



January 2008

country summary

## United States

Bush administration resistance to scrutiny of its counterterrorism policies and past abuses continues to be a major obstacle to human rights improvement in the United States. Despite some efforts in Congress to change practices violating basic human rights, there was no evident progress concerning the treatment of so-called enemy combatants, including those held at Guantánamo Bay, or the use of secret detention facilities.

Domestically, undocumented migrant workers faced an increased risk of detention, and other non-citizens were blocked from vindicating their rights in court. Persons convicted of crimes faced harsh sentencing policies and in some cases abusive conditions in US prisons.

Racial discrimination again emerged as a prominent issue in 2007, when six African-American high school students in Jena, Louisiana, were charged as adults with a range of serious crimes for the 2006 beating of a white student. The case sparked protests and the charges were widely viewed as excessive and discriminatory, especially as compared with the treatment of white Jena youths involved in other incidents.

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

The Department of Defense released over 100 detainees from Guantanamo Bay in 2007, but about 305 remained at this writing. Most of these men have been held without charge for six years. Over a dozen Chinese Uighurs, and likely several more individuals of other nationalities, were long ago cleared for release yet remain incarcerated at Guantanamo. The government acknowledges the Uighurs likely would be ill-treated if returned to China.

In other cases, the United States, in violation of its international obligations, has repatriated detainees without any meaningful or independent assessment of the risk of torture or abuse they faced upon return. In such cases the US has claimed that “diplomatic assurances”—or promises of humane treatment—from the receiving government were sufficient protection against abuse, despite compelling evidence to the contrary.

In December 2005 Congress passed the Detainee Treatment Act, preventing Guantanamo detainees from bringing future habeas corpus petitions to challenge the lawfulness of their detention or any mistreatment. In September 2006 the Military Commissions Act made these provisions retroactive and extended them to all detained non-citizen “unlawful enemy combatants.” After the November 2006 congressional elections, legislation that would have lifted the habeas-stripping provisions passed the Senate, but fell short of the 60 votes needed to overcome a filibuster. The Supreme Court agreed to review the constitutionality of the habeas-stripping provisions, with a decision expected by mid-2008.

In June a federal appellate court ruled that these same habeas-stripping provisions could not be applied to Ali Saleh Kahlal al-Marri, a Qatari in the US on a student visa, whom the US administration had declared an “enemy combatant” just weeks before his trial for financial fraud and giving false statements. Having already spent four years in solitary confinement in a military brig in South Carolina, al-Marri’s only outside contact has been with his lawyers, who had to sue in US court for access to him. The appeals court ruled that al-Marri could not be stripped of his right to bring a habeas challenge to his detention and ordered the government to either charge him in federal court or release him. At this writing, the order was stayed pending appeal.

Congress authorized a new system of military commissions in 2006 after the US Supreme Court in *Hamdan v. Rumsfeld* declared unlawful the military commissions set up in 2001 by the Bush administration to try non-citizens accused of terrorism. While these new commissions, which are entirely separate from the federal court system, address some of the concerns of the old commissions, they still fall far short of the due process standards provided by federal courts. For example, statements obtained through “cruel, inhuman, or degrading treatment” prior to December 30,

2005, are admissible so long as a judge finds that they are probative and “reliable.” The ad hoc nature of the process raises further fair trial concerns.

Australian David Hicks, whose plea agreement in March 2007 makes him the only Guantanamo detainee to be convicted of a criminal offense, was scheduled to be released from custody in Australia in December, upon completion of his nine-month sentence.

To date only three other Guantanamo detainees had been charged under the commissions: Salim Hamdan, Omar Khadr, and Mohamed Jawad. Both Khadr and Jawad were juveniles—15 and 17, respectively—when they were first brought to Guantanamo close to six years ago. The Bush administration has said that it ultimately plans to try up to 80 Guantanamo detainees before the commissions.

