



# USA

## AMNESTY INTERNATIONAL SUBMISSION FOR THE UN UNIVERSAL PERIODIC REVIEW

### 22<sup>ND</sup> SESSION OF THE UPR WORKING GROUP, MAY 2015

#### FOLLOW UP TO THE PREVIOUS REVIEW

During the USA's first Universal Periodic Review (UPR) in 2010, 228 recommendations were made to it by other states.<sup>1</sup> The USA supported 53 of the recommendations and rejected 57. It gave qualified or partial support to the remainder.<sup>2</sup> Given the number of recommendations, and the uneven implementation of accepted recommendations, Amnesty International draws attention to the following areas which illustrate the shortcomings in the engagement by the USA with the UPR to date.

#### **Treaties and international human rights mechanisms**

Some 50 recommendations concerned ratifications or withdrawal of reservations to previous ratifications. The USA rejected those calling for the ratification of the International Covenant on Economic, Social and Cultural Rights, the Rome Statute of the International Criminal Court, the International Convention on the Protection of All Persons from Enforced Disappearance, and the Optional Protocol to the Convention against Torture and other Cruel, Inhuman, or Degrading Treatment or Punishment.<sup>3</sup> The USA supported calls to ratify the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of Persons with Disabilities, and the Convention on the Rights of the Child.<sup>4</sup> However, it did not support doing so "without reservation".<sup>5</sup> It has still not ratified any of these treaties. It rejected calls to withdraw reservations lodged with its ratification of the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.<sup>6</sup>

#### **National security**

The USA's responses to recommendations on national security provide an example of its reluctance to apply international human rights law to its conduct. Thus, its support for closure "without delay" of the Guantánamo detention facility and for resolution of the detentions in line with international human rights law, in particular the ICCPR,<sup>7</sup> has not led to closure of the facility more than four years later. This is because the USA has not addressed these detentions as a human rights issue, but as "law of war" detentions (unilaterally defined by the USA), to which it does not apply human rights law. Similarly, its support for a recommendation to not resort to exceptional tribunals to prosecute anyone suspected of terrorism-related offences<sup>8</sup> has not led to an end to military commissions, established to prosecute a handful of detainees held at the base. The USA's claim to support recommendations for "vigorous investigation and prosecution of any serious violations of international law", was followed by the telling phrase "consistent with existing US law, policy and practice".<sup>9</sup> Today, US law and policy has led to impunity for the perpetrators of crimes under international law of enforced disappearance and torture committed as part of the CIA secret detention program authorized from 2001 to 2009.

#### **Criminal justice issues**

Some 18 recommendations concerned capital punishment, with most calling for a moratorium on executions or abolition, and some for an end to its use against people with mental disabilities.<sup>10</sup> Reflecting an approach under which the USA applies only constitutional standards to the death penalty, the USA rejected those recommendations,<sup>11</sup> despite ever-growing evidence of cruelty, discrimination and error in the capital justice system. People with serious mental illness continue to face execution. US support for Mexico's recommendation

to implement the International Court of Justice's 2004 *Avena* judgment and to prevent the execution of those it covers<sup>12</sup> has led to no change and has failed to prevent three more such executions in the interim.

## THE NATIONAL HUMAN RIGHTS FRAMEWORK

The rejection of the many recommendations calling for ratification of human rights treaties or withdrawal of conditions attached to previous ratifications is symptomatic of a long-standing tendency of the USA to be supportive of international instruments while also seeking to exempt itself from them. It has been slow to ratify human rights treaties and when it has ratified them it has frequently lodged reservations or other conditions which defeat the object and purpose of the treaty or limit its potential to protect human rights, or declared that the treaty's provisions are not "self-executing" and then failed to implement the treaty into domestic law, or refused to apply relevant treaty provisions extraterritorially. For individuals under US jurisdiction, the fact of the USA becoming a party to a human rights treaty has often been more symbolic than real.

