noted with alarm in an essay titled “Above the Law” the Bush administration’s efforts post 9/11 to dramatically expand executive power at the expense of judicial or legislative protection for individual rights. It now appears we underestimated the extent and tenacity of those efforts.

In the past five years the administration has authorized torture and other abusive interrogation techniques, “disappeared” dozens of suspected terrorists into secret prisons, twisted domestic law to permit indefinite detention without charge of persons suspected of links to terrorism, and confined hundreds at Guantanamo Bay without charge while denying them information about the basis for their detention and meaningful opportunity to contest it. The administration has sought to exempt its actions from court oversight.

Wholly outside the counterterrorism arena, the executive branch has continued to slight its obligation to protect the human rights of US residents, particularly those who are accused or convicted of crimes, or who are immigrants.

In 2006 the Supreme Court provided an important check on some of the administration’s counterterrorism policies, striking down the military commissions originally authorized by President George W. Bush to try Guantanamo detainees and calling into question the legality of the administration’s secret detention program. The president, in response, asked Congress to authorize a system of military commissions akin to those that had been struck down, and to redefine the humane treatment requirements of the Geneva Conventions so that the CIA’s “enhanced”—and abusive—interrogation program could continue. The legislation Congress ultimately passed did not give the administration everything it wanted. Congress left intact the humane treatment requirements and insisted abusive interrogation techniques such as waterboarding (mock drowning), induced hypothermia, and extended sleep deprivation remain prosecutable war crimes. But the legislation also endorsed deeply troubling provisions that violate international

human rights protections. These include provisions that curtail the fundamental right of non-citizens to contest their detention and define “combatant” in a way that allows for the military detention and trial of civilians who did not participate in armed hostilities.

The United States appeared in 2006 before the United Nations Committee against Torture and Human Rights Committee regarding its compliance with the Convention against Torture and the International Covenant on Civil and Political Rights. With regard to US counterterrorism policies, both committee of experts rejected most of the administration’s justifications, issuing strong and thorough critiques of the US record on torture, detention without charge, and lack of accountability for abuse. The Human Rights Committee also issued a robust critique of US criminal justice, detention, and immigration policies, including the practice of sentencing juveniles to life without parole and the overbroad “material support to terrorism” bars on admission that put asylum seekers at risk of being returned to countries where they fear persecution.

Guantanamo Bay, Indefinite Detention, and Military Commissions

Approximately 450 men remain in long-term, indefinite, and largely incommunicado detention at Guantanamo Bay. The United States continues to assert its authority to hold these men as “unlawful enemy combatants” without charge and without regard to the laws of armed conflict.

In late 2005 Congress passed a law preventing non-citizen Guantanamo detainees from bringing any future court challenges to their detention, their treatment by US officials, or their confinement conditions. In September 2006 Congress extended and made these provisions retroactive—applying them to pending cases and to non-citizens in US custody anywhere in the world. Unless found unconstitutional, this measure could result in courts dismissing the more than 200 pending habeas corpus cases brought on behalf of Guantanamo detainees, as well as the pending habeas challenge brought by Ali Saleh Kahleh al-Marri, the only so-called unlawful enemy combatant still detained in the United States, and a handful of habeas cases brought on behalf of detainees in Afghanistan.

In response to litigation brought by the Associated Press, the US publicly disclosed in early 2006 the names of the Guantanamo detainees and transcripts of

administrative proceedings regarding their continued detention. These documents suggest that, contrary to the claims of the Bush administration, only a small proportion of the detainees are alleged to have engaged in armed conflict against the United States.

The Department of Defense has been working through a second round of administrative reviews to determine whether individual Guantanamo detainees are still a “threat” or of intelligence value that warrants their continued detention. At this writing, the military Administrative Review Boards have slated 166 detainees for transfer or release, although fewer than a third have actually left Guantanamo. Some countries have refused to take back nationals declared “enemy combatants” by the US or to accept US requirements for their monitoring or continued detention. In other cases, detainees had substantial grounds for believing they might be tortured if returned. Rather than allowing some of these detainees into the United States—including men who have been cleared of any wrongdoing—the Bush administration continues to hold them in Guantanamo.