Jose Padilla was convicted in federal court in 2007 of conspiracy to aid terrorism, but prosecutors did not pursue long-trumpeted allegations that he had been planning to detonate a radioactive “dirty” bomb in Chicago. The government agreed not to use any statements made by Padilla during his more than three years in incommunicado military detention, presumably because such statements were elicited during abusive interrogation.

## **Torture Policy**

Over the past two years, Congress and the courts have repudiated the Bush administration’s authorization of abusive interrogation techniques that amount to torture. In response the Pentagon announced new rules applicable to all interrogations carried out by the United States armed forces and disavowed many abusive techniques. The Central Intelligence Agency (CIA), however, contends that it is not bound by these rules, and the administration has gone to great lengths to justify the CIA’s continued use of certain techniques banned for use by the military. According to an October 2007 *New York Times* article, the Department of Justice issued legal memoranda in 2005 that authorized the use of waterboarding (simulated drowning), head slapping, and exposure to frigid temperatures, and ruled that neither these techniques, nor any other techniques being employed by the CIA, violated the then-pending legislation prohibiting cruel, inhuman, and degrading

treatment. In October 2007 the Bush administration's candidate for attorney general, Michael Mukasey, refused to repudiate waterboarding as a form of torture in his confirmation hearings.

In July 2007 the administration issued an executive order providing legal authorization for the so-called "CIA program" in which detainees are held incommunicado and subject to reportedly abusive interrogations. Michael McConnell, Director of National Intelligence, said on July 22, 2007 that he "would not want a US citizen to go through the process" of being subjected to some of the techniques approved for use by the CIA.

### **Secret Prisons**

In April 2007 the Department of Defense announced the transfer to Guantanamo of another detainee who was previously held in CIA custody, suggesting that secret prisons (temporarily closed after President Bush's admission that they existed in 2006) were up and running again. Human Rights Watch has identified 39 other people we believe were held in secret prisons; administration officials have indicated the total number to be about 100. Under international law those persons remain unlawfully "disappeared" until the United States can account for them. In July President Bush issued an executive order providing authorization for this "CIA program," despite the patent illegality of incommunicado detention under international law.

### **Accountability for Detainee and Civilian 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. Prosecutions of military personnel have focused almost exclusively on low-ranking personnel, and no one has been charged under the doctrine of command responsibility. Over a dozen cases referred to the Department of Justice for prosecution by the military and others have been sitting idle for years. No CIA agents have been prosecuted for abuse, and only one civilian contractor has faced criminal charges.

On September 16, 2007, a convoy of contractors from the Blackwater security firm fired into a crowded street in Baghdad, killing at least 17 civilians. This incident has galvanized international attention to the effective immunity from prosecution under Iraqi and US law enjoyed by many of the almost 180,000 contractors supporting US operations in Iraq. At this writing, legislation expanding federal jurisdiction over felonies committed by contractors overseas was pending before Congress.

Khaled el-Masri, a German citizen arbitrarily arrested and transferred by the US to Afghanistan, where he was beaten and held incommunicado for several months, and Maher Arar, a dual Canadian-Syrian citizen secretly detained and sent by the US to Syria, where he was tortured and imprisoned for 10 months, brought lawsuits against the US challenging their mistreatment. US courts have dismissed both cases, accepting the administration's position that the courts should not review the government's actions. El-Masri asked the Supreme Court in 2007 to review the dismissal of his case, but the court declined to do so.

### **Denial of Refugee Protection**

US law allows authorities to deny refugee protection to people believed to have associated with or provided "material support" to any armed group. The broad terms of the law have led authorities to deny rights to persons who fit the refugee definition under international law, including rape victims forced into domestic servitude by rebel groups. In 2007 the administration began to issue a small number of waivers to prevent innocent civilians from being barred as terrorists. Over 3,000 refugees—mostly from Burma—and a handful of asylum seekers have benefited, but implementation has been slow, the administration's waiver authority is limited, and families have been separated as a result. Legislation that would expand the waiver authority was pending before Congress at this writing.

