



**UPR Submission
United States
September 2014**

1. Human Rights Watch submits the following information regarding United States implementation of recommendations it accepted through its 2010 Universal Periodic Review as well as information about additional international human rights obligations not addressed in the 2010 review.
2. This submission is not a complete review of the implementation of all 171 recommendations either fully or partially accepted by the United States, nor is it a comprehensive review of US protection of human rights in the domestic sphere. It is our intention to complement the numerous important reports submitted by civil society organizations on different aspects of the US human rights record not covered here.
3. In its 2010 review, the United States agreed to “consider” ratifying ICESCR, CEDAW, CRC, and CRPD (92.10, 92.11, 92.20, 92.21); ratifying ILO Convention Nos. 100 and 111 (92.22 and 92.26); ratifying the Rome Statute of the International Criminal Court (92.28); signing the Migrant Worker Treaty (92.30); lifting reservations to the ICCPR and other ratified human rights treaties (92.47, 92.48, 92.49); and establishing a national human rights institution (NHRI) at the federal level (92.74).¹
4. To date, however, no new human rights treaty has been signed or ratified, no reservations, understandings or declarations have been lifted, and no NHRI established. The UPR is ineffective if limited to a conceptual exercise, and no country should claim success by accepting recommendations that require no identifiable outcomes or even proof of a deliberative process.
5. The United States has failed to implement a number of other recommendations from its prior review. These include recommendations involving national security, criminal justice and policing, treatment of immigrants, and privacy, as detailed below, as well as overarching recommendations, such as agreeing to incorporate human rights training and education strategies in public policies (92.87). This submission also touches on issues that the United States did not address in its prior UPR but should consider in its upcoming review.

Policing and racial discrimination

6. The fatal shooting of Michael Brown, an unarmed 18-year-old African-American, by police in August 2014 in Ferguson, Missouri alongside the excessive response by law enforcement to the subsequent protests are a reminder that the United States still struggles with issues of race and policing. The shooting is the most recent example of possible unlawful use of lethal force by local law enforcement. In addition, police responded to largely peaceful protests about the killing with intimidating tactics and excessive use of force.
7. Human Rights Watch is also concerned by reports of profiling and excessive use of force by police and US Border Patrol agents. The United States agreed to “[g]uarantee the prohibition of use of cruelty and excessive or fatal force by law enforcement officials against people of Latin American or African origin as well as illegal migrants and to investigate such cases of excessive use of force” (92.209). The United States also agreed to ban racial profiling in law enforcement (92.68 and 92.101). Profiling by law enforcement on the basis of race, ethnicity or religion undermines the right to equal treatment and drives a wedge between community members and law enforcement.

¹All paragraph cites are to United Nations General Assembly, Human Rights Council, Report of the Working Group on the Universal Periodic Review: United States of America, A/HRC/16/11 (January 2011). Recommendations accepted by the United States can be found here: <http://www.state.gov/j/drl/upr/recommendations/>.

8. The US Justice Department has investigated allegations of racial profiling at the state and local level in the past four years, including a finding that the Alamance County Sheriff's Office in North Carolina engaged in a pattern and practice of discriminatory policing against Latinos.
9. However, the United States has failed to follow through on other key opportunities to address excessive use of force and racial profiling in the past four years. US law also requires the collection of data on the use of excessive force by police, but offers no mechanism to require states to provide that information to the federal government. In 2009, pre-dating the last US UPR, Attorney General Eric Holder began reviewing how to update guidance to federal law enforcement on racial profiling—five years later, that guidance has yet to be updated. And the US Congress has yet to vote on the End Racial Profiling Act, which was first introduced in 2001.
10. *The United States should:*
 - a. Provide clear and strong incentives to state and local governments to collect and disseminate excessive use of force data.
 - b. Commit to passing legislation that aims to reduce incidents of profiling by law enforcement, such as the End Racial Profiling Act.
 - c. Issue its updated guidance on racial profiling, ensure that it applies to border-related enforcement, and respond to excessive use of force complaints involving US Border Patrol agents.