In its first UPR, the USA rejected calls to withdraw reservations to international human rights treaties, stating that it does not believe that any of its reservations undermine the object or purpose of the treaty in question.<sup>13</sup> However, UN treaty monitoring bodies have long called on the USA to withdraw certain reservations precisely because they indeed defeat the object and purpose of the treaty.<sup>14</sup> In 2014 the USA has appeared before the Human Rights Committee and the Committee on the Elimination of Racial Discrimination, and is scheduled to appear before the Committee against Torture in November 2014. A number of recommendations made previously by the treaty monitoring bodies remain unimplemented.

## THE HUMAN RIGHTS SITUATION ON THE GROUND

### (i) COUNTER-TERRORISM

#### **Indefinite detention without charge or trial**

More than four and a half years after President Obama's deadline for closing the detention facility at the US Naval Base in Guantánamo Bay passed, scores of detainees remain held at the base, most without charge or trial. A human rights-compliant approach to ending the Guantánamo detentions requires that any detainee not charged with a recognizable criminal offence for trial under fair procedures in an independent and impartial court be immediately released, into the USA if no other safe and just solution is immediately feasible. However, the USA continues to apply its own unilaterally developed "law of war" framework to these detentions.

#### **Trials by military commission**

The US military commissions at Guantánamo are creations of political choice, not of demonstrably legitimate necessity. The commissions lack independence, in substance and appearance, from the political branches of government that have authorized, condoned, and blocked accountability and remedy for, human rights violations committed against the very category of detainees to appear before them. Trial of civilians by military tribunals is inconsistent with international standards, especially when civilian courts are readily available. Applying inferior trial protections on the basis of nationality – US nationals cannot be tried by the military commissions – violates the right to equality before the law. Six detainees face possible death sentences at forthcoming trials by military commission. Execution following unfair trial violates the right to life under international law.

#### **Accountability and remedy**

Dozens of detainees were held in the CIA-operated program of secret detention authorized from 2001 to 2009. Systematic human rights violations were committed in this program, including the crimes under international law of enforced disappearance and torture. No-one has been brought to justice for these crimes and the limited investigations that have been conducted have been closed, with no charges brought against those anyone. A combination of executive secrecy, judicial deference to the invocation of national security or war powers by the political branches, and domestic party politics continues to block accountability and remedy, resulting in continued non-compliance by the US with its international human rights obligations.

## (ii) CRIMINAL JUSTICE

### **Police and correctional agencies**

US law enforcement and correctional agencies generally operate under professional standards. However, there are frequent reports of ill-treatment and excessive use of force by police and custody officials. Such officials are rarely prosecuted for such abuses and some law enforcement agencies, as well as many prisons and jails, lack effective independent oversight bodies. There are no binding national guidelines governing use of restraints or “less lethal” weapons such as **Tasers**.

More than 12,000 US law enforcement agencies deploy Tasers: dart-firing electro-shock weapons which can also be used close-up as stun guns. Over 540 people have died in the USA since 2001 after being struck by police Tasers, raising serious concern about the safety of such devices. Although most of the deaths have been attributed to other factors, coroners have found that the Taser played a role in more than 60 deaths, and there are other cases where the cause of death was unclear. Tasers are widely used against individuals who do not pose a serious threat, including children, the elderly and people under the influence of drink or drugs.<sup>15</sup> In many of the cases documented by Amnesty International, the use of Tasers violates international standards prohibiting torture and other ill-treatment.

Racial minorities continue to be disproportionately represented in complaints of police ill-treatment. National data on the excessive use of force by police does not exist. Lesbian, gay, bisexual, transgender and intersex people are also at risk of discrimination and ill-treatment by police. There are concerns about **racial profiling** in many jurisdictions, with individuals allegedly stopped, searched, or arrested on account of their race, nationality, or perceived origin or religion. Legislation prohibiting racial profiling nationwide, with relevant data collection and monitoring, has been pending before Congress since 2001.

Since the late 1980s, more than 30 states and the federal government have introduced “**supermaximum security**” (**supermax**) **facilities** for the control of prisoners who are considered disruptive or a security threat. The conditions of prolonged isolation and sensory deprivation in such units have been criticized by UN treaty monitoring bodies as incompatible with international human rights standards.<sup>16</sup> Prisoners in the most restrictive units are typically confined for 23 to 24 hours a day in small, sometimes windowless, solitary cells, with no work or rehabilitation programs, and no daily exercise. Although courts have ordered improvements to some supermax prisons, conditions remain extremely harsh in many states and often the review procedures for assignment to such facilities are inadequate.

