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UNITED STATES OF AMERICA
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INTRODUCTION

This document summarizes Amnesty International's main current concerns in the USA. The issues covered include the death penalty, where the resumption and increase in executions in recent years is incompatible with human rights standards; police brutality and use of excessive force, including deaths in custody and unjustified shootings; and torture and ill-treatment in prisons. Racial minorities have often been disproportionately the victims of abuses. In all these areas, Amnesty International has found violations of international standards, including those contained under Articles 6, 7, 10 and 26 of the International Covenant on Civil and Political Rights (ICCPR). The report also summarizes Amnesty International's concerns regarding the fairness of trials in political cases, discriminatory sodomy laws, and the treatment of Haitian and Cuban asylum seekers.

Although US law prohibits torture and ill-treatment and provides a range of domestic remedies for victims of abuses, Amnesty International believes that more could be done to prevent abuses by, for example, better monitoring and investigation of complaints of ill-treatment and stronger disciplinary actions against those who perpetrate abuses. It also believes that the federal government should take a more active role in monitoring complaints of excessive force by state law enforcement agents and bringing those responsible to justice, in accordance with US obligations under international law. Amnesty International has also urged the federal authorities to take stronger steps to ensure that conditions in state and federal prisons conform to minimum international standards for the humane treatment of prisoners. It is particularly concerned that conditions in some new, super-maximum security prison units in the USA fall short of such standards.

The USA ratified the ICCPR in June 1992 and the United Nations (UN) Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in October 1994. However, the US Government entered a large number of reservations, declarations and understandings when it ratified the ICCPR, including reservations to the following non-derogable Articles: Article 6 on the right to life, where the US Government reserved the right of US states to execute juvenile offenders; Article 7, prohibiting torture and other cruel, inhuman or degrading treatment, where the US considered itself bound only to the extent that cruel, inhuman or degrading treatment met the definition of "cruel and unusual punishment" prohibited under the US Constitution; and Article 15(1), prohibiting retroactive penal legislation. The US Government also made a reservation to the Convention Against Torture similar to its reservation under Article 7 of the ICCPR.

Amnesty International considers that the above restrictions seriously undermine the rights guaranteed by these treaties. If every government were to ratify treaties only after making reservations to ensure there is no change in existing state practice, the whole concept of international human rights protection, and the authority of such treaties, would become meaningless. Amnesty International has urged the US Government to withdraw the conditions limiting acceptance of its obligations under the ICCPR and the Torture Convention.

Human rights violations in the USA

The death chamber in Huntsville Prison, Texas, March 1983. As of March 1995, Texas was one of 24 US states to have introduced lethal injection as sole or alternative method of execution (other methods of execution in the USA are electrocution, the gas chamber, firing squad and hanging). c. Gamma-Liasion/Spooner

Human rights violations in the USA

THE DEATH PENALTY

In 1972 the US Supreme Court struck down most US death penalty laws on the ground that the arbitrary and discriminatory way in which the death penalty was then applied violated the Constitution. However, a further Supreme Court ruling in 1976 permitted states to reinstate the death penalty for murder according to certain constitutional guidelines, and there has been a steady increase in the use of the death penalty since then.¹ In March 1995 New York (which carried out its last execution more than 30 years ago) became the thirty-eighth US state to reinstate the death penalty. More than 2,870 prisoners are currently under sentence of death across the USA. 266 prisoners were executed between 1977 (when the first execution took place under the new laws) and the end of February 1995. Last year three states - Idaho, Maryland and Nebraska - carried out their first executions in more than 30 years.

Until last year, the only federal death penalty statute in force under civilian law was the Anti-Drug Abuse Act, introduced in 1988, which provides the death penalty for certain drug related murders. However, in September 1994 President Clinton signed legislation which extended the federal death penalty to more than 50 additional crimes, ranging from the murder of federal officials to several non-homicidal offences, including attempted assassination of the President and major drug trafficking. These provisions were included in the Violent Crime Control and Law Enforcement Act, 1994. The last execution under federal law was in 1963. However, at least six people convicted under the Anti Drugs Abuse Act were under sentence of death in February 1995 as were eight former members of the armed services, sentenced to death for murder under federal military law. (The last execution under military law was in 1961.)

Amnesty International believes that the increase in executions and in the number of offences carrying the death penalty is inconsistent with international standards which encourage governments to restrict their use of capital punishment. The expansion of the death penalty under federal law is directly contrary to the American Convention on Human Rights (ACHR), signed by the USA in 1977, which states *inter alia* under Article 4(2) that the death penalty "shall not be extended to crimes to which it does not currently apply". It is also inconsistent with US obligations under the ICCPR. The Human Rights Committee,² in its General Comment on Article 6 of the ICCPR, states that States Parties are obliged to limit the use of the death penalty and recommends that governments "consider reviewing their criminal laws in that light". The Committee has also stated that "...all measures of abolition should be considered as progress in the enjoyment of the right to life."

¹ Before the 1972 Supreme Court ruling striking down US death penalty laws (*Furman v Georgia*, 408 U.S. 238) there had already been a steady decline in the use of the death penalty in the USA, with a moratorium on executions in 1967.

² The body of experts established under the ICCPR to monitor implementation of that treaty.

Human rights violations in the USA

Dalton Prejean, a juvenile offender, was executed by electrocution in Louisiana in May 1990. He was convicted of the murder of a white police officer in 1978 when he was aged 17. He was tried and sentenced to death by an all-white jury after the prosecutor had excluded all black people from the jury panel. The governor of Louisiana denied clemency, despite a recommendation by the Louisiana Board of Pardons and Paroles that Dalton Prejean's death sentence should be commuted to life-without-parole. Their recommendation was based on his abused and neglected childhood, his history of mental problems and borderline mental retardation, and on his remorse and model behaviour during 12 years on death row.

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Unfairness of the death penalty in practice

Special procedures have been introduced in capital cases following US Supreme Court rulings in the 1970s which were intended to eliminate the arbitrariness and discrimination existing under past statutes. State laws now authorize the death penalty only for aggravated murder, after a separate sentencing hearing at which mitigating and aggravating circumstances must be weighed before the judge or jury chooses between a life or death sentence. Death sentences are automatically reviewed by the state supreme court and prisoners then have the same rights as all defendants to pursue further appeals, including appeals on constitutional issues through both state and federal courts (known as *habeas corpus* review).

Research by Amnesty International and other bodies has shown that, despite these judicial safeguards, the death penalty remains both unfair and discriminatory in practice. It is sought by prosecutors in only a small proportion of homicide cases and there is wide variation in the treatment of similar offenders. The evidence suggests that factors such as class, race, politics and location of crime can play a far more decisive role in who receives the death penalty than the crime itself; that it is imposed disproportionately on the poor, minorities, the mentally ill or retarded and those without adequate legal counsel.

Some US death penalty laws also directly contravene international standards, for example laws permitting the execution of juvenile offenders (offenders aged under 18 at the time of the crime). Many executions carried out in the last few years have also contravened a series of safeguards guaranteeing the protection of the rights of those facing the death penalty adopted by the UN Economic and Social Council (ECOSOC). Although the US Government has described the ECOSOC safeguards as "non-binding", they are an important measure of a state's compliance with minimum international standards.

Amnesty International's concerns have been documented in numerous individual case histories and publications issued by the organization over the years. They include the following:

- **Execution of juvenile offenders:** The USA continues to sentence minors to death in violation of Article 6 of the ICCPR and other international human rights treaties.³ At the end of 1994 approximately 37 juveniles were under sentence of death in 12 states. Since 1990 only four countries worldwide are reported to have executed juvenile offenders: one was executed in Saudi Arabia and one in Pakistan in 1992; one in Yemen in 1993, and six in the USA. A total of nine juvenile offenders have been executed in the USA since 1985.

Although the USA has entered a reservation to Article 6 on the basis of state laws permitting this practice, Amnesty International believes that such a reservation to a non-

³The prohibition of the execution of minors under 18 at the time of the crime is contained under the *ICCPR*, the *American Convention on Human Rights*, the *Convention on the Rights of the Child*, and the *UN Ecosoc safeguards guaranteeing the protection of the rights of those facing the death penalty*, adopted by Resolution 1984/50 on 25 May 1984.

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Clayton Flowers, sentenced to death in Alabama in 1990 for the murder of a woman when he was 15-years-old. The trial judge overruled the jury's recommendation of a life sentence and imposed the death penalty. In July 1991 his death sentence was overturned by a state appeal court, but he remained on death row until May 1992 pending an unsuccessful appeal by state prosecutors for the death sentence to be reinstated. The US Supreme Court has ruled that offenders as young as 16 can be executed. c. Guy Busby/Mobile Press Register.

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derogable right⁴ should be considered null and void. No other government has entered a similar reservation to Article 6 of the ICCPR. Indeed, the Human Rights Committee in its General Comment 24 has stated that the prohibition under Article 6 of the arbitrary deprivation of life cannot be reserved and that, in particular "a State may not reserve the right ... to execute ... children".

A 1991 Amnesty International study of juvenile offenders under sentence of death in the USA, found that most came from acutely deprived backgrounds; many had suffered gross physical or sexual abuse as children; most were of below-average intelligence and many suffered from mental illness or brain damage. Many had been inadequately represented at their trials and in a disturbing number of cases the defendant's youth itself was not considered as a significant mitigating factor at sentencing.⁵

- **adequacy of legal representation:** Amnesty International has documented numerous cases in which capital defendants have received shockingly inadequate legal presentation. Many of the prisoners executed in recent years were represented at trial by inexperienced lawyers who failed to investigate their clients' backgrounds or to raise relevant mitigating evidence at the sentencing hearing. In some states indigent offenders are assigned court-appointed lawyers who are paid extremely low fees, are untrained in capital punishment law and may not even be experienced in criminal law. The lack of competent counsel can seriously undermine other fair trial safeguards existing in US law. Mistakes at trial may often not be remedied on appeal as defendants may be procedurally barred from raising issues at a later stage.

In some states, also, no state funding is provided for appeals beyond the direct appeal to the state court and prisoners have to rely on "volunteer" lawyers working without a fee for important appeals on constitutional issues. However, there is a serious shortage of lawyers prepared to take on such cases. The problem is particularly acute in Texas which in December 1994 had more than 390 prisoners on death row, many of whom were without legal representation.⁶

Amnesty International believes that the lack of adequate legal representation in many cases violates ECOSOC safeguard 5 which states that capital punishment may only be carried out after a legal process which gives all possible safeguards to ensure a fair trial, at least equal to those contained in article 14 of the ICCPR, including the right of defendants to adequate legal assistance at all stages of the proceedings.