### **Incarceration**

There are more than 2.2 million persons in US prisons and jails, an increase of 500 percent from 30 years ago. A June 2007 report by the Justice Department's Bureau of Justice Statistics (BJS) found that the incarcerated population continued to grow in 2006, experiencing its largest one-year increase in six years. The United States now

has both the largest incarcerated population and the highest per capita incarceration rate in the world, with a rate five times that of England and Wales, seven times that of Canada, and more than 10 times that of Japan.

The burden of incarceration falls disproportionately on members of racial and ethnic minorities. Black men are incarcerated at 6.5 times the rate of white men, and 11.7 percent of *a//*black males age 25 to 29 are in prison or jail. The US government failed to explain or address these rates in its 2007 report to the United Nations Committee on the Elimination of Racial Discrimination, hearings on which are expected in February 2008.

As the prison population grows, so does the challenge of providing adequate medical and mental health care. A September 2006 BJS report found that more than half of all prisoners—and nearly three-quarters of all female prisoners—suffer from a mental health problem such as major depression or a psychotic disorder.

In California a federal judge found that medical care in the state's prisons violated the US Constitution's prohibition on cruel and unusual punishment. In 2006 the judge appointed a receiver to oversee prison medical care, stripping that function from the state government. In September 2007 the receiver issued a report finding that 15 percent of California prisoner deaths were either preventable or possibly preventable.

Enacted by the US Congress in 1996, the Prison Litigation Reform Act (PLRA) creates a variety of obstacles for prisoners seeking to challenge their conditions of confinement or otherwise vindicate their rights in court. In January 2007 the US Supreme Court issued a decision overturning some particularly restrictive interpretations of the PLRA by lower federal courts.

### **The Death Penalty and Juvenile Life without Parole**

State governments executed 42 prisoners between January and October 2007, bringing the total number of men and women executed in the United States to 1099 since 1977. Almost all were killed by lethal injection; one was electrocuted.

With growing evidence that lethal injection may be a very painful way to die, executions in many states were halted in 2007. In September 2007 the US Supreme Court agreed to consider the constitutionality of lethal injection in the case of two Kentucky death row prisoners claiming that lethal injection amounts to cruel and unusual punishment. Lethal injections in the US are expected to decrease substantially until the court issues its decision sometime in 2008.

In 2007 Human Rights Watch revised upward, from 2,225 to at least 2,380, our estimate of the number of US prisoners serving sentences of life without parole for crimes committed when they were under 18. The number of such prisoners in the rest of world combined is eight. Efforts at reforming this excessively punitive sentence for young offenders continued in several states across the country, including in Michigan and California.

## **Women's Rights**

Women's rights in the United States suffered major setbacks at the Supreme Court in 2007. One court decision severely restricted challenges to unequal pay (women earn only 77 cents for every dollar earned by men), another upheld the exclusion of in-home care workers from certain federal wage and overtime protections (89 percent of such workers are women), and a third upheld a ban on a medically approved late-term abortion method, adding to existing regulatory and financial obstacles to safe abortion.

The US continues to channel its international assistance toward programs that compromise sexual and reproductive health and rights. In 2007, a significant portion of US funding for HIV/AIDS prevention continued to be earmarked for programs that promote abstinence until marriage, regardless of whether such programs were likely to be effective and without sufficient regard for abuses that put women, even those who abstain until marriage, at high risk for HIV.

In a positive step, the Senate in 2007 approved a bill that would overturn the "global gag rule"—a series of restrictions on what recipients of US reproductive health aid can do and say on abortion. At this writing, it remained unclear whether the bill would become law.