### **The death penalty**

There have been nearly 1,400 executions in the USA since judicial killing resumed under revised statutes in 1977, and about 3,000 prisoners remain on death row around the country, including more than 50 on federal death row. The US capital justice system is marked by arbitrariness, discrimination, and error. Studies demonstrate that race, particularly race of murder victim, plays a role in who is sentenced to death. More than 130 prisoners have been released from death row since 1977 on grounds of innocence. In numerous cases, prisoners have gone to their deaths despite serious doubts about their guilt or where inadequate legal representation for indigent defendants meant that the sentencing jury had not been presented with the full array of mitigating evidence available in the case. People with serious mental illness continue to be subjected to the death penalty. Harsh conditions on death rows in many states add to the inherent cruelty of the death sentence.

### **Life sentences for children**

Hundreds of individuals are serving sentences of life without parole for crimes committed when they were under 18 years old.<sup>17</sup> The imposition of a sentence of life without the possibility of parole against such individuals – regardless of the nature of that crime or its consequences – is an unequivocal violation of international law.

### **Sexual violence against Indigenous women**

Indigenous women suffer disproportionately high levels of rape and sexual violence. Data collected by the Department of Justice (DOJ) indicates that Native American and Alaska Native women are more than 2.5 times more likely to be raped or sexually assaulted than women in the USA in general.<sup>18</sup> The DOJ found that more than one in three American Indian and Alaska Native women will be raped during their lifetimes, compared to one in five in the USA overall.<sup>19</sup> Recently enacted legislation<sup>20</sup> has provided some solutions but is limited in scope: it only applies to domestic violence related crimes, precludes prosecution of the majority of non-Indian perpetrators without ties to the tribe and does not apply to the Alaska Native Tribes.<sup>21</sup>

### **Migrants in detention**

More than 350,000 men, women and children are detained by US immigration authorities annually.<sup>22</sup> International human rights standards require that detention in immigration cases should only be used in exceptional circumstances, and that it must be justified in each case and be subject to judicial review. However, immigrants can be detained for months or years in the USA without any form of meaningful individualized judicial review of their detention. Amnesty International has documented pervasive problems regarding the conditions under which immigrants are held. These conditions violate both US and international standards on the treatment of detainees.<sup>23</sup>

### **Gun violence**

Each year, more than 11,000 people are killed as a result of gun violence.<sup>24</sup> In 2011, African Americans accounted for 55.7 per cent of all homicides with a “firearm” despite accounting for only 13 per cent of the US population.<sup>25</sup> The problem is especially pervasive among African American youth; African American children and teens (ages 0-19) accounted for 60.75 per cent of all homicides due to firearms for that age range.<sup>26</sup> The failure of US authorities to prevent gun violence violates international human rights law.<sup>27</sup>

## **(iii) ECONOMIC, SOCIAL AND CULTURAL RIGHTS**

### **Maternal mortality**

64 countries have lower maternal mortality rates than the USA,<sup>28</sup> with hundreds of women dying each year in preventable pregnancy-related deaths.<sup>29</sup> The maternal mortality rate in the USA has increased from 13 per 100,000 births in 2000, to 17 per 100,000 births in 2005, to 28 per 100,000 births in 2013.<sup>30</sup> African American women are nearly four times more likely to die of pregnancy-related complications than white women.<sup>31</sup> This disparity holds steady regardless of income, education or location.<sup>32</sup>

## **RECOMMENDATIONS FOR ACTION BY THE STATE UNDER REVIEW**

### **Amnesty International calls on the government of the USA to:**

#### *International law and standards*

- Ratify and implement into domestic law the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, the International Covenant on Economic, Social and Cultural Rights, the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Convention for the Protection of All Persons from Enforced Disappearance, the Rome Statute of the International Criminal Court, the American Convention on Human Rights, and the Vienna Convention on the Law of Treaties;
- Review its current ratifications, with a view to withdrawing all reservations, understandings and declarations, in particular those which are considered by treaty bodies to defeat the object and purpose of the treaty;
- Review all outstanding recommendations from UN treaty bodies and experts with a view to implementing them.