- **racial discrimination:** 84% of prisoners executed since 1977 were convicted of murdering white victims, despite the fact that blacks and whites are the victims of homicide in roughly equal numbers (and in some states the majority of victims are black). Numerous US studies have

⁴Article 6 is one of the articles under the ICCPR from which governments may not derogate even in time of national emergency. Article 7 (to which the US also entered a reservation) is another.

⁵See *USA: The Death Penalty and Juvenile Offenders*, (AMR 51/23/91), a report published by Amnesty International in October 1991.

⁶Since 1988 federal grants have partially funded state "resource centres": offices with a small staff of lawyers who handle federal appeals in capital cases or recruit "volunteer" lawyers to take on cases without pay. However, there remains a serious shortage of lawyers prepared to take on such cases in some states, particularly those with a large death row population such as Texas.

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shown that murders involving white victims are far more likely to result in death sentences than those involving black victims after other legally relevant factors have been taken into account. There is also evidence that black offenders are disproportionately sentenced to death in some judicial districts, especially those with a history of racial discrimination.⁷ Also, many black prisoners on death row were sentenced to death by all-white juries after prosecutors had deliberately excluded black people from the jury pool. Although this practice was ruled unconstitutional in 1985, the law does not apply retroactively to prisoners whose sentences had already been confirmed on direct appeal.

Amnesty International believes that the racial disparities in the application of the US death penalty violate the anti-discrimination provisions of Articles 2 and 26 of the ICCPR.

Article 2(2) of the ICCPR requires each State Party to undertake steps to adopt such legislative or other measures as may be necessary to effect the rights under the Covenant. However, an amendment to the US crime bill (extending the death penalty under federal law) which would have allowed defendants to challenge their death sentences on grounds of racial discrimination was dropped from the final version of the bill.⁸

- **mentally impaired:** Amnesty International has documented the cases of more than 50 prisoners suffering from mental illness or mental retardation who have been executed in the USA in the past decade, in violation of ECOSOC safeguards contained in resolution 1989/64, adopted in May 1989, which recommends "eliminating the death penalty from persons suffering from mental retardation or extremely limited mental competence". Only eight US states prohibit the execution of the mentally retarded.

- **risk of executing the innocent:** Current legal safeguards to prevent and remedy errors in capital cases are inadequate to ensure that innocent people will not be sentenced to death or executed. In October 1993 a Congressional report by the House Subcommittee on Civil and Constitutional Rights listed 48 condemned men who had been freed from death row since 1972. The report blamed inadequate legal safeguards to prevent wrongful executions and listed numerous inherent flaws in the criminal justice system, including racial prejudice, official misconduct, shoddy legal representation, inadequate post-trial review of innocence claims and the politicization of the clemency process. The report concluded: "Judging by past experience, a substantial number of death row inmates are indeed innocent, and there is a high risk that some

⁷For example, in one district in Georgia, between 1973 and 1990 prosecutors sought the death penalty in 34.3 per cent of white-victim homicides and only 5.8 per cent of black-victim homicides - a difference that could not be explained by non-racial factors such as the presence of aggravating circumstances, additional felonies or multiple victims. In a trial where this evidence was presented, relatives of black murder victims testified that prosecutors had shown little interest in following up their cases, in contrast to their vigorous prosecution of cases involving white victims. (*Chattahoochee Judicial District: The Death Penalty in Microcosm*, published by the Death Penalty Information Centre, Washington, DC (1991).

⁸ The Racial Justice Act (RJA) would have allowed defendants to present statistical evidence of a pattern of disproportionate death sentencing on the basis of race to establish a prima facie case for discrimination, which the prosecuting authorities would then have had to rebut. It also required death penalty states and the federal government to collect data on death sentencing patterns. The RJA was passed by the House of Representatives but defeated in the Senate, and was not included in the final version of the crime bill. Opponents had argued that such a measure would have placed huge burdens on prosecutors to disprove discrimination and impeded the administration of the death penalty.

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of them will be executed."

Several prisoners have been executed, despite doubts about the evidence on which they were convicted. They include Edward Earl Johnson, executed in Mississippi in May 1987 for the murder of a white police officer. Johnson, aged 18 at the time of his arrest, had been rounded up with other black men in the area, and signed a confession after being held in custody without a lawyer and allegedly threatened with shooting by police. The only eye-witness to the killing gave a description of the killer that did not match Johnson's. She initially said that Johnson was not the killer, only changing her testimony after learning that he had made a confession (which he recanted when brought before the courts). A lawyer who took over his case in the last days before his execution found many legal errors in the case which were too late to bring before the courts and Johnson went to the gas chamber proclaiming his innocence.⁹

- **executive clemency:** There is a lack of proper clemency review in some states, particularly in Texas. Although Texas has executed more prisoners than any other state (more than 80 between 1982 and February 1995), the Board of Pardons and Paroles has convened clemency hearings only very rarely and has not recommended clemency in any case since 1982, despite the presence of strong mitigating circumstances in some cases. Recent research suggests that executive clemency was granted much more frequently in the USA before 1972, including in cases of the mentally ill. The lack of effective provision for clemency in some states is contrary to Article 6(4) of the ICCPR.

In an Open Letter to President Clinton in January 1994, Amnesty International called on the US Government to recognize its constitutional responsibility for ensuring equal protection of the law to all US citizens by establishing a Presidential Commission on the death penalty, with a moratorium on all executions until the Commission reported its findings. Eleven areas of particular concern were cited in the 10,000 word letter, including the points referred to above. Amnesty International has received no substantive response to this letter. The organization continues to campaign for a commission of inquiry, as well as for the commutation of all death sentences.¹⁰

⁹ Amnesty International raised concern about this and other cases in a document *USA: The Risk of Executing the Innocent*, AMR 51/19/89. There has been much concern about the recent case of Jesse Dewayne Jacobs, executed in Texas on 4 January 1995 for the fatal shooting of the estranged wife of his sister's boyfriend. He was convicted on the basis of a pre-trial confession in which he said he had shot the victim, a confession he recanted at trial. His sister was later tried for the same crime and the state conceded in her trial that she had been the killer and that Jacobs had not known that she had a gun or anticipated the killing. Although Jacobs was involved in the abduction of the victim, there are grave doubts that he was guilty of the crime of capital murder. However, the Texas Board of Pardons and Paroles refused to commute the death sentence and the state authorities refused to review the case.

¹⁰ For further information on the US death penalty see *USA: The Death Penalty* AMR 51/01/87; *Open letter to the President on the Death Penalty*, AMR 51.01.94 and *Developments on the US Death Penalty* (1988-1994).

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TORTURE AND ILL-TREATMENT IN POLICE CUSTODY

Over the past few years Amnesty International has received and investigated numerous complaints of ill-treatment of suspects by police in the USA. Many complaints concern excessive force by patrol officers during the course of arrests, traffic stops, searches or at the end of police pursuits. There have also been allegations of torture or ill-treatment of suspects held in police stations or jails. The majority of complaints involve physical brutality such as beatings, sometimes while suspects are already restrained, and sometimes accompanied by additional force through the use of tasers, stun guns, mace or pepper spray. There have also been disturbing cases where suspects have died while being held in restraints or positions which have restricted breathing, as well as reports of unjustified shootings. In many areas African Americans or members of other racial minorities appear to be disproportionately the victims of abuse. The treatment in many cases appears to have violated international standards, including Article 7 of the ICCPR which states that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment". Police actions appear also to have violated standards set out in the UN Code of Conduct for Law Enforcement Officials and the Basic Principles on the Use of Force and Firearms. These require that law enforcement officers should use force and firearms with restraint and only as a last resort when non-violent measures have failed or would clearly be inappropriate, and that the amount of force must be proportionate to the threat encountered. While it is difficult to gauge the extent of police brutality in the USA, the evidence suggests that it is widespread and persistent in some areas and that not enough is being done to prevent it.¹¹ Each year US city and county authorities pay out millions of dollars in damages to the victims of alleged police abuse. However, although there are penalties under both state and federal law for officials who use excessive force or otherwise violate civil rights, police officers have rarely been criminally prosecuted for such offences. Many US police departments have internal guidelines governing the use of force which are similar to those contained under international standards. However, in some departments the investigation, monitoring and disciplining of officers accused of ill-treatment or excessive force has been shown to be inadequate. Some examples are given below.

- **Los Angeles:** In June 1992 Amnesty International published a report *USA: Torture, ill-treatment and excessive force by police in Los Angeles, California*. The report described abuses by the Los Angeles Police Department (LAPD) - which was already under scrutiny following the March 1991 video-taped beating by officers of black motorist Rodney King -

¹¹ In 1991 the US Justice Department reviewed 15,000 complaints of misconduct by state law enforcement officials filed with its Civil Rights Division over a six year period from 1985-1990 to see if any patterns of abuse could be identified in particular areas. However, it was unable to draw any statistically valid conclusions because the data examined represented only a small proportion of total complaints of misconduct from the more than 16,000 local law enforcement agencies in the USA (most of which are filed locally, not with the Justice Department). The states with the greatest number of complaints filed with the Justice Department were California, Louisiana and Texas, followed by New York, Georgia, Florida, Alabama and Mississippi.

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Police officers from Rochester, New York, restraining a youth during disturbances in downtown Rochester on 1 May 1992. The disturbances followed the acquittal of four police officers charged in connection with the video-taped beating of black motorist Rodney King in March 1991. Two of the four officers were subsequently convicted on federal civil rights charges in the case. c. AP

Human rights violations in the USA

Photo taken after his arrest by deputies from the Los Angeles Sheriff's Department in February 1991. Brown alleged that he was beaten by five deputies after he had surrendered following a car-chase (case cited in *USA: Torture, ill-treatment and Excessive Force by Police in Los Angeles, California* AI Index number: AMR 51/76/92).

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and the Los Angeles Sheriff's Department (LASD), which is the second largest police force in Los Angeles County. The report suggested that members of the LAPD and LASD regularly resorted to excessive force, particularly in black or latino neighbourhoods, and that this had gone unchecked for many years. It described more than 30 cases of police brutality, unjustified shootings and the use of police dogs to inflict unwarranted injuries on suspects. Victims included an unarmed man wanted for a traffic violation who was blinded in one eye after a beating by three police officers; a mentally disturbed, handcuffed man who died after being "subdued" by some 20 officers who beat him and jolted him repeatedly with a taser gun;¹² and an unarmed man shot dead in his car after a car chase. In many cases officers appeared to have acted with impunity or received only minor disciplinary sanctions.