Mass surveillance

11. The United States accepted a recommendation to adopt legislation prohibiting government use “of modern technology for excessive and unjustified intervention in citizens’ private life” (92.188). Yet in 2013 documents released by Edward Snowden revealed that the United States uses modern technology to collect vast quantities of information involving the private life of people living in the United States and outside as well. The United States collects potentially millions of telephone records within the US, intercepts massive amounts of Internet communications from fiber optic cables entering the US from abroad, and compels US-based Internet companies to disclose data about their global users. It is not always clear under what legal authorities the US government is conducting these activities. However, laws that regulate digital surveillance and intelligence gathering activities do not adequately protect the right to privacy, particularly for non-US persons. This broad and indiscriminate approach to surveillance violates the right to privacy, as well as the right to free expression, freedom of the press, and due process.
12. *The United States should:*
 - a. Commit to reforming its mass surveillance programs to ensure that any acquisition, use, dissemination or retention of personal communications data or content be limited to that which is necessary and proportionate to a legitimate state purpose.
 - b. Respect the right to privacy of all, regardless of the nationality or location of those affected by surveillance.

National security

13. The United States committed to “[m]ake fully consistent all domestic anti-terrorism legislation and action with human rights standards” (92.58) and to find a solution for all persons detained at Guantanamo Bay, a “solution in line with the United States obligations regarding the foundations of international and human rights law” (92.160). Yet 149 people continue to be held in the Guantanamo detention facility, including many cleared for release, and only a small number have been transferred to home or third countries since 2010. The military commission system at Guantanamo fundamentally fails to provide due process protections to those charged. Among other things, the system does not protect attorney-client communications; it allows the introduction of coerced evidence; and it uses rules that block the defense from access to information essential to the case—such as the treatment of the detainees currently facing trial while in secret Central Intelligence Agency(CIA) custody.
14. The United States has failed to investigate or hold accountable high-level government officials who approved and ordered the torture of detainees, the use of secret prisons and incommunicado detention, and the unlawful rendition of detainees to countries where they faced torture.

15. Under the guise of national security, the United States has also targeted American Muslims in aggressive counterterrorism investigations on the basis of their religion or ethnic background. Human Rights Watch research suggests that the Federal Bureau of Investigation (FBI) potentially created terrorism suspects by targeting vulnerable individuals and suggesting or encouraging them to undertake acts of terrorism.

16. *The United States should:*

- a. Close the Guantanamo detention facility and transfer the remaining detainees home or to third countries, unless they have been charged with a credible criminal offense.
- b. End the military commission system and prosecute those charged in US federal courts.
- c. Hold accountable those responsible for the CIA secret detention program and the mistreatment of prisoners.
- d. Reform counterterrorism investigations of American Muslims, ending investigations based primarily on a person's religion or ethnic background.

Death penalty

17. The decision of the International Court of Justice in the 2004 *Avena* case requires US states to review and reconsider death sentences for certain foreign nationals who were denied their right to consular notification under the Vienna Convention on Consular Notification. The United States committed to "resolve the obstacles that prevent the full implementation of the *Avena* Judgment" and to stay executions of those covered in that judgment (92.54). However, since 2011, three people covered under *Avena* have been executed in the state of Texas. We note the statements of concern by the US State Department regarding these executions, and the public statements of support by US government officials regarding passage of the Consular Notification Compliance Act, which would help implement *Avena*.

18. Racial disparities also continue to be present in the application of the death penalty in the United States. We were therefore pleased to see the US commit to "[u]ndertake studies to determine the factors of racial disparity in the application of the death penalty" and "to prepare effective strategies aimed at ending possible discriminatory practices" (92.95). Unfortunately those studies have yet to take place. While the United States may have undertaken limited studies on these issues in years prior to the previous UPR, relying on outdated, limited studies does not fulfill the US commitment.

19. *The United States should:*

- a. Continue to encourage passage of the Consular Notification Compliance Act. If Congress is not amenable to the legislation, the executive should use available administrative actions to prevent any new executions of foreign nationals covered by *Avena*.
- b. Recommit to undertaking studies on racial disparities in application of the death penalty and issue findings by a fixed date.