#### *Counter-terrorism*

- Release all detainees still held at Guantánamo, unless they are to be charged and tried without further delay in ordinary federal civilian courts, applying fair trial standards fully consistent with international law. If repatriation is not possible then release into the USA or any safe alternative, without placing conditions on the transfers of detainees that would violate international human rights law and standards;
- Initiate effective independent criminal investigations, including into crimes under international law such as torture and enforced disappearance, committed by individuals acting for or on behalf of the USA, including in the programmes of rendition, interrogation and detention operated by the CIA between 2001 and 2009;
- Ensure that all victims of human rights violations have full access to meaningful remedy;
- Declassify, with redactions only where strictly necessary, the full report of the Senate Select Committee on Intelligence on the CIA detention and interrogation program, as well as other relevant information relating to the CIA programmes of rendition, detention and interrogation between 2001 and 2009.

#### *Criminal justice*

- Suspend the use of Tasers and similar devices in law enforcement unless strictly regulated and limited to situations where they are necessary to protect life and avoid resort to firearms;
- Review conditions in federal supermax prisons and to develop national standards to ensure humane conditions in all such units, with adequate review and monitoring procedures;
- Increase investigations by the Civil Rights Division of the Justice Department of ill-treatment in prisons, and of police departments accused of a “pattern or practice” of abuses, and collect data nationally on the use of force by police departments;
- Ensure that state and federal authorities impose a moratorium on executions with a view to abolishing the death penalty nationwide, and that prosecutors in all jurisdictions cease pursuing death sentences;
- End the use of life imprisonment without parole for offenders under the age of 18 at the time of the crime, regardless of the nature of that crime, and to review all existing sentences in order to ensure that any such convicted offender has the possibility of parole.

#### *Detention of migrants*

- Detain migrants only in exceptional circumstances, in humane conditions, with such detention justified in each individual case and subject to judicial review.

#### *Gun violence*

- Ensure the development and implementation of a national program of action to prevent gun violence.

#### *Sexual violence against Indigenous women*

- Ensure that all reports of rape and sexual violence against Indigenous women are promptly and thoroughly investigated, and that perpetrators are prosecuted and appropriately punished.

#### *Maternal mortality*

- Ensure that all women have equal access to timely and quality maternal health care services.

## END NOTES

<sup>1</sup> Human Rights Council, *Report of the Working Group on the Universal Periodic Review of the United States of America*, A/HRC/16/11, para 92.

<sup>2</sup> Human Rights Council, *Report of the Working Group on the Universal Periodic Review of the United States of America (Addendum)*, A/HRC/16/11/Add.1., paras 5 – 32.

<sup>3</sup> A/HRC/16/11/Add.1., paras 29 – 30.

<sup>4</sup> A/HRC/16/11/Add.1., paras 28 – 29.

<sup>5</sup> A/HRC/16/11/Add.1., para 29.

<sup>6</sup> A/HRC/16/11/Add.1., para 29.

<sup>7</sup> A/HRC/16/11/Add.1., paras 13 – 14.

<sup>8</sup> A/HRC/16/11/Add.1., paras 13 – 14.

<sup>9</sup> A/HRC/16/11/Add.1., para. 14.

<sup>10</sup> A/HRC/16/11, recommendations 92.48 – 50, 92.95, 92.118 – 133, 92.135, (France [x2], Uruguay, Austria, Sweden, Russian Federation, United Kingdom, Belgium, Switzerland, Italy, Uruguay, New Zealand, Netherlands, Cyprus, Australia, Hungary, Norway, Slovakia, Turkey, Germany, Holy See, Nicaragua, Algeria, Spain, Denmark, Norway, Venezuela, Ireland).

<sup>11</sup> A/HRC/16/11/Add.1., paras 8 - 9.

<sup>12</sup> A/HRC/16/11/Add.1., para. 28.

<sup>13</sup> See above n. 6.