Amnesty International's recommendations included incorporating international standards into police codes of practice and an effective independent oversight of complaints against the police. Both departments have since made changes to their complaints procedures and introduced some other reforms following the recommendations of independent local inquiries.¹³ However, Amnesty International has continued to receive some complaints of ill-treatment and unjustified shootings (see, for example, the case of Michael Bryant and the section on police shootings, below).

- **Chicago:** In 1990 Amnesty International published a report describing allegations that officers attached to the Area 2 police station in Chicago, Illinois, had systematically tortured or otherwise ill-treated criminal suspects in the 1970s and 1980s. Most of the alleged victims were black. The allegations had come to light during a civil lawsuit brought in 1989 by Andrew Wilson, one of the victims who alleged that, during police interrogation, he was kicked and beaten, burned against a radiator, had a plastic bag placed over his head and was subjected to electric shocks.¹⁴ A doctor who examined him in Cook County Jail a day after the alleged ill-treatment testified to seeing burn marks on his chest, thigh and face and numerous other injuries consistent with his allegations. The Chicago Police Department's Office of Professional Standards (OPS), which had dismissed his complaint when it was initially filed, subsequently reinvestigated the case and recommended dismissal of three officers. A further OPS inquiry also found more than 50 other cases in which suspects had made similar allegations while being held at the Area 2 police station, some of whom had

¹² a device which shoots darts (connected by wires to the taser) which discharge an electrical shock as the switch on the taser is depressed.

¹³ The Christopher Commission on the LAPD (set up following the Rodney King beating) found that a significant number of officers repeatedly used excessive force and ignored departmental guidelines. It recommended, among other things, that an Office of Inspector General be set up within the Police Commission to provide independent oversight of complaints against the police. An inquiry by Judge Kolts into the LASD, which reported in July 1992, found a serious problem of excessive force, including physical brutality and unjustified shootings of unarmed suspects as well as ill-treatment of jail inmates; it also recommended some independent supervision of complaints.

¹⁴ He alleged that the division's Commander and another officer shocked him with a "black box" by attaching clips to his ear and nostril and cranking the box to produce an electric current.

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Members of the Florida National Guard "subduing" a man outside a shop in August 1994. The shop front had been found wide open after a hurricane and guards reportedly suspected it had been looted. c. AP

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subsequently been awarded damages in civil actions. In 1992, the division's commander was dismissed, but two other officers were reinstated.

Further allegations of ill-treatment surfaced in 1991 at the Area 3 station in Chicago when a 13-year-old African American boy, Marcus Wiggins, alleged that he was threatened, beaten and subjected to electric shocks¹⁵ while being held for questioning following a gang-related shooting. He signed a confession which was later thrown out by a juvenile court on the grounds that it was coerced. The state has appealed that decision and the case is still before the courts. According to his lawyer, Marcus Wiggins still suffers from post-traumatic stress disorder as a result of the treatment he received in police custody. The case is currently under investigation by the OPS and a civil action is also pending.

- **New York:**In July 1994 a commission of inquiry reporting on corruption in the New York City Police Department (NYPD), the Mollen Commission, found serious corruption among officers in several high-crime precincts, whose activities included protecting or assisting drug dealers as well as direct involvement in drug trafficking and robberies. The commission found a direct link between corruption and brutality, stating in its report that "Police brutality seemed to occur ... wherever we uncovered corruption". The commission found that the department had failed to monitor or discipline officers accused of brutality and that a "code of silence" among officers had also hampered the investigation of abuses.

There had been concern about brutality within the NYPD for years before the Mollen Commission's inquiry. In 1983 a black teenager arrested for spraying graffiti in a subway died as a result of what prosecutors described as a brutal beating by police; six officers charged in connection with the death were later acquitted by a jury after they denied that excessive force was used. In another incident in February 1991 Frederico Pereira, an unarmed latino youth, died during a struggle with five police officers who pulled him from a stolen car in which he was sleeping and placed him face-down with his wrists and ankles bound behind him in a "hogtied" position. A grand jury charged all five officers with murder but charges against four of them were later dropped; the fifth officer was later acquitted of a reduced charge of manslaughter in a non-jury trial.

Steps have been taken during the past two years to improve the investigation and monitoring of complaints against the NYPD.¹⁶ However, reports of excessive force have continued, and at least three other suspects have died in police custody under disputed circumstances since May 1993. They include Ernest Sayon, of Liberian origin, who died in April 1994 during his arrest by three NYPD police officers investigating drugs offences. The city Medical Examiner found the cause of death to be "asphyxia by compression of chest and neck while [he was] rear-handcuffed and prone on the ground immediately following a struggle in which he sustained blunt impacts to his head and trunk". A grand jury subsequently voted not to file any criminal charges against the

¹⁵ a black box similar to the one allegedly used in the Wilson case.

¹⁶ In 1993 an all civilian complaints review board was created to replace the former board half of whom had been police officers and which had police investigators. There have also been changes to the Internal Affairs Division within the NYPD although it is not yet known how these changes will operate in practice. In January 1995 the NYC Council voted to establish an independent agency to monitor corruption within NYPD as recommended by the Mollen Commission, although the new law is currently the subject of dispute between the council and the mayor who opposes some of the provisions.

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officers involved. In December 1994 Anthony Baez died from asphyxia during an altercation with six NYPD officers after his football had accidentally hit two parked patrol cars. One of the officers involved had eleven previous unsubstantiated complaints of excessive force filed against him. At the time of writing Anthony Baez' death was still under investigation by the Bronx District Attorney (DA). Amnesty International has urged the authorities to make it clear that torture and cruel, inhuman or degrading treatment by NYPD officers will not be tolerated and to bring those responsible for abuses to justice.

There have been serious incidents of police ill-treatment and excessive force, often toward racial minorities, in other major US cities also, including **Miami, Florida**, where there have been three outbreaks of civil unrest in the past 15 years following police beatings or shootings of black suspects, and **Detroit, Michigan**, where two white police officers were convicted of murder for the fatal beating of a black motorist in November 1992.

In December 1994 nine police officers from **New Orleans, Louisiana**, were indicted by a federal grand jury on drugs and weapons charges after an FBI investigation into widespread corruption in the police department. One of the officers was also charged with having ordered the contract killing of a woman who had filed a complaint of brutality against him; she was found murdered in the street a few days after filing the complaint in October 1994. Although efforts are reportedly being made to reform the New Orleans Police Department, it has long been notorious for complaints of brutality, with several disputed deaths in custody.

Deaths in police custody from use of restraints

There have also been numerous deaths in police custody in the USA resulting from the practice of placing suspects face-down in restraints, usually when hogtied, as illustrated by several cases in New York. Medical experts have indicated that such practices can severely restrict respiratory movement and are inherently dangerous, especially where a person is under the influence of drugs or in a highly agitated state. The procedure can lead to death from what is known as "positional asphyxia".¹⁷ A study of in-custody deaths conducted by the San Diego Police Department in 1992 recorded more than 90 deaths from hogtying across the USA since 1982, but the survey was not comprehensive and the true figure could be higher. According to reports, some police departments have now banned the procedure but it is still used by a number of law enforcement agencies. Amnesty International believes that the use of restraints in this manner can amount to cruel, inhuman or degrading treatment.

At least two people died as a result of being hogtied by police in Los Angeles in 1993. One was Michael Bryant, an unarmed black barber who was arrested following a car chase in March 1993 and who died after being shot twice with a taser gun, hit with batons, hogtied and placed face-down on his stomach in a police car. Although departmental procedures apparently stipulated that suspects who were hogtied should be placed on their side (not prone as in Bryant's case), the LAPD informed Amnesty International that no fault had been found in the officers' actions. At

¹⁷ The American Journal of Forensic Medicine and Pathology has published several articles on restraint and positional asphyxia in the last few years. Amnesty International March 1995AI Index: AMR 51/25/95

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the time of Michael Bryant's death there had been at least seven other deaths in police custody in five years in Los Angeles County in which hogtying was found to be either the cause of death or a contributory factor. The LAPD has since introduced a device which allows a restrained suspect to be placed in an upright position.

Amnesty International has raised concern about other cases, including that of Cristino Hernandez, an immigrant from El Salvador with a history of mental illness, who died after his arrest by police in Worcester, Massachusetts in July 1993. An inquest judge found that he had died from lack of oxygen after police applied pressure to his body and forced his arms, which were handcuffed behind him, up over the back of his head for several minutes "in an extremely unnatural position" while he lay face down on the ground.

There have also been deaths involving other techniques used to subdue suspects or mentally disturbed individuals. A number of people have died after being sprayed with pepper spray (oleoresin capsicum), a cayenne pepper based substance which has been introduced by many police departments in recent years as a safer alternative to chemical mace. Although other factors have nearly always been found to be involved in such deaths, there is concern that pepper spray can be a contributing factor in some circumstances.

Cristino Hernandez, whose case is cited above, was twice sprayed with pepper spray before police placed him face-down in restraints, a practice that has since been criticized as potentially dangerous. Johnny L. Williams, a severely disturbed prisoner at a jail in New York State, died in July 1994 during a struggle with sheriff's deputies who held him down and wrapped a belt round his face after he had several times jumped head-first off a sink. Although the cause of death was found to be suffocation through use of restraints, the deputies also sprayed him in the face with three canisters of pepper spray, which relatives were concerned could have contributed to his inability to breathe. A Justice Department inquiry into conditions at the jail (the Public Safety Building in Onondaga County, New York) found the use of pepper spray in this and other cases to be excessive. The American Civil Liberties Union (ACLU) of Southern California is reported to have documented a number of cases of pepper-spray linked deaths in the state since its use was introduced in 1992. The use of pepper-spray is being monitored by a number of police departments. Amnesty International believes that its use should be carefully monitored across the USA.

Although many police departments have banned use of the chokehold (the application of pressure to a suspect's neck which cuts off the blood supply to the brain), Amnesty International has received reports of deaths from the application of a police chokehold in a number of jurisdictions, including two cases in Cleveland, Ohio in 1992.