Alleged “enemy combatant” Ali Saleh Kahleh al-Marri remains in custody in the United States. A Qatari who had been living in the US on a student visa, he was charged in 2002 with credit card fraud, but just weeks before his trial the US administration declared him an “enemy combatant,” and sent him to a military brig in South Carolina, where he has been held in solitary confinement for three years, essentially incommunicado; his only contact is with his lawyers, who had to sue in US court for access to him. The charges against al-Marri are based on a single hearsay declaration relying heavily on accusations by a man widely reported to have been tortured in a secret Central Intelligence Agency (CIA)-run detention center. The government has filed to dismiss al-Marri’s habeas challenge to the lawfulness of his detention—citing the court-stripping provisions in the Military Commissions Act. As of this writing, the court had not ruled on the government’s request.

In June 2006 the US Supreme Court, in *Hamdan v. Rumsfeld*, struck down the military commissions set up to try non-citizens accused of participating in or supporting terrorist acts against the United States. In response to *Hamdan*, in September Congress legislated a new system of military commissions (the Military Commissions Act of 2006). The new commissions contain important improvements over the

previous ones. For example, Congress has specified that the accused have access to the same evidence as is considered by the fact-finder, and that they may appeal convictions to a civilian appellate court (though such review is limited to legal findings, not factual ones, so actual innocence would not be a basis for overturning a verdict). But the new rules still contain troubling provisions: for example, statements obtained through “cruel, inhuman or degrading treatment” prior to December 30, 2005, are admissible so long as a judge finds they have probative value and are “reliable” (a contradiction in terms).

Perhaps the most disturbing aspect of these new commissions is their expansive jurisdiction. The commissions are authorized to try any non-US citizen, including longtime US residents, who falls within a definition of “unlawful enemy combatant” that is far broader than the definition ordinarily used under the laws of war. Because the definition includes anyone who “purposefully and materially supported” hostilities against the United States, it potentially turns ordinary civilians—such as an individual who sends money to a banned group—into “combatants” who can be placed in military custody and hauled before a military commission.

At this writing no charges have been brought against detainees under the new military commission rules, and the first trials were not expected until summer 2007 at the earliest.

Torture Policy

In late 2005 Congress—over the Bush administration’s objections—passed the Detainee Treatment Act, which prohibits the use of cruel, inhuman, or degrading treatment by any US personnel operating anywhere in the world. The Supreme Court stepped in here as well, ruling in *Hamdan* that the US is bound to treat al Qaeda detainees in accordance with the minimal provisions of the Geneva Conventions’ Common Article 3.

In response, in July 2006 the Pentagon ordered the military to ensure that all of its practices complied with these standards, and in September it announced new interrogation rules that repudiated many of the abusive techniques reportedly used by US interrogators in the past, including waterboarding, painful stress positions,

and prolonged sleep deprivation or exposure to cold. Ironically, that same day the Bush administration proposed legislation effectively rewriting the humane treatment standards of Common Article 3, permitting the CIA to continue using the abusive interrogation techniques now banned by the Pentagon.

Congress rejected the administration's proposal, but with mixed results. It retains most of the War Crimes Act, which exposes interrogators to criminal prosecution for both torture and "cruel and inhuman treatment" (defined as conduct that causes serious physical or mental pain or suffering). As two of the primary authors of the legislation, Senators McCain and Warner, have stated that the definition of prohibited conduct is intended to criminalize a wide range of abusive interrogation techniques. However, the law narrowed prosecutable offenses under the War Crimes Act by creating a higher threshold for inflicting serious physical pain or suffering, preventing prosecution for non-prolonged mental abuse occurring prior to the new law, and eliminating as a war crime the punishing of a person after an unfair trial.