<sup>14</sup> For example, Committee against Torture, *Concluding Observations on the USA*, 2000, para. 3(b), and 2006, para. 40. Human Rights Committee, *Concluding Observations on the USA*, 1995.

<sup>15</sup> See USA: 'Less than lethal'? The use of stun weapons in US law enforcement, December 2008, <http://www.amnesty.org/en/library/info/AMR51/010/2008/en>, and USA: Statistical analysis of deaths following police Taser deaths, February 2012, <http://www.amnesty.org/en/library/info/AMR51/013/2012/en>

<sup>16</sup> For example, Human Rights Committee, *Concluding Observations on USA 2014*, para. 20. Committee against Torture, *Concluding Observations on USA*, 2000, para 3(f).

<sup>17</sup> In 2010, in *Graham v. Florida*, the US Supreme Court prohibited the imposition of sentences of life without parole for defendants convicted of non-homicide crimes committed when they were under 18 years old. And, in 2012, in *Miller v Alabama*, it outlawed mandatory life imprisonment without parole for such offenders. According to the Court at the time of the *Miller* ruling, 28 states and the federal government made life without parole sentences mandatory for some children convicted of murder in adult court with more than 2,000 inmates sentenced under mandatory sentencing schemes. States have responded in a variety of ways to the *Miller* ruling, including on whether they will apply it retroactively or not.

<sup>18</sup> Bureau of Justice Statistics, *A BJS Statistical Profile, 1992-2002, American Indians and Crime*, 7, U.S. Dept. of Justice, December 2004, available at <http://www.bjs.gov/content/pub/pdf/aic02.pdf>

<sup>19</sup> National Institute of Justice, *Full Report of the Prevalence, Incidence, and Consequences of Violence Against Women: Findings From the National Violence Against Women Survey*, U.S. Dept. of Justice, 22, November 2000, available at <https://www.ncjrs.gov/pdffiles1/nij/183781.pdf>.

<sup>20</sup> In July 2010, the US Congress passed the Tribal Law and Order Act and signed it into law. Tribal Law and Order Act of 2010. P.L. 111-211. This Act endeavors to increase coordination between Tribal and federal law enforcement and to better equip Tribal courts to punish crime, with greater sentencing authority. In March 2013, Congress reauthorized the Violence Against Women Act. The reauthorization includes new provisions to protect Indigenous women which will allow Tribal courts to prosecute non-Native men for certain offenses, including domestic violence, dating violence and protection order violations. The DOJ found that 86% of rapes and sexual assaults are perpetrated by non-Native men, making it critical that Tribal governments are able to act against this epidemic. Violence Against Women Reauthorization Act of 2013 ('VAWA 2013'), Pub. L. 113-4 (2013). VAWA 2013 § 904; Department of Justice, *VAWA 2013 and Tribal Jurisdiction over Crimes of Domestic Violence*, 14 June 2013, <http://www.justice.gov/tribal/docs/vawa-2013-tribal-jurisdiction-over-non-indian-perpetrators-domesticviolence.pdf>.

<sup>21</sup> While the Tribal Law and Order Act increased the sentencing abilities of Tribal courts, Tribal courts can still only impose a maximum of three years in prison for any crime, including rape, and Tribal courts still lack jurisdiction to try non-Native perpetrators outside of the limited domestic violence context allowed by VAWA 2013. The new VAWA provisions exclude

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Alaska Native Tribes and a number of crimes, including sexual assaults between strangers, child abuse that does not involve a protection order, and crimes committed by a non-Native perpetrator who lacks ties to the Tribe, such as a man who does not live or work on the reservation.

<sup>22</sup> See ICE and ERO statistics for Fiscal Years 2001 – 2012, available at: <http://www.ice.gov/doclib/foia/reports/ero-facts-and-statistics.pdf>.

<sup>23</sup> These include co-mingling of immigration detainees with individuals convicted of criminal offenses, inappropriate and excessive use of restraints, inadequate access to healthcare including mental health services, and inadequate access to exercise. Many individuals have limited or no access to family and legal or other assistance throughout their detention. See, Amnesty International, *Jailed Without Justice: Immigration detention in the USA*, available at: <http://www.amnestyusa.org/pdfs/JailedWithoutJustice.pdf>.