Police Shootings

Article 6(i) of the ICCPR states that the right to life shall be protected by law and that "No one shall be arbitrarily deprived of his life". The Basic Principles on the Use of Force and Firearms by Law Enforcement Officials provide that firearms may be used only in self defence or the defence of others against the "imminent threat of death or serious injury" and "only when less

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extreme means are insufficient to achieve these objectives". US state and federal law and the US Constitution also provide that no one shall be deprived of life without due process of law. Most US police departments also have guidelines which conform broadly to international standards by limiting deadly force to situations in which there is an imminent threat of death or serious injury. Despite this, there have been disturbing cases in which US police officers have shot and killed or injured suspects in circumstances which appeared to violate international standards. Officers have rarely been prosecuted in such cases. Although it can be difficult to obtain information on the outcome of police internal investigations, it appears that in some departments officers who have violated police guidelines have received only minor disciplinary sanctions.

In its 1992 report on police ill-treatment in **Los Angeles**, Amnesty International described a number of cases in LAPD and LASD officers shot suspects who apparently offered no immediate threat of deadly resistance. They included some cases where officers continued to fire after the suspect was apparently disabled. The victims included an unarmed 21-year-old Korean man who was shot dead in his car after a car chase; he received nine gunshots to the back and back of the neck after four sheriff's deputies opened fire on him simultaneously after he had driven into a cul-de-sac. None of the officers involved was disciplined for their actions, although the county later paid the family \$1,000,000 in an out-of-court settlement of a civil lawsuit. In another case an officer fired all rounds from his gun at an unarmed man who had been involved in a domestic dispute; he then reloaded the gun and fired four more times, killing him. The report also cited studies of police shootings, including a 1990 study by the Los Angeles Daily News which found there were 56 questionable shootings by LASD between January 1985 and August 1990, involving mainly unarmed suspects, none of which had resulted in any prosecutions.

Since its report was published, Amnesty International has received further reports of questionable shootings by police in Los Angeles, including the LAPD which continues to have one of the highest ratios of officer-involved shootings of any police force in the USA. Amnesty International called for an inquiry into the fatal shooting by an LAPD officer of an unarmed black truck driver, John Daniels, on 1 July 1992. The officer involved in the shooting was later charged with murder - the first law enforcement officer in Los Angeles County in more than ten years to be charged with murder for an on-duty shooting. All charges were eventually dropped after two trials in which the jury failed to agree on a verdict.

Amnesty International also asked for information about the outcome of investigations into several other cases, including the case of Sonji Danese Taylor, a 27-year-old black woman who died after being shot nine times, including seven times in the back, by two white LAPD officers in December 1993. The shooting took place on the roof of a hospital where, according to police accounts, she had been threatening her three-year-old son with a butcher knife and shouting "For the love of Jesus!". According to press reports, officers used pepper spray to subdue Sonji Taylor, who then released her son. Police said they fired after she lunged at officers with the knife. However, questions have been raised about how Sonji Taylor came to be shot seven times in the back.

Amnesty International also sought information on the case of Efrin Lopez, an mentally

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disturbed 18-year-old who was shot dead by an LAPD officer in November 1992, as he ran towards two officers swinging a broomstick; Efrian Lopez' mother had flagged down a police car saying that her son was acting "crazy"; as the boy ran toward the officers one of them fired his gun reportedly discharging all rounds into Lopez' body.

Chief Williams of the LAPD declined to provide Amnesty International with any information on police internal inquiries in the above cases, on the ground that "personnel issues are confidential by law and cannot be released to the public". Amnesty International continues to seek information on whether any officers were disciplined.

There has been concern about police shootings in other police departments as well.

More than a dozen black youths, most of them teenagers, were shot dead or injured by (mainly white) police officers in disputed circumstances in **New Jersey** between 1990 and 1992. They include Phillip Pannell, an unarmed 16-year-old fatally shot in the back while running away from police officers from Teaneck, New Jersey, in April 1990. The officer was acquitted on a state charge of reckless manslaughter by an all-white jury in 1992. The US Justice Department reviewed the case and in 1994 decided not to file federal civil rights charges against the officer involved. In another case in Hillside, New Jersey, two people (including a 16-year-old pregnant girl) were shot dead and several others wounded when police fired 43 shots into a stolen van driven by teenage joy-riders after a high-speed car chase. No officers were charged in that case.

There have been a number of questionable shootings by **NYPD** police. They include at least two cases in which black plain clothes officers have been shot by white police officers, apparently mistaking them for criminals. In March 1995 an officer was charged with first-degree assault for "recklessly shooting" and wounding black undercover police officer Desmond Robinson on a subway platform in August 1994; Robinson was reportedly shot twice while he was standing and at least twice more after he had fallen to the platform and lost control of his own gun.

In February 1995 Amnesty International wrote to the NYPD to express concern about the fatal shooting of an apparently unarmed man in Brooklyn, in January 1995. Police statements after the shooting said that the man was shot in the chest after turning to face the officer in a "gun stance"; however, the city Medical Examiner subsequently reported that he was shot in the back. Amnesty International also asked for information about the fatal shooting of two suspects after a car chase in December 1994; both men were reportedly shot through the head by an NYPD officer after the car had come to a halt. Both incidents were still under investigation by the city authorities at the time of writing.

Allegations of excessive force by federal law enforcement officials

Although most firearms incidents involve state police (who are responsible for most law enforcement in the various states), there have been incidents in which federal officials have been accused of using excessive force.

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An internal Justice Department study made public in December 1994 was highly critical of the actions of federal agents who in August 1992 laid siege to the house of an alleged white separatist, Randy Weaver, who was wanted for federal firearms violations. During the siege, agents shot dead Weaver's 14--year-old son and his wife who was standing in a doorway holding their 10-month-old baby. The Justice Department study prepared by the Office of Special Responsibility (the US Justice Department's internal disciplinary unit) found that senior officials had violated the Constitution and federal policies which stipulated that officials may not shoot unless their lives or the lives of others were in direct jeopardy. The study also found that federal officials had misjudged the threat posed by Weaver and had adopted an aggressive assault plan without negotiations. However, the Justice Department declined to prosecute any officers involved for civil rights violations, and the agent with overall responsibility for the operation was reportedly promoted in December 1994. After the report became public, the FBI said that the possibility of disciplinary action against officers was still under review.¹⁸ Concern has also been expressed about the tactics used by federal agents during the handling of a 51-day stand-off in 1993 between federal agents and members of the Branch Davidians, a religious community in Waco, Texas, who were believed to have stockpiled weapons. The standoff followed an initial assault on the compound in which six Branch Davidians and four federal agents were killed. In a final assault on the compound, federal agents rammed the compound's walls with tanks and pumped CS gas and liquid gas into the compound for three and a half hours. The siege finally ended in fires (allegedly started by some cult members during the CS gas attacks) in which 75 Branch Davidians died, 24 of them children and infants. Inquiries by the Treasury and Justice Department were critical of the initial raid on the compound but cleared the FBI of any blame for events during the siege and the final assault. However, Amnesty International wrote to the Justice Department expressing concern about the use of CS gas, which it said could be lethal if used in such massive quantities in occupied areas, particularly where there were elderly people or young children. Amnesty International called for official inquiries to examine whether the action taken by law enforcement officials was in line with international standards, including the Code of Conduct for Law Enforcement Officials and the UN Basic Principles on the Use of Force and Firearms. The Government did not reply to the concerns raised.

18 The findings of the Justice Department study and the department's response were reported in the New York Times, 13 December 1994
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ILL-TREATMENT IN PRISONS AND JAILS

Amnesty International has raised concerns about allegations of torture and ill-treatment in prisons and jails in many US states and the federal system. These concerns have included allegations of direct physical abuse such as beatings; the punitive use of restraints; the sexual abuse of prisoners in at least one prison; and denial of adequate medical or psychiatric care. Conditions in a number of state prisons improved during the 1970s as a result of litigation in the federal courts and court orders which required states to reduce overcrowding and set certain minimum standards for treatment of prisoners. However, the massive increase in the US prison population in the last few years appears to have reversed this trend and led to an increase in the incidence of ill-treatment in some states. Due to the imposition of mandatory minimum prison sentences, increased incarceration for drugs offences and other measures, the prison population has more than trebled in the past twenty years (doubling in some states during the 1990s) and the total US prison and jail population currently exceeds 1,400,000.¹⁹

Prison litigation remains the most common remedy for challenging prison conditions and seeking relief for ill-treatment of inmates by guards. Rulings in court cases over the past decade have documented numerous incidents of abuse in institutions across the USA, many involving serious staff assaults on inmates. Some judgments have found that prison authorities have failed to take adequate measures to protect inmates from attacks by other prisoners.²⁰ Some recent examples of ill-treatment in prisons are given below.

Ill-treatment in Texas prisons

In December 1994, it was reported that the Texas prison authorities were investigating allegations that some 30 prison guards had systematically ill-treated inmates in four Texas prisons. An internal prison memorandum, the contents of which were revealed in the Houston Chronicle and the Dallas Morning News on 20 and 21 December 1994, reportedly stated that cases of excessive force had quadrupled in the past year, and that this was partly due to the doubling of the state's prison population in two years from 50,000 to 100,000 prisoners, and the recruitment of young, inexperienced guards. The allegations, based on press reports and other sources, include the following:

- In McConnell Unit, an organized gang of guards allegedly targeted inmates for abuse. Two guards were charged in December 1994 with aggravated assault and tampering with witnesses, for allegedly kicking and punching an prisoner in the head in November 1994, and then getting other guards to falsify reports about the incident.

¹⁹ According to the Bureau of Justice Statistics published in October 1994 the prison population grew by 40,000 prisoners in the first six months of 1994 alone, and in June 1994 there were 373 prisoners for every 100,000 of the US population, one of the highest incarceration rates in the world (reported in New York Times 27 October 1994).

²⁰ Examples of published court cases on abusive treatment of prisoners are given in *Human Rights Violations in the United States*, a report published in December 1993 by Human Rights Watch and the American Civil Liberties Union on US compliance with the ICCPR.

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- Michael McCoy, a prisoner in Terrell Unit, was reportedly beaten to death by guards on 7 November 1994. Amnesty International has received a letter from prisoners alleging that two guards entered McCoy's cell and kicked him to death in retaliation for his having spat at a female guard earlier in the day; no-one intervened and his body was reportedly not found until the next shift of guards came on duty. Two guards were subsequently charged with his murder and their trial was still pending at the time of writing. Four other guards were charged with assaulting another prisoner in the same unit on the same date.