Incarceration and sentencing

20. The United States agreed to review "alternative ways to handle petty crime" (92.179). Yet still over half the prisoners in state and federal prison with a sentence of one year or more are serving time for a non-violent offense. Drug offenders still represent half of all federal prisoners and 20 percent of prisoners in all prisons (federal or state).

21. The United States also committed to review mandatory minimum sentences "in order to assess their disproportionate impact" on racial and ethnic minorities (92.97). The US attorney general has attempted to reduce disparities in federal drug sentencing by adjusting the charging policies that trigger mandatory minimums. The US Sentencing Commission has also adjusted its sentencing guidelines in a way that may reduce some racial disparities in drug sentencing. A number of states have passed laws that reduce or eliminate mandatory minimum

sentences for crimes beyond drug offenses. However, arbitrary and harmful mandatory minimum sentences are still required by state and federal law, and efforts to reform these sentences have yet to be successful.

22. *The United States should:*

- a. Pass laws that eliminate mandatory minimum sentences.
- b. Commit to review the length and proportionality of criminal sentences at the federal and state level, and develop alternatives to incarceration.
- c. Commit to drug laws and policies that respect a person's liberty, autonomy, and privacy.

Youth in the criminal justice system

23. The United States rejected five separate calls to provide youth sentenced to life imprisonment the possibility of parole, as well as recommendations to limit the prosecution and imprisonment of youth (92.180 and 92.181). Children under the age of 18 continue to be tried in adult courts across the United States and imprisoned alongside adults. Human Rights Watch estimates that in 2011, 95,000 youth under the age of 18 were held in adult jails or prisons.

24. *The United States should:*

- a. At minimum, guarantee that youth sentenced as adults in the federal system have an opportunity for release, and should grant that opportunity to persons currently serving life sentences for crimes committed as children.
- b. Provide incentives for states to not try youth as adults and to keep children in jails and prisons separate from adult prisoners.

Immigration detention

25. The United States agreed to “[e]nsure that detention centers for migrants and the treatment they receive” respect universal human rights law (92.164). Yet over the last year the United States has increased detention capacity for immigrant families more than ten-fold, without a clear consideration of the best interests of children in those families. Children in detention suffer anxiety, depression, and the possibility of long-term emotional and psychological damage.

26. *The United States should:*

- a. Cease detaining immigrant children and develop alternative care arrangements that take the best interests of children into account.

Protections for children working in agriculture

27. The United States agreed to recognize the right to association for agricultural workers (92.192). However, the right to association in the United States is not fully extended to people working in agriculture as they are excluded from coverage under the National Labor Relations Act. The lack of this protection may be reflected in lax safety regulations when it comes to children working in the fields. In 2012, two-thirds of children under the age of 18 who died from occupational injuries were agricultural workers, and there were more than 1,800 nonfatal injuries to children under the age of 18 working on US farms. In 2012, the US government withdrew proposed regulations that would have helped to improve protections for children working in agriculture.

28. *The United States should:*

- a. Amend federal law to apply the same minimum age and maximum hour requirements to children working in agriculture as already apply to all other working children.
- b. Raise the minimum age for particularly hazardous work in agriculture from 16 to 18.
- c. End the exclusion of farmworkers from the National Labor Relations Act.

International Criminal Court

29. The United States agreed to consider ratifying the Rome Statute of the International Criminal Court (ICC) in its last UPR(92.28), but took no steps to move towards ratification over the last four years. The American Servicemembers Protection Act (ASPA), enacted in 2002, currently prohibits US cooperation with the ICC.

30. *The United States should:*

- a. Become a state party to the Rome Statute of the ICC.
- b. Provide the ICC with effective assistance and cooperation to investigate and prosecute serious crimes committed in violation of international law, such as sharing relevant information and evidence, facilitating and pressing for the arrest of individuals sought by the court, and supporting appropriate Security Council resolutions on the ICC.
- c. Repeal the remaining provisions of the ASPA and close loopholes to prosecution of international crimes under federal law, in particular with respect to crimes against humanity.