Most seriously, the legislation prohibits any detainee the US government has labeled an "unlawful enemy combatant" from ever challenging in court his treatment while in US custody, even after his release.

Secret Prisons

In early September 2006 President Bush admitted for the first time that the CIA had maintained secret detention centers abroad to interrogate terrorism suspects. He announced that his administration was shutting them down and had moved the 14 people still being held in those centers to Guantanamo Bay (where they have since been visited by the International Committee of the Red Cross). Bush was unrepentant when he announced the existence of the secret prisons, and his administration kept open the option of restarting the program of enforced disappearances of terrorist suspects.

The administration has not identified the other people whom it held in the secret prisons, nor has it disclosed their current whereabouts. Human Rights Watch has identified at least 15 other people we believe were held in those prisons. Those persons remain "disappeared" under international law until the US can account for them.

Accountability for Detainee Abuse

Despite a number of official investigations into abuse of detainees in US custody in Afghanistan, Iraq, and Guantanamo Bay, the United States has done little to hold those involved accountable. Joint research conducted by New York University Law School, Human Rights First, and Human Rights Watch documented over 330 cases in which US military and civilian personnel were credibly alleged to have abused or killed detainees. While these cases involved at least 600 US personnel and over 460 detainees, only a small percentage have been prosecuted: approximately 90 military personnel, no CIA agents, and one civilian contractor. Only 10 of the convicted abusers were sentenced to a year or more in prison.

The US persisted in thwarting efforts by victims of abuse to seek redress in court. Asserting claims of “state secrets” and “national security,” the government moved to dismiss claims brought by Khaled el-Masri, a German citizen who was seized in Macedonia, transferred to a CIA-run prison in Afghanistan, beaten, and held incommunicado for several months, and by Maher Arar, a dual Canadian-Syrian citizen detained by US authorities on his way home to Canada and sent to Syria, where he was imprisoned for 10 months and tortured. Lower courts dismissed both cases on the grounds that the court should not second-guess—or even investigate—the government’s actions. Both Arar and el-Masri have appealed. A Canadian commission of inquiry into Arar’s case found that the US deported him to Syria based on Canadian authorities’ erroneous claims that he was linked to terrorism. The inquiry concluded “categorically” that there was “no evidence to indicate that Arar has committed any offense.”

The US continues to assert that it may lawfully send detainees to countries that regularly engage in torture, so long as it has obtained “diplomatic assurances”—i.e. promises by the receiving government not to mistreat the detainee. But these promises cannot be enforced and, indeed, there is little incentive for the governments involved to uncover any breach of the assurances. The US has stated that it will rely on such assurances in moving detainees from Guantanamo Bay.

Incarceration

With more than 2.2 million men and women in US jails and prisons, a preponderance of whom are low-level nonviolent offenders, the United States has the highest incarceration rate in the world. The burden of incarceration falls disproportionately on the poor and members of racial and ethnic minorities.

Many prisons and jails are dangerous, plagued by high rates of violence and illness, and devoid of productive programs and activities for prisoners. The private bipartisan Commission on Safety and Abuse in America's Prisons released a report in June 2006 concluding that overcrowding and prisoner idleness promotes disorder and tension that can escalate into violence. Staff members engage in unnecessary as well as excessive use of force to respond to minor prisoner misbehavior.

As of the beginning of the year, prison policies in six states permitted use of aggressive unmuzzled dogs to intimidate and even attack prisoners who did not obey orders to leave their cells – four of those states used dogs for this purpose. This practice was virtually secret, even within the corrections community, until Human Rights Watch revealed it in October. Advocacy by Human Rights Watch helped persuade three states to change their policies. At this writing, only one state continues to use dogs to help prison officers remove prisoners from their cells.