According to reports in the Texas press, three other prisoners in the same wing of Terrell Unit were murdered by other inmates between July and October 1994 and prison guards took no action to prevent the attacks. One of the prisoners, Randy Payne, died on 12 August 1994 allegedly after repeated attacks on him by two inmate gangs after he had refused to pay protection money; according to some reports, he was fighting for his life all day while guards stood by and did nothing. No officers were charged as a result of these incidents although the prisoner deaths are now being investigated. Terrell Unit is a modern unit which opened in late 1993 and cells and other areas are equipped with electronic listening devices operated by guards; however, according to reports, these devices were often not switched on.

The other incidents referred to in the Texas prison memorandum, some of which were also under investigation by the US Justice Department, took place in Michael Unit and Robertson Unit. The Texas authorities reported that the cases of ill-treatment in Texas prisons were "isolated" and that strong measures were being taken in response. However, Amnesty International has received allegations of ill-treatment from prisoners in Texas over a number of years, suggesting that this is not a recent, or isolated, problem. In the late 1980s the organization wrote to the Texas authorities about allegations of guard assaults on prisoners during separate incidents in Michael Unit, one of the prisons cited above; in the cases raised guards were alleged to have beaten prisoners who were handcuffed and in leg-irons. In their reply, the prison authorities had denied that ill-treatment had taken place but provided no information on the incidents in question. Amnesty International is currently investigating allegations that prisoners in another Texas prison, Ramsey 1 Unit, have died through lack of medical care and that ill and disabled prisoners are made to do hard labour in dangerous conditions.

Pelican Bay State Prison, California

In January 1995 a federal judge issued a 345-page opinion condemning what he described as a pattern of brutality and neglect at Pelican Bay State Prison, California, a high security prison complex which opened in 1989. The ruling called upon the state to discontinue practices which included repeated assaults on prisoners; a pattern of punitive violence toward prisoners during "cell extractions" (the forcible removal of prisoners from cells); the punitive shackling of inmates to toilets or other cell fixtures; and grossly inadequate medical and mental health care. The ruling also found that guards resorted to firearms too quickly and in circumstances that did not warrant the use of lethal force.²¹ The ruling referred to a number of individual cases including the case of

²¹ The ruling noted that, unlike some large prison systems in other US states, the housing units in Pelican Bay were monitored by armed guards. In September 1994 Amnesty International March 1995AI Index: AMR 51/25/95

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Vaughn Dortch, a mentally disturbed prisoner who suffered third-degree burns over one third of his body after guards forced him, handcuffed behind his back, into a bath of scalding water.²²

Another prisoner, Arturo Castillo, who refused to hand over his food tray, had a gas gun²³ fired into his cell, was knocked unconscious and beaten so severely that a piece of his scalp became detached. The judge also found that guards were rarely disciplined for excessive force and that their accounts of incidents were routinely accepted at face value, ignoring any other evidence. The judge also ordered the state to cease holding mentally ill prisoners in the prison's Security Housing Unit (SHU), a super-maximum security unit in Pelican Bay, on the ground that the conditions could exacerbate their condition (more details about this unit are given below). The Pelican Bay lawsuit was brought by private attorneys for the prisoners under a federal civil rights statute which allows prisoners to sue state officials directly in the federal courts for alleged constitutional violations. The judge said in his ruling that, while the authorities had made some changes during the 3-year litigation, he was not satisfied that they were committed to ensuring that abuses would not continue. He therefore appointed a special monitor to oversee implementation of the court order.

Amnesty International had written to the California Department of Corrections in 1992 (shortly after the litigation was started), urging a review of conditions in Pelican Bay and expressing concern about the ill-treatment of Vaughn Dortch and reports of the beatings and punitive shackling of prisoners, as well as about conditions in SHU. The Warden of Pelican Bay replied in November 1992, stating that AI's information was "incorrect and grossly exaggerated".

Other examples of ill-treatment in jails and prisons

- In February 1995 Amnesty International called on the Florida authorities to hold a full and impartial inquiry into alleged ill-treatment of three prisoners at the Dade County Jail, Miami, Florida. Jose Mesidor died from pneumonia in the psychiatric wing of the jail in June 1993 after being left naked in a bare cell and allegedly physically assaulted by correctional staff. Eladio Vega spent 16 days in hospital in May 1993 after an alleged beating by guards. Frank Dennis was reportedly beaten by correctional staff in August 1994; four guards who witnessed the incident made statements complaining about the ill-treatment.

- In July 1994 a series of articles in the Knoxville News-Sentinel, a Tennessee newspaper, reported that inmates of the Knox County Jail, Tennessee, had been left handcuffed spread-eagled to bars for periods of an hour or more, with their feet barely touching the ground. The

Amnesty International wrote to the authorities expressing concern about the fatal shooting of a prisoner by a guard in another California prison - San Quentin - reportedly after the prisoner had been involved in a minor altercation with another inmate. Following growing concern about the high incidence of such shootings in California prisons, and in response to the Pelican Bay ruling, the California prison authorities announced in January 1995 that they were tightening their policies regarding the use of lethal force.

²² Vaughn Dortch is African American. A nurse testified during court hearings that one of the guards involved had come into her officer to make a phone call shortly afterwards and she heard him saying to a colleague "looks like we're going to have a white boy before this is through"; clumps of skin were apparently hanging from his lower body, but officers sought no medical assistance.

²³ A gas powered gun, which ejects high velocity rounds of rubber blocks. These were frequently used during cell extractions.

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paper published two photographs of prisoners held in such positions in 1993. The newspaper also claimed that other inmates were punished by being placed in a special restraining chair in the jail and forced to wear a helmet with the visor blacked out, which was then struck by prison guards using fists, flashlights and other objects. Amnesty International wrote to the authorities stating that it was concerned that such treatment, if confirmed, constituted cruel, inhuman or degrading treatment, very possibly amounting to torture. Amnesty International also pointed out that such treatment was also in violation of the UN Standard Minimum Rules for the Treatment of Prisons (UNSMR) which state under Article 33 that: "Instruments of restraint ... shall never be applied as punishment". Inquiries into the incidents were reportedly being conducted by the Knox County Sheriff's Department and the FBI at the end of 1994.

- In 1993 the US Justice Department opened an investigation into allegations of widespread sexual abuse by guards of inmates at the Georgia Women's Correctional Institution. The abuses, which had reportedly been going on for some years until they were exposed in a lawsuit in 1992, included coercion of inmates into having sex with guards and forcing inmates into guard-run prostitution rings. At least 12 employees were also charged with criminal offences under state law and others were dismissed or transferred. Amnesty International wrote to the authorities drawing attention to guidelines and standards designed to protect female inmates from potential abuse, including Article 53 of the UNSMR which provides that male employees shall not enter parts of an institution set aside for women unless accompanied by a female staff member.²⁴

- In April 1993 a Boston based medical organization, Physicians for Human Rights (PHR), published a report on the abusive shackling of inmates at the Onondaga County Public Safety Building (county jail) in Syracuse, New York. The PHR had investigated the jail and found that prisoners had been restrained for hours with their ankles secured in steel shackles tied to bed frames, with their wrists handcuffed to cell bars above their heads so that their buttocks were barely touching the bed, with no drink, food or use of the toilet. PHR found that the use of metal four-point restraints in this manner had caused musculo-skeletal injuries, pain, numbness and nerve damage and was a form of cruel, inhuman or degrading treatment which in some cases might constitute torture. Changes in the use of restraints at the jail were later implemented. However, a subsequent investigation by the US Justice Department into conditions at the Onondaga jail found that some restraints were still being used improperly, including the placing of emergency restraint belts around a prisoner's head, nose and mouth.

²⁴ According to the initial report of the US Government to the Human Rights Committee in August 1994, most US prison regulations do not incorporate this standard (CCPR/C/81/ADD 4 at p. 67-8).

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The Department also found widespread guard brutality, a racially hostile environment, "grossly inadequate" medical care and filthy conditions, as well as the abusive use by guards of pepper spray to restrain inmates. The Justice Department's report, published in October 1994, ordered further changes to the running of the jail.

- In 1992 Amnesty International wrote to the authorities about conditions in the Maximum Control Complex (MCC) in Westville, Indiana, a maximum security prison facility which opened in April 1991 to house prisoners with serious disciplinary problems. The 200 prisoners in the unit were held in conditions of prolonged isolation and sensory deprivation, in single cells painted stark white, with the lights kept on for 24 hours a day. Exercise was taken alone for 50 minutes every 48 hours. Prisoners were not allowed to wear watches or ask the time; were denied access to radio or television for at least the first six months of confinement; and had only very limited access to reading materials. Visits were also severely restricted, and there were no educational, training or vocational programs. Amnesty International was concerned that such conditions, which were apparently imposed on a permanent basis, amounted to cruel, inhuman or degrading treatment. Amnesty International was also concerned by reports that prisoners were severely punished for even minor infractions by being placed in waist-chains and leg shackles or spread-eagled to beds for hours at a time. The punitive use of restraints and other conditions in MCC violated the UNSMR.

In January 1994 the authorities agreed to implement some changes to conditions in MCC following a lawsuit filed by the prisoners.²⁵ However, prisoners remain confined to their cells for all but six hours a week and Amnesty International has continued to receive complaints about conditions in the unit.

- An inquiry conducted by the National Institute of Corrections in December 1991 found that prisoners in Montana State Penitentiary had been ill-treated in the aftermath of a serious riot in the prison in September 1991. Prisoners were reportedly punched, kicked and hit with batons while naked and handcuffed, and were made to lie face-down on the ground for five to seven hours while naked with their hands cuffed behind their backs; six inmates whom the prison authorities suspected of planning a further disturbance were stripped naked and left hogtied on the floor of their cells for 23-24 hours in October 1991. The inquiry team found that serious injuries had resulted from the hogtying; and that the measures had been imposed for punitive rather than security reasons. The Justice Department subsequently investigated the incident but declined to prosecute any officials for civil rights violations after concluding that "there were no unjustified or malicious acts against the prisoners".²⁶ Amnesty International wrote to the Justice Department saying that, while it was not in a position to comment on the legal grounds for deciding against prosecutions in the case, it was disturbed by what appeared the Justice

²⁵ These included access to radios and TVs under certain conditions at inmate expense; better provision of reading materials and access to educational correspondence courses; increased opportunities for exercise to six hours a week; reduction in intensity of the 24-hour lighting in cells; controls on the use of restraints; increased visitation; and changes in procedures for confining prisoners in the facility.