## Jena

In August 2006 an African-American high school student in Jena, Louisiana, challenged the de facto racial segregation of his school's grounds by asking permission to sit under the "white tree" on campus. The next day three nooses hung from the tree. School authorities responded inadequately, further stoking racial tensions. In December 2006 six African-American youth at the high school beat up a white youth, who suffered a concussion and other injuries. The six youth were charged as adults with a range of serious crimes including attempted murder, spurring a nationwide outcry over what were seen as excessive, racially discriminatory charges. In September 2007 an appeals court vacated the conviction for aggravated battery of the first of the six to be tried, Mychal Bell; the prosecutor said he would appeal the ruling.

## Sex Offenders

In a 2007 report, *No Easy Answers*, Human Rights Watch found that, as currently conceived, many sex offender registry laws do little to prevent sexual violence and violate fundamental human rights. Offenders on publicly available registries find it difficult to obtain or keep employment and housing. Some have been murdered and many are harassed by strangers who find their information online. Residency restrictions lead to homelessness and transience for some convicted sex offenders, which interfere with their effective tracking, monitoring, and supervision by law enforcement officers; this in turn may make repeat offenses more likely.

Sex offender laws ignore the full reality of sexual violence in the US. Child safety advocates question the focus in current law on "stranger danger" and already convicted offenders because more than 90 percent of child sexual abuse is committed by someone the child knows and trusts. Authoritative studies show that three out of four sex offenders do not re-offend within 15 years of release from prison and 87 percent of sex crimes are committed by individuals without a previous conviction for a sex offense.

## Rights of Non-Citizens

Immigration reform legislation continued to be stymied in 2007 by disagreements among lawmakers on whether or how to regularize the status of millions of undocumented migrant workers. According to the US Census, there were 37.5 million non-citizens living in the United States in 2006.

State and local governments passed at least 182 laws in 2007 limiting access to public benefits and state-issued identification cards, or punishing landlords or employers for doing business with undocumented workers. Many of these laws were found unconstitutional or temporarily halted by courts. Federal immigration authorities stepped up workplace raids in California, Nevada, New Mexico, New York, and elsewhere, splitting many families and leading to mistaken arrests and transfers of migrants to detention centers in remote locations far from their legal counsel.

A 2007 Human Rights Watch report, *Forced Apart*, found that non-citizens who have lived in the country for decades, including lawful permanent residents, have been summarily deported after criminal convictions, even for minor crimes. In fact, 64 percent of the non-citizens deported in 2005 were deported for non-violent crimes such as drug possession or theft. The deportations occur after the non-citizen has finished serving his or her sentence.

According to US Citizenship and Immigration Services, 672,593 non-citizens were deported for crimes between 1997 and 2005. Human Rights Watch estimates that at least 1.6 million spouses and children, many of whom are US citizens, were separated from their family members as a result. US law gives immigration judges no opportunity to balance the individual's crime against his or her family relationships, other connections to the United States such as military service or economic ties, or likelihood of persecution in the country of origin.

Deportation and workplace raids are enforcement measures that US Immigration and Customs Enforcement (ICE) authorities combine with the daily detention of some 28,000 non-citizens. Endemic problems in detention facilities continued in 2007, including deaths in custody, inadequate medical care, inappropriate and punitive

housing for non-citizen children, interference with access to counsel and to family members, and prolonged detention.

The death in July 2007 of Victoria Arellano, a 23-year-old transgender detainee, in US immigration custody is an extreme, but not surprising, example of the suffering experienced by immigration detainees with HIV/AIDS. The US fails to ensure that detainees with HIV/AIDS receive medical care that complies with recognized standards for correctional health care. Medical care in facilities operated or supervised by ICE is delayed, interrupted, and inconsistent to an extent that endangers the health and lives of many detainees.

Lawsuits, congressional hearings, and proceedings before the Inter-American Commission on Human Rights have brought increased scrutiny to detention of non-citizen children, though generally not improved conditions. In one notable exception, lawyers in Texas won a settlement that improved conditions and ensured the release of dozens of children.