In July 2006 a Department of Justice Bureau of Statistics (BJS) report found that formal complaints of sexual violence filed in adult prisons and jails increased nearly 16 percent between 2004 and 2005, from 5,386 to 6,241; more than half concerned staff sexual misconduct or harassment. As the BJS acknowledges, these numbers underestimate the level of sexual violence in prison because inmates are reluctant to make complaints for fear of retaliation, among other reasons. The National Prison Rape Elimination Commission held four public hearings this year during which witnesses testified to the causes and consequences of staff and inmate-on-inmate rape and sexual abuse.

In an investigation of two high-security juvenile facilities for girls in New York state, Human Rights Watch and the American Civil Liberties Union found that young girls were subjected to excessive use of a face-down “restraint” procedure in which girls

were thrown to the floor, often causing injury, as well as incidents of sexual abuse, and inadequate educational and mental health services.

Prisons struggle to provide quality medical care without adequate resources or qualified staff. A federal judge put the entire California prison medical system under receivership because care was so abysmal that one prisoner died from medical malpractice or neglect every six to seven days. In Florida, over 300 inmates who have been found mentally incompetent to stand trial had been left to languish in jail, despite a law requiring the state to move them to hospitals or other mental health facilities where they can get the treatment they need.

The Death Penalty and Other Cruel Sentences

State and federal governments executed 51 prisoners between January and November 2006, bringing the total number of men and women executed in the country to 1055 since 1977. Almost all were killed by lethal injection. Mounting evidence indicates that contrary to public belief, lethal injection may be a very painful way to die. Execution logs from six recent executions in California and toxicology reports from executions in Missouri and North Carolina suggest that some prisoners may have been conscious and suffering at the time of their executions. Despite being used for almost 30 years, state lethal injection protocols were never subjected to scientific, medical, or public scrutiny until recent litigation prompted some judges and officials to examine them.

In the United States, youth who were below the age of 18 at the time of their crimes may be tried and sentenced as adults. Courts in the US continue to impose life sentences without the possibility of parole on many such youthful offenders. The more than 2,225 youthful offenders serving life without parole are disproportionately African American or Hispanic. The UN Committee against Torture, the Human Rights Committee, and the Secretary-General in his study on violence against children worldwide all rebuked the United States in 2006 for imposing life without parole sentences on young offenders. On the legislative front, the Colorado legislature eliminated the sentence, although it substituted a mandatory term of 40 years' imprisonment. A package of bills to eliminate the sentence remained under serious consideration in Michigan.

Immigrants and Other Non-Citizens

The two houses of Congress remained in a stalemate over the correct approach to immigration reform, with the Senate embracing the concept of a guest worker program, and the House focusing solely on immigration restrictions and enforcement. Just before the November 7, 2006 elections, Republican Party leaders in the House re-introduced previously failed legislation that would allow fencing of 700 miles of the US-Mexico border, give state and local officials the authority to enforce immigration law while shielding them from accountability for errors, and reverse two Supreme Court decisions that had found indefinite detention of non-citizens unconstitutional. None of these measures were considered in committees, and instead were rushed to a vote and passed by the House, though only the border fence legislation had passed the Senate and won the approval of President Bush at this writing.

As of late 2006 hundreds of asylum seekers faced return to their countries of origin by the United States and thousands of refugees are being denied resettlement inside the US due to overbroad definitions of terrorism and terrorism-related activity in the Immigration and Nationality Act. Anyone who associated with, or provided any “material support” to any armed group is denied asylum, including civilians caught up in civil wars who are forced at gunpoint to provide food to rebel forces.

HIV/ AIDS

Massachusetts, Delaware, and New Jersey made progress toward ensuring injection drug users’ access to sterile syringes, recognizing their human right to obtain lifesaving HIV/AIDS information and services without fear of punishment. Massachusetts enacted legislation permitting non-prescription sale of syringes; Delaware approved its first needle exchange program; and the New Jersey legislature considered legislation to increase access to clean needles, including by establishing needle exchange programs.

California Governor Arnold Schwarzenegger vetoed legislation that would have permitted condom distribution to prevent the spread of HIV/AIDS in state prisons, rejecting the example of jurisdictions in the US and abroad that have taken such measures to protect inmate health.