²⁶ Letter to Amnesty International from Doris M. Poppler, US Attorney, dated 6 November 1992.

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Department's general endorsement of the actions taken by guards.

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Conditions in super-maximum security units

There has been a growing trend in the USA in recent years toward building super-maximum security institutions, often special units within maximum security prisons. While prisoners in normal maximum security prisons spend around 13 hours a day outside their cells, prisoners in these super-maximum units are typically confined for 23 hours a day in sealed, sometimes windowless cells, with no work, training or other programs. The facilities are designed to minimize contact between staff and inmates and prisoners are subjected to regimes of extreme social and often sensory deprivation. Such facilities are reportedly based on the federal prison in Marion, Illinois, which since 1983 has operated a regime in which prisoners are placed in permanent "lockdown" (confinement to cells, with no association or prison programs). At least 36 states were reported to have constructed super-maximum units by 1994, some of which imposed conditions more severe than in Marion.

The prison authorities have defended such units as being necessary to contain violent, disruptive prisoners. However, Amnesty International believes that conditions in some units violate international standards for the humane treatment of prisoners, and exceed what is necessary for security purposes. It has expressed concern about conditions in several super-maximum facilities in recent years, including MCC, Westville (cited above); Marion federal penitentiary;²⁷ and H-Unit in Oklahoma, described in more detail below.

H-Unit, Oklahoma

In May 1994 Amnesty International published a report on H-Unit in Oklahoma, a super-maximum facility which opened in November 1991 as part of Oklahoma State Penitentiary at McAlester. Amnesty International concluded that conditions under which death row prisoners were confined in the unit amounted to "cruel, inhuman or degrading treatment" in violation of international standards, including Articles 7 and 10 of the ICCPR. The report, *USA: Conditions for death row prisoners in H-Unit, Oklahoma State Penitentiary*, was based on the findings of an Amnesty International delegation which visited the prison in March 1994.

Prisoners in the unit (who include prisoners in administrative or disciplinary segregation as well as the state's death row population) are confined for 23 or 24 hours a day in windowless, sealed, concrete cells, with virtually no natural light or fresh air. Up to four prisoners at a time may exercise for one hour a day on weekdays in a bare concrete yard with 18 foot high solid walls giving no view of the outside. The unit is designed to minimize contact between inmates and guards. Correctional officers rarely patrol the cell area and their

²⁷ See *Allegations of ill-treatment in Marion Prison, Illinois, USA*, AMR 51/26/87. The report described allegations of beatings and other ill-treatment made by many prisoners during imposition of the lockdown in the prison in 1983. The lockdown was imposed on the whole prison after 2 prison guards in the prison's control unit and an inmate in general population were killed by prisoners. The report also described concerns about general conditions prevailing in the prison as part of the lockdown, noting that a number of practices, including the use of restraints and lack of provision for programs, violated the UNSMR and may, in their totality, amount to cruel, inhuman or degrading treatment. Conditions remain unchanged in most of the prison.

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main communication with prisoners is through an intercom in each cell, controlled by guards. No work, recreational or vocational programs are provided.

Amnesty International's conclusion that conditions amounted to cruel, inhuman or degrading treatment was based on a combination of factors, including the sparse physical conditions inside the cells and the length of time confined to them; the poverty of the exercise facilities; the isolation and lack of programs; and the fact that death row prisoners may be confined in such conditions for years without regard to their individual behaviour. Some of the conditions in H-Unit, such as the lack of natural light or fresh air in the cells, are in direct violation of the UNSMR.

Other concerns highlighted in the report included the stresses and dangers from the practice of confining two prisoners together in such small, enclosed cells, and the "institutionalized indifference" to prisoners' legitimate needs created by the non-contact nature of the facility.²⁸ Some prisoners were reported to have become seriously mentally ill while on H-Unit but to receive little or no psychiatric care.

Amnesty International made a number of detailed recommendations for improving conditions in H-Unit, including a recommendation that death row prisoners should have their custody status reviewed so that those not presenting an institutional security risk could have more association with other prisoners and be allowed to participate in prison programs. Amnesty International also recommended that no prisoners should be confined long-term under the conditions prevailing in H-Unit, which the organization believed could be harmful to prisoners' physical and mental health. None of its recommendations has been acted on.

American Correctional Association and federal standards

As well as violating international standards, Amnesty International found that conditions in H-Unit also breached standards laid down by the American Correctional Association (ACA), a private agency, whose members are serving or retired US correctional staff, that administers a voluntary accreditation scheme for prisons in the USA and Canada. The size of the cells in H-Unit and the lack of cell furniture both violate ACA standards for example. Amnesty International also found that some ACA standards were themselves deficient, in particular a standard which allowed for a light source some distance away from cells, which the organization's expert delegate described as "extraordinary if that were regarded as acceptable for a new building". After receiving a copy of Amnesty International's report, the ACA deferred re-accrediting OSP and it undertook a further inspection of H-Unit in October 1994. Although this inspection confirmed Amnesty International's findings that aspects of H-Unit did not meet ACA standards, the auditor concluded that "Oklahoma State Penitentiary ... is operating under United States law and following the requirements for decent, humane care of prisoners". The ACA subsequently reaccredited OSP in January 1995 without any changes having been made to the

²⁸ There are no alarm bells in the cells and no easy way to attract the attention of guards if the intercom system is switched off. One prisoner was murdered by his cell-mate who had a history of violence and had repeatedly attacked him inside the cell. Another prisoner died of a heart attack after his cell-mate repeatedly banged on the cell doors trying to summon assistance.

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operation of H-Unit.²⁹

Amnesty International sent its report on H-Unit to the Federal Bureau of Prisons (BOP) and the US Justice Department, urging them to take steps to ensure that conditions in other prisons did not emulate those in H-Unit. The BOP replied stating that there are "... limits to the ability of Federal agencies in the United States to influence policies and procedures in individual states". The BOP also said that "The Bureau's position is that there are situations which fully justify the operation of a highly structured facility such as the one you reference".

Since then, the government has opened a federal super-maximum prison in Florence, Colorado, which incorporates some of the features applying in H-Unit. Prisoners in the high-security ADX facility at Florence, which opened in November 1994, are isolated for 22 hours a day in single, hermetically sealed, concrete cells, each with a narrow window looking out onto the enclosed concrete exercise yard. Prisoners never see grass, earth or any part of the natural world; contact with guards and other inmates is extremely limited and no work, training or vocational programs are provided.

SHU, Pelican Bay

Some other super-maximum security units in the USA operate under similar or even more severe conditions than H-Unit. The recent court decision on Pelican Bay, California, (see above) described conditions in the prison's Special Housing Unit (SHU) in which prisoners are confined (either alone or with one other prisoner) for 22 and a half hours a day in sealed, windowless cells with bare, white, concrete walls. Each cell door is made of heavy gauge perforated metal which, the court found, "significantly blocks vision and light". There are no programs or prison work and interaction with correctional staff is kept to a minimum. Each prisoner exercises alone, or with their cell mate if they have one, in a bare concrete yard with solid 20 foot high walls; no recreational equipment is provided. The district court observed that:

"The overall effect of the SHU is one of stark sterility and unremitting monotony. Inmates can spend years without ever seeing any aspect of the outside world except for a small patch of sky. One inmate fairly described the SHU as being 'like a space capsule where one is shot into space and left in isolation'."³⁰

Although half the 1,500 prisoners in SHU are there for set terms as punishment for disciplinary offences, the rest are assigned to the unit indefinitely - which could be for the full length of their sentence (from 10 years to life). These are prisoners whom the California Department of Corrections has determined are members of prison gangs or who have been placed in

²⁹ Amnesty International has been informed that the only change made to the unit since its report are the installation of basket ball nets in the exercise yards, although several prisoners have complained that they were denied basket balls, something on which AI is seeking more information. Food vending machines are also reported to have been installed in the visitors' room.

³⁰ *Madrid v Gomez*, p. 198

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administrative segregation for general disruptive behaviour.³¹

During the lawsuit, testimony was presented to show that a significant number of prisoners in SHU were suffering from severe mental illness, which had been caused or exacerbated by their confinement on the unit. In its ruling the court said it was satisfied that "the severe reduction in environmental stimulation and social isolation can have serious psychiatric consequences for some people" and ordered the removal of mentally ill prisoners from SHU. The court also conceded that conditions for other inmates in SHU appeared "tenuously related to legitimate penological needs" and "may press the outer bounds of what most humans can psychologically tolerate". However, the judgment fell short of ruling that these conditions violated the US Constitution, noting that the courts had placed a narrow definition on what could be considered "cruel and unusual" in terms of general prison conditions, and that the authorities had wide discretion in deciding how to confine prisoners requiring maximum security custody. The ruling left open, however, the question as to whether conditions would reach an unconstitutional level if inmates were confined there for many years.

Amnesty International is concerned that there is no independent monitoring system for prisoners in the USA. The only nationwide standard-setting body, the ACA, is closely affiliated to the corrections departments. Amnesty International is further concerned that the federal BOP has itself justified the existence of such units as described above.

Although the US Government has made a reservation to Article 7 of the ICCPR, it has entered no reservation to Article 10 of the Covenant which provides *inter alia* that "All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person"; and that "The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation". These provisions appear to be lacking in both the design and rationale of some super-maximum security units in the USA. Amnesty International urges the federal authorities to take stronger steps to ensure that conditions, both in state and federal institutions, do not violate international standards, and that minimum standards are provided for the humane treatment of all prisoners, including those in super-maximum security units.

31 A small number of prisoners at risk of assault from other inmates were also placed in the unit indefinitely for their own safety.

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REMEDIES FOR TORTURE AND ILL-TREATMENT UNDER US LAW

The Human Rights Committee in its General Comments on Article 7 of the ICCPR has noted that:

"...it is not sufficient for the implementation of this Article to prohibit such treatment or punishment or to make it a crime ... States must ensure an effective protection through machinery of control. Complaints about ill-treatment must be investigated effectively by competent authorities..." (General Comments of 27 July 1982)

Torture is prohibited under US state and federal law, and the Eighth Amendment to the US Constitution contains a general prohibition against the imposition of "cruel and unusual punishment". Police or prison officials accused of excessive force may be prosecuted for various criminal offences ranging from misdemeanour assault to murder; in addition there are specific penalties for abuses by officials acting under "colour of law". However, in practice it is relatively rare for police or prison officials to be criminally prosecuted for ill-treatment.