<sup>24</sup> See Center for Disease Control, Table 2, page 19, Assault (Homicide) by discharge of firearms for 2011 (preliminary) and 2010, [http://www.cdc.gov/nchs/data/nvsr/nvsr61/nvsr61\\_06.pdf](http://www.cdc.gov/nchs/data/nvsr/nvsr61/nvsr61_06.pdf)

<sup>25</sup> Centers for Disease Control and Prevention, “Fatal Injury Reports, National and Regional, 1999-2011,” available at [http://webappa.cdc.gov/sasweb/ncipc/mortrate10\\_us.html](http://webappa.cdc.gov/sasweb/ncipc/mortrate10_us.html) Gun violence has been shown to reduce African-American male life expectancy by a full year with African-American males being almost seven times more likely to die by firearm homicide than white males. 1 J. Lemaire, “The Cost of Firearm Deaths in the United States: Reduced Life Expectancies and Increased Insurance Costs”, *Journal of Risk and Insurance*, 2005, Vol 72, No. 3, 359-374, available at <http://www.fox.temple.edu/cms/wp-content/uploads/2012/06/JeanLemaire.pdf>

<sup>26</sup> Centers for Disease Control and Prevention, “Fatal Injury Reports, National and Regional, 1999-2011,” available at [http://webappa.cdc.gov/sasweb/ncipc/mortrate10\\_us.html](http://webappa.cdc.gov/sasweb/ncipc/mortrate10_us.html)

<sup>27</sup> Under international human rights law, states have a duty to take positive measures to prevent acts of violence and unlawful killings, including those committed by private persons. Where a foreseeable consequence of a failure to exercise adequate control over the civilian possession and use of arms is continued or increased violence, states might be held liable for this failure under international human rights law. The state responsibility to exercise due diligence does not lessen the criminal responsibility of those who carry out gun crimes.

<sup>28</sup> “Maternal mortality ratio.” The World Bank. [http://data.worldbank.org/indicator/SH.STA.MMRT?order=wbapi\\_data\\_value\\_2013+wbapi\\_data\\_value+wbapi\\_data\\_value-last&sort=asc](http://data.worldbank.org/indicator/SH.STA.MMRT?order=wbapi_data_value_2013+wbapi_data_value+wbapi_data_value-last&sort=asc)

<sup>29</sup> M. Heron et al, Deaths: Final Data for 2006, *National Vital Statistics Reports*, Vol.57, No.14, April 2009, p.116, Table 34; available at [http://www.cdc.gov/nchs/data/nvsr/nvsr57/nvsr57\\_14.pdf](http://www.cdc.gov/nchs/data/nvsr/nvsr57/nvsr57_14.pdf).

<sup>30</sup> See also USA: Deadly Delivery: The maternal health care crisis in the USA, AI Index AMR 51/007/2010, 12 March 2010, <http://www.amnesty.org/en/library/info/AMR51/007/2010/en>. USA: Deadly Delivery: The maternal health care crisis in the USA: One year update, AI Index AMR 51/108/2011, 7 May 2011, <http://www.amnesty.org/en/library/info/AMR51/108/2011/en>.

<sup>31</sup> GK Singh, *Maternal Mortality in the United States, 1935-2007*.

<sup>32</sup> Women of certain groups are disproportionately affected, as age, gender, race, ethnicity, immigration status, Indigenous status or income level can all affect a woman’s access to health care, the way she is treated by health care providers, and the quality of health care she receives. This results in disparities in health outcomes. AI’s report cited above noted that for 2005-2007, the maternal mortality rate was highest among black women at 34.0 per 100,000 births, followed by Native American and Alaska Native women at 16.9 per 100,000 births, Asian and Pacific Islanders at 11.0 per 100,000 births, non-Hispanic whites at 10.4 per 100,000 births, and Hispanics at 9.6 per 100,000 births. USA: Deadly Delivery: The maternal health care crisis in the USA: One year update, AI Index: AMR 51/108/2011, 7 May 2011, <http://www.amnesty.org/en/library/info/AMR51/108/2011/en>; GK Singh, *Maternal Mortality in the United States, 1935-2007*.