Even where such prosecutions have taken place, juries often fail to convict. The "code of silence" among police or prison officers is likely to account for some of the difficulties in both bringing prosecutions and securing convictions, particularly if there are no independent witnesses.

The US Justice Department may itself bring federal criminal civil rights charges against state officials who violate the protected rights of others while acting under "under colour of law". This is provided under section 242 of Title 18 of the U.S. Code. Although the federal authorities reportedly investigate several thousand cases annually, only a small proportion result in prosecutions.³² Amnesty International has been told that it would be rare for the federal authorities to prosecute if a defendant has been acquitted in state court.³³ Also federal rules of evidence are extremely stringent - with a requirement to prove beyond a reasonable doubt that the official in question acted with specific intent to violate a protected right. Cases which may involve other offences under state law, such as recklessness or negligence, may not be pursued under federal criminal civil rights statutes.

The most common remedy for alleged abuses by law enforcement officials is for the victim to bring a civil lawsuit for damages against the officer or authority responsible. These actions are usually brought under Title 42, Section 1983 of the United States Code (U.S.C.), under which individuals may sue state officials directly in a state or federal court for violations of their civil rights. Unlike criminal prosecutions where juries must find evidence of abuse beyond reasonable doubt, damages may be paid in a civil trial based on a "preponderance of the evidence". Although the authorities do not necessarily admit liability when agreeing to settle a

³² The Justice Department reportedly receives about 8,000 complaints of abuses by officials each year and reviews about 2,500. According to the US Government's initial report to the Human Rights Committee in August 1994, the Department of Justice had filed charges in approximately 126 cases of official misconduct since 1988, the majority involving police officers (p. 72 of CCPR/C/81/Add.4). The outcome of such cases was not given.

³³ The federal prosecution of four officers acquitted in a Los Angeles state court of violating the civil rights of black motorist Rodney King in March 1991 was exceptional, and would probably not have taken place at all without the video-taped evidence and the public attention the incident attracted. Before this, the federal authorities had prosecuted only one other law enforcement officer in Los Angeles since 1984, despite many serious cases of alleged abuse and very few state prosecutions.

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civil lawsuit, Amnesty International believes that, in general, they provide an important indicator of police abuse. However, the system has some limitations as a remedy for police abuse. Firstly, the onus is on the victim to initiate such lawsuits, whereas international standards require allegations of ill-treatment to be independently investigated whether or not the victim has filed a complaint. Civil rights lawyers also claim that there are many cases of alleged abuse in which lawsuits are not pursued, for example cases where there are no independent witnesses or where injuries are not severe enough for any award to cover the costs of litigation. Also, while civil lawsuits may provide a remedy to the individual in the form of compensatory damages, they may not serve as a deterrent to prevent future abuses, unless strong disciplinary action is taken against officers involved and there is a change in departmental practice or policy. It has been difficult to bring lawsuits seeking to prevent an alleged "pattern and practice" of police abuses, and damages cannot be imposed against a police department unless the plaintiff can show that his injuries resulted from a municipal "policy" or "custom" of abuse. It appears also that many police departments do not take account of civil actions in monitoring or disciplining officers for abuses. Amnesty International believes that state authorities should take stronger steps to ensure that torture and ill-treatment by law enforcement officials will not be tolerated by fully incorporating international standards into police and prison codes of practice; by instituting thorough inquiries into all substantive allegations and making the findings public; by setting up adequate monitoring systems for ill-treatment and excessive force; and by taking strong disciplinary action for the abusive use of force and fire-arms.

Amnesty International also believes that the federal government should take a more active role in monitoring complaints of excessive force by state law enforcement agents, and in preventing such abuses, in accordance with its obligations under international law. The Violent Crime Control and Law Enforcement Act, which became law in September 1994, includes a clause requiring the US Attorney General to collect data about the use of excessive force by law enforcement officers, for research or statistical purposes. The Act also contains a provision allowing the federal government to initiate civil actions to seek to eliminate an alleged "pattern or practice" of abuses by law enforcement officials in any given jurisdiction. Amnesty International urges the government to ensure that these important provisions will be put into practice.

remedies for cruel, inhuman or degrading prison conditions

Under the Civil Rights of Institutionalized Persons Act (42 U.S.C. Section 1997), the federal government may institute proceedings to eliminate a pattern or practice of abuses in any state jail, prison or detention facility. The act has been used to redress abuses in a number of institutions in recent years. However, civil lawsuits under Section 1983 remain the main remedy for redressing prison conditions alleged to be "cruel and unusual" in violation of the US Constitution.³⁴ Again, the onus is on the prisoner as alleged victim to initiate such proceedings

³⁴ These are usually "class action" suits (brought on behalf of a class of prisoners) in which injunctive relief from certain conditions or practices is sought from the federal court

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which can be lengthy and expensive. The absence of any independent monitoring body for US prisons may mean that abuses can go unchecked for many years.

The US courts have also placed a narrow interpretation on what constitute "cruel and unusual" prison conditions. To succeed with a constitutional claim prisoners must show that the prison authorities acted with "deliberate indifference" to deprive prisoners of "basic human needs" such as adequate clothing, shelter, medical care and personal safety. Conditions which inflict serious mental or physical pain would also be unconstitutional but here the standard is less clear. The courts have not ruled that segregation, isolation or the absence of recreational, vocational or rehabilitative programs are *per se* unconstitutional; they have also held that the infliction of some "psychological pain" does not necessarily violate the Eighth Amendment.³⁵ This narrow standard allowed the district court in its ruling on conditions in Pelican Bay to conclude that, while conditions in SHU "may well hover on the edge of what is humanly tolerable for those with normal resilience... They do not, however, violate exacting Eighth Amendment Standards, except for the specific population subgroups identified in this opinion".³⁶

In its initial report to the Human Rights Committee in August 1994, the US Government acknowledged that the extent of US constitutional provisions are "arguably narrower in some respects than the scope of article 7" (of the ICCPR).³⁷ Rather than undertaking a commitment to ensure that US practice will meet minimum standards under international treaties, the US issued a reservation to Article 7, stating that it considered itself bound by the Article only to the extent that it conforms with the "cruel and unusual" provisions of the US Constitution. Amnesty International has strongly urged the US Government to withdraw such a reservation.

35 Reference to *Toussaint III* 597 F. Supp at 1414, quoted in *Madrid v Gomez* (fed. district court judgment on conditions in Pelican Bay, Jan 95).

36 *ibid* at p. 335

37 CCPR/c/81 Add.4, 24 August 1994 at p. 48.

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OTHER CONCERNS IN THE USA

Prisoners of conscience and fair trials in political cases

The right to freedom of thought and expression is well-established in US law. Nevertheless, Amnesty International has worked on behalf of prisoners of conscience in the USA, most recently in 1991-1992 when it campaigned for the release of more than 30 military personnel imprisoned for their conscientious objection to the Gulf War.³⁸

Amnesty International has also investigated cases in which prisoners convicted of criminal offences in the USA have alleged that they were "framed" on account of their beliefs or origins or that their trials were unfair on political grounds. Although the US criminal justice system contains many procedural safeguards for a fair trial, it has been alleged in some cases that the prosecuting authorities fabricated evidence or knowingly introduced perjured testimony, or that they improperly withheld evidence favourable to the defence. While the facts in such cases have sometimes been difficult to establish, Amnesty International has raised concerns about the fairness of proceedings in a number of cases.

In October 1981 Amnesty International published a report calling for a commission of inquiry into FBI intelligence operations (COINTELPRO) which it believed had undermined the fairness of trials of several Black Panther Party (BPP) members and members of the American Indian Movement (AIM) in the 1970s. The organization continues to investigate the cases of a number of prisoners who were alleged victims of COINTELPRO and who remain in prison. It has called, for example, for the retrial or release of Geronimo ji Jaga Pratt, a former BPP leader in Los Angeles, serving a life prison sentence for the murder of a woman in 1972, a charge he has always denied. Evidence which came to light after the trial showed that Pratt had been targeted for "neutralization" by COINTELPRO and suggested there had been misconduct by the FBI and state police in the prosecution of the case (see *USA: The case of Elmer "Geronimo" Pratt*, AMR 51/27/88 and NWS 11/01/92).

Amnesty International has also raised concerns about the fairness of the trial of AIM member Leonard Peltier, convicted in 1977 of the murders of two FBI agents on the Pine Ridge Reservation in 1975. Amnesty International's concerns include the fact that Leonard Peltier was extradited from Canada on the basis of affidavits by an alleged eye-witness to the murders which the FBI later admitted it knew were false. The FBI had supplied the state authorities with the same witness in another case involving a leading AIM member; she retracted her testimony in both cases. Amnesty International has conveyed its concerns to the federal government which is currently reviewing an application for a pardon in his case (For further information on Peltier's case see *USA: Human Rights and American Indians*, AMR 51/31/92, and *Human Rights Violations Against Indigenous Peoples*, AMR 01/08/92.)

Other cases of concern include the case of Gary Tyler, black, who is serving a life prison sentence in Louisiana for the murder of a white schoolboy who was shot during racial

³⁸ Amnesty International recognizes the right to "selective" objection on conscientious grounds to particular wars, as it has done since the Vietnam War. This applies both to conscripts and to volunteers who develop conscientious objection after enlisting in the armed forces.

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disturbances in 1974. Tyler, aged 16 at the time of the incident, denied involvement in the crime. Although unable to reach a firm conclusion on his guilt or innocence, Amnesty International believes that Gary Tyler was denied a fair trial and that racial prejudice played a major part in his prosecution, and it has supported applications for his sentence of life-without-parole to be reviewed (see *USA: The Case of Gary Tyler*, AMR 51/89/94).

Laws discriminating against homosexual practices

Amnesty International's work for the release of prisoners of conscience includes individuals who have been imprisoned solely because of their homosexuality, including the practice of homosexual acts in private between freely consenting adults. Amnesty International has campaigned for the repeal of discriminatory sodomy laws in the US states of Montana, Arkansas, Missouri, Kansas and Tennessee, which provide penalties of imprisonment for consensual sexual acts between persons of the same sex.³⁹ Such laws violate the principles of non-discrimination and the right to privacy contained under the ICCPR and other international standards. Although the laws have not been used recently to prosecute consenting adults for sexual acts in private, Amnesty International would consider any person imprisoned for such acts to be a prisoner of conscience.

Treatment of Haitian and Cuban asylum seekers

Amnesty International has had serious concerns about the procedures followed by the US authorities in dealing with Haitian asylum-seekers for many years, and particularly since the September 1991 military coup in which President Jean-Bertrand Aristide was overthrown. Amnesty International condemned US policy, in force from May 1992 until May 1994, of forcibly returning all Haitians intercepted at sea without even a cursory attempt to identify those at risk of human rights violations. This policy was in flagrant violation of international standards for the protection of refugees.⁴⁰ In a change of policy in 1994 the US Government offered such asylum seekers so-called "safe haven" protection at the US naval base in Guantánamo Bay, Cuba, but they were not able to apply for asylum in the USA. While Amnesty International welcomed the end of the policy of forcible return of all intercepted Haitians, it remained concerned that they had no opportunity for a proper hearing of their asylum claims. Amnesty International was seriously concerned by further change in US policy in December 1994, when the US government decided to forcibly repatriate all Haitian asylum-seekers remaining at Guantánamo Bay, without allowing those who wished to do so to present asylum claims. Over 3,000 Haitian asylum-seekers were forcibly returned in January 1995. Although the human rights situation in Haiti had improved, and thousands of refugees had

³⁹ Penalties range from up to 30 days' imprisonment in Tennessee for "consensual sexual penetration with a person of the same gender" to a maximum ten years' imprisonment in Montana for any sexual contact or sexual intercourse between two persons of the same sex.

⁴⁰ Article 33 of the 1951 Convention relating to the Status of Refugees, which specifies that refugees shall not be forcibly returned in any manner whatsoever to the frontiers of territories where they risk serious human rights violations; and Article 14.1 of the Universal Declaration of Human Rights which states that "Everyone has the right to seek and to enjoy in other countries asylum from persecution".

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returned to the country voluntarily, many problems remained. There had been no serious attempt, for example, to disarm and bring to justice those connected to the former military government who are believed to have been responsible for human rights violations. Amnesty International called for an immediate halt to the forcible repatriation and urged the immediate implementation of a full and fair refugee determination procedure at Guantánamo in accordance with internationally accepted standards.

In September 1994 an Amnesty International delegation visited Guantánamo Bay to investigate the situation of Cuban and Haitian asylum-seekers held there. As well as its concerns about Haitians, the organization believed that a substantial number of Cubans held in camps at Guantánamo Bay and Panama, who were not permitted to request asylum in the USA, could be at risk of human rights violations if required to return to Cuba. Amnesty International urged that they, too, be given the opportunity to present asylum applications in accordance with internationally accepted procedures.

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Appendix: Selected International Standards

Articles of the International Covenant on Civil and Political Rights (ratified by the US Government on 8 June 1992)

Article 6

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.
2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.
3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.
4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.
5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.
6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.

Article 7

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

Article 10

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.
2. (a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;
(b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.
3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

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Article 26

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

US reservations to the International Covenant on Civil and Political Rights

US reservation to Article 6

" Because approximately half the states have adopted legislation permitting juveniles aged 16 and older to be prosecuted as adults when they commit the most egregious offences, and because the Supreme Court has upheld the constitutionality of such laws, the United States took the following reservation to the Covenant:

'The United States reserves the right, subject to its Constitutional constraints, to impose capital punishment on any person (other than a pregnant woman) duly convicted under existing or future laws permitting the imposition of capital punishment, including such punishment for crimes committed by persons below eighteen years of age.' "⁴¹

US reservation to Article 7

" The extent of the constitutional provisions discussed above is arguably narrower in some respects than the scope of article 7. For example, the Human Rights Committee adopted the view that prolonged judicial proceedings in cases involving capital punishment might constitute cruel, inhuman or degrading treatment or punishment in contravention of this standard. The Committee has also indicated that the prohibition may extend to such other practices as corporal punishment and solitary confinement.

As such proceedings and practices have repeatedly withstood judicial review of their constitutionality in the United States, it was determined to be appropriate for the United States to condition its acceptance of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on a formal reservation to the effect that the United States considers itself bound to the extent that 'cruel, inhuman treatment or punishment' means the cruel and unusual treatment or punishment prohibited by the Fifth, Eighth and/or Fourteenth Amendments to the Constitution of the United States. For the same reasons, and to ensure uniformity of interpretation as to the obligations of the United States under the Covenant and the Torture Convention on this point, the United States took the following reservation to the Covenant:

⁴¹ Initial Report of USA, CCPR/C/81/Add.4, page 41 para.148
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'The United States considers itself bound by article 7 to the extent that 'cruel, inhuman or degrading treatment or punishment' means the cruel and unusual treatment or punishment prohibited by the Fifth, Eighth and/or Fourteenth Amendments to the Constitution of the United States.'⁴²

The American Convention on Human Rights (signed by the US government on 1 June 1977)

Article 4. Right to Life

1. Every person has the right to have his life respected. This right shall be protected by law, and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.
2. In countries that have not abolished the death penalty, this may be imposed only for the most serious crimes and pursuant to a final judgment rendered by a competent court and in accordance with a law establishing such punishment, enacted prior to the commission of the crime. Its application shall not be extended to crimes to which it does not presently apply.
3. The death penalty shall not be re-established in states that have abolished it.
4. In no case shall capital punishment be inflicted for political offences or related common crimes.
5. Capital punishment shall not be imposed upon persons who, at the time the crime was committed, were under 18 years of age or over 70 years of age; nor shall it be applied to pregnant women.
6. Every person condemned to death shall have the right to apply for amnesty, pardon, or commutation of sentence, which may be granted in all cases. Capital punishment shall not be imposed while such petition is pending a decision by the competent authority.

The United Nations (UN) Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (ratified by the US government in October 1994)

This provides, among other things, that education and information regarding the prohibition against torture or other cruel, inhuman or degrading treatment or punishment shall be fully included in the training of law enforcement personnel and others (Articles 10 and 16). It also provides that each State Party shall ensure there is a prompt and impartial investigation whenever there is reasonable ground to believe that an act of torture or other cruel, inhuman or degrading treatment has been committed in any territory under its jurisdiction (Articles 12 and 16).

⁴² Initial report of USA, CCPR/C/81/Add.4, page 48 para 176 and 177
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Resolution 1984/50 on safeguards guaranteeing protection of the rights of those facing the death penalty, adopted by the United Nations Economic and Social Council on 25 May 1994

1. In countries which have not abolished the death penalty, capital punishment may be imposed only for the most serious crimes, it being understood that their scope should not go beyond intentional crimes with lethal or other extremely grave consequences.
2. Capital punishment may be imposed for a crime for which the death penalty is prescribed by law at the time of its commission, it being understood that if, subsequent to the commission of the crime, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby.
3. Persons below 18 years of age at the time of the commission of the crime shall not be sentenced to death, nor shall the death penalty be carried out on pregnant women, or on new mothers, or on persons who have become insane.
4. Capital punishment may be imposed only when the guilt of the person charged is based upon clear and convincing evidence leaving no room for an alternative explanation of the facts.
5. Capital punishment may only be carried out pursuant to a final judgement rendered by a competent court after legal process which gives all possible safeguards to ensure a fair trial, at least equal to those contained in article 14 of the International Covenant on Civil and Political Rights, including the right of anyone suspected or charged with a crime for which capital punishment may be imposed to adequate legal assistance at all stages of the proceedings.
6. Anyone sentenced to death shall have the right to appeal to a court of higher jurisdiction, and steps should be taken to ensure that such appeals shall become mandatory.
7. Anyone sentenced to death shall have the right to seek pardon, or commutation of sentence; pardon or commutation of sentence may be granted in all cases of capital punishment.
8. Capital punishment shall not be carried out pending any appeal or other recourse procedure or other proceeding relating to pardon or commutation of the sentence.
9. Where capital punishment occurs, it shall be carried out so as to inflict the minimum possible suffering.

Extracts from Resolution 1989/64, adopted by the United Nations Economic and Social Council on 24 May 1989

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1. Recommends that Member States take steps to implement the safeguards and strengthen further the protection of the rights of those facing the death penalty, where applicable, by:

(a) Affording special protection to persons facing charges for which the death penalty is provided by allowing time and facilities for the preparation of their defence, including the adequate assistance of counsel at every stage of the proceedings, above and beyond the protection afforded in non-capital cases;

(b) Providing mandatory appeals or review with provisions for clemency or pardon in all cases of capital offence;

(c) Establishing a maximum age beyond which a person may not be sentenced to death or executed;

(d) Eliminating the death penalty for persons suffering from mental retardation or extremely limited mental competence, whether at the stage of sentence or execution.

Standards on police codes of conduct and use of force

Relevant articles under the **UN Code of Conduct for Law Enforcement Officials**, adopted by the UN General Assembly in 1979:

Article 2: "In the performance of their duty, law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons."

Article 3: "Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty."

More detailed guidelines are set out in the **Basic Principles on the Use of Force and Firearms by Law Enforcement Officials**, adopted by the Eighth UN Congress on the Prevention of Crime and Treatment of Offenders on 7 September 1990. These provide in part:

4. "Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result."

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5. "Whenever use of force and firearms is unavoidable, law enforcement officials shall:

- a. Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved;
- b. Minimize damage and injury and respect and preserve human life;
- c. Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment";

9. "Law enforcement officials shall not use firearms against persons except in self-defence or defence of others **against the imminent threat of death or serious injury**, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger or resisting their authority, or to prevent his or her escape, **and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.**" (emphasis added)

10. "In the circumstances provided for under principle 9, law enforcement officials shall identify themselves as such and give a clear warning of their intent to use firearms, with sufficient time for the warning to be observed, unless to do so would unduly place the law enforcement officials at risk or would create a risk of death or serious harm to others, or would be clearly inappropriate or pointless in the circumstances of the incident."

The **Basic Principles** also provide that law enforcement officials shall, among other things:

11(b) "Ensure that firearms are used only in appropriate circumstances and in a manner likely to decrease the risk of unnecessary harm."

Article 6 of the **Basic Principles** provides that officials shall promptly report any use of force or firearms that results in injury or death. Article 7 provides that governments shall ensure that "arbitrary or abusive use of force and firearms by law enforcement officials is punished as a criminal offence under their law."

Governments were asked to consider incorporating the provisions of the **Code of Conduct for Law Enforcement Officials** into national legislation or guidelines for law enforcement agencies.

The Eighth UN Crime Congress invited member states to bring the **Basic Principles** to the attention of law enforcement officials and other members of the executive branch of government, judges, lawyers, the legislature and the public and to inform the UN Secretary-General every five years of the progress achieved in their